

The 'Dishonest Procrastinator' Lives On

by

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In the late 1980s several lawyer discipline cases in Minnesota involved attorneys who lied to courts, clients or opposing counsel to conceal neglect of files and failure to communicate with clients. These attorneys were labeled as “dishonest procrastinators.” [\[1\]](#)

Over a two-year period, approximately 20 such cases -- an unusually high number -- had reached the Minnesota Supreme Court and resulted in public disciplinary action in the form of probation, reprimand, suspension and even disbarment.

Although dishonest-procrastinator cases aren't reaching the Office of Lawyers Professional Responsibility or the Minnesota Supreme Court at the pace they were in the late 1980s, such cases continue to appear on the office director's case lists and the court's docket at a steady pace. Unfortunately, nearly 20 years later, the “dishonest procrastinator” lives on.

Probably the worst case of dishonest procrastination from the 1980s was seen in *In re McCoy*, 447 N.W.2d 887 (Minn. 1989).

Louis McCoy's procrastination-hiding devices were many, and included a matter in which he told his clients to wait outside the courtroom while he completed their adoption of a child inside. Problem was, there was no hearing. In fact, there was no adoption. It was an elaborate ruse by McCoy designed to cover up his procrastination, which was especially unforgivable considering the emotional and personal nature of his clients' case. McCoy was disbarred.

If the *McCoy* case was the worst example of dishonest procrastination in the 1980s, *In re Samborski*, 644 N.W.2d 402 (Minn. 2002) was a worthy successor in the 1990s.

The case involved misconduct that spanned nearly a decade, was the subject of three petitions for disciplinary action and involved 27 counts of misconduct. Most of the counts involved lies to 22 clients to hide Samborski's utter lack of diligence in handling their cases. Samborski also was disbarred.

Obviously, not all such cases result in disbarment and less egregious facts will result in less severe discipline.

On one level, procrastination makes no sense. Just work harder and the problem is solved, right?

Well, lawyers are human and we make mistakes. We sometimes take on cases or clients that we don't realize until much later should have been avoided from the start. Or, we take on more cases than we can handle. A few files may start to gather dust on the credenzas behind our desks or in file drawers in the corner of our offices while the client's case grows stale.

Occasionally, life throws us a curve, and an illness, divorce or family crisis gets in the way of our ability to stay on top of our cases. Or, we use time-tested avoidance techniques for cases that are unusually difficult, unprofitable, or excessively time-consuming (or all three).

Most likely, we have good intentions to get to them soon, but may not actually do so until some deadline looms or an angry client confronts us or our support staff. Such lack of diligence violates the disciplinary rules, but can happen to even conscientious lawyers.

The critical issue is this: what to do when, for whatever reasons, you've let a client's legal matter slide and procrastinated to the point where a deadline is missed or a client simply is unhappy.

Promptly review the case and come up with a realistic plan to get the case moving again. There is a wealth of resources in print and on the Internet for ways to attack and prevent procrastination.^[2] Take advantage of such material. If appropriate, contact your malpractice carrier.

What not to do is easier. Don't compound your delay by lying about it or covering it up from partners, clients, courts or others. "Come clean" by informing the client of the problem immediately. "The actual consequences of delivering bad news are seldom as bad as those imagined. Nor are the actual consequences often as bad as the consequences of lying to cover up."^[3]

Above all, avoid the temptation to cross the line from "honest" to "dishonest" procrastinator by telling the client a "white" lie or worse to hide your failing. This path can lead to disaster.

^[1] The term was used by then Director William Wernz in a January 1990 Bench & Bar of Minnesota column of that name.

^[2] See, for example, "The Importance of Diligence and Avoiding Procrastination," Patrick R. Burns, Minnesota Lawyer (February 4, 2002), or Stephen R. Covey. SEVEN HABITS OF HIGHLY EFFECTIVE PEOPLE: Powerful Lessons in Personal Change. New York: Simon and Schuster, 1989.

^[3] See Wernz, "The Dishonest Procrastinator," Bench & Bar of Minnesota January 1990.