

PERJURY, FORGERY AND FABRICATION

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An unprecedented series of cases has recently arisen, involving fabrication of documents, forgeries, false testimony, obstruction of disciplinary investigation, improper notarizations, and the like. Although dishonesty in such forms as misappropriation of funds and fraud regularly has been among the most serious disciplinary matters, this new wave of forgeries, perjury, and the like has not been seen before among Minnesota attorneys.

The following cases, all arising in the last year or so, indicate that confronting dishonesty in various forms is the greatest current challenge to the Minnesota professional responsibility system.

Fabrication of Documents and False Testimony

1. An insurer sent an attorney a settlement check for a client claim, together with a release mistakenly stating a lesser amount. The attorney attempted to profit from the mistake by deceiving the client. After the client complained, the attorney furnished to the Director's Office a falsified bank document to conceal his misappropriation and fraud. The attorney also testified falsely at deposition and before the referee. The attorney has been temporarily suspended and the recommendation for final discipline is now under consideration.

2. An attorney presented at a real estate closing several fabricated documents, including forged satisfactions of judgment notarized by him and a bankruptcy court certification. At a disciplinary deposition, the attorney falsely testified regarding his conduct. Criminal charges were brought and the attorney pled guilty to certain criminal offenses. The attorney invoked a disability rule and his license to practice has been at least temporarily suspended.

3. An attorney allegedly fabricated, signed in another's name, notarized, and falsely entered recording data on a purported satisfaction of a client's mortgage. The matter is pending before the Supreme Court.

4. After a disciplinary complaint was filed against an attorney, he attempted to obtain false statements from witnesses, made a false statement to the district ethics committee, sought to have others cover up his misconduct, and fabricated documents to conceal his misconduct. The attorney was suspended for one year for this and other misconduct.

Forged, Notarized Client Affidavits

1. An attorney, apparently to conceal his delay in handling a family law matter, signed his client's name to two affidavits and filed them in court. He photocopied one of them so as to conceal the forgery from the client. At deposition he gave false testimony regarding the affidavit signatures. After a hearing before a referee, the matter is pending before the Supreme Court.

2. An attorney signed his client's name to an affidavit, notarized it, and filed it in court without her

knowledge or consent. A disciplinary petition has been filed in the Supreme Court.

3. An attorney apparently signed his client's name to three affidavits in a family law matter, and filed them in court, all without the client's knowledge or consent. An investigation is pending.

4. An attorney allegedly notarized a false signature on articles of incorporation and filed them. An investigation is pending.

Offenses involving dishonesty in one form or another account for a large percentage of Minnesota Supreme Court disciplinary cases. The Court recently recalled its statement of 20 years ago, that deception of the Court subverts "that loyalty to the truth without which [one] cannot be a lawyer in the real sense of the word." Many cases involving serious dishonesty have resulted in suspension or disbarment. In the last decade, the Court has several times imposed minor disciplines for lesser offenses, such as improper notarial practices which fell short of intentional dishonesty.

Never has the Court or the Lawyers Board confronted a series of cases like those summarized above. The Director's Office has sought, or will seek, disbarment or suspension of attorney licenses for the most serious of the cases described above.

Lawyers enjoy a monopoly in providing legal services to society. The regulation of those services has been left to the Court, its agents, and the bench and bar working with the Court. The license granted by the Court to attorneys is an implicit certification to the public that attorneys are competent and trustworthy to handle a person's most intimate and important matters.

The Court's general certification is specified in several prohibitions of dishonesty. The Rules of Professional Conduct state repeatedly that dishonesty in various contexts is subject to discipline. *See e.g.*, Rules 1.15(h), 3.3(a), 3.4(b), 4.1, 4.3(b), 7.1, 7.4(a), 8.1(a), 8.3(a) and 8.4(c). An attorney on admission to the bar swears he or she "will use no falsehood or deceit." Minn. Stat. §481.071 provides that any attorney "guilty of any deceit or collusion . . . shall be guilty of a misdemeanor." Perjury, forgery, and false notarizations are also subject to criminal penalties.

Even if there were no formal rules, oath, or criminal law, "responsible attorneys would [not] differ in appraising [the] propriety" of the dishonesty involved in the cases described above. *In re Ruffalo*, 390 U.S. 544 (1968). To protect the public, and the integrity of the bench and bar, and to remind attorneys unmistakably of their fundamental obligations, severe discipline and clear policy declarations will be sought from the Court in all cases of serious intentional dishonesty.