

LYING TO A COURT COMES WITH A PRICE TAG

by

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Reprinted from *Minnesota Lawyer* (October 6, 2014)

The Supreme Court, in numerous lawyer disciplinary decisions, has emphasized the importance of telling the truth as a fundamental character trait for lawyers. The court has stated “Honesty and integrity are chief among the virtues the public has a right to expect of lawyers. Any breach of that trust is misconduct of the highest order and warrants severe discipline.” *In re Ruffenach*, 486 N.W.2d 387, 391 (Minn. 1992). False statements by a lawyer to a judicial official can violate a number of the Minnesota Rules of Professional Conduct, including candor to the tribunal under Rule 3.3(a)(1) and the general prohibition on dishonesty and conduct prejudicial to the administration of justice under Rules 8.4(c) and (d).

Over the summer, several lawyers have been publicly disciplined for making a false statement to the court. A lawyer was publicly reprimanded for making false statements to the court by claiming that a document included in an appendix to an appellate brief was part of the record on appeal and making another false statement in an expert witness affidavit. A second lawyer was publicly reprimanded and placed on two years of probation for misconduct involving a conflict of interest and making a false statement to the court. Most recently, a third lawyer was publicly reprimanded for falsely informing the court and opposing counsel that his mother had died of breast cancer in order to obtain a continuance. In addition, there is fourth public petition for discipline pending against a lawyer who made a false statement to the court about when her retained expert received the other side’s expert opinion in order to obtain a continuance.

What should the legal profession make of this set of disciplinary opinions? While these cases likely do not signify a trend toward dishonesty within the legal profession, they are noteworthy in that the court again appears to be putting lawyers on notice of the seriousness with which the court has treated lawyers who violate their obligation of candor to a tribunal. In the disciplinary opinions issued this summer, the court upheld stipulations for a public reprimand due to the presence of mitigating circumstances or other evidentiary concerns, however, the court noted in all three opinions that lawyers were routinely suspended for making misrepresentations to judicial officers and cited several cases in support thereof, including *In re Jensen*, 542 N.W.2d 627, 634 (Minn. 1996). The court also noted that lawyers have been suspended for misconduct

involving a single misrepresentation. See, e.g., *In re Warpeha*, 802 N.W.2d 361, 361 (Minn. 2011) (60-day suspension for making false statement about lawyer's criminal history during voir dire when he was a potential juror), *In re Scott*, 657 N.W.2d 567, 568 (Minn. 2003) (30-day suspension for making false statements to a court in lawyer's divorce and custody proceeding).

The court's repeated reference to lawyers being suspended for violations of candor to the tribunal may indicate that in the absence of mitigating factors, suspension may be warranted in the future. Likewise, where a lawyer's false statement is accompanied by additional acts of misconduct or aggravating circumstances, such as substantial harm, suspension is further likely to be imposed. In the end, lawyers should consider that a lie to obtain a tactical advantage in litigation – even a short continuance, may not be worth the cost of a suspended license.