

THE DISHONEST PROCRASTINATOR

By
William J. Wernz, Director

Reprinted from *Bench & Bar of Minnesota* (January 1990)

"Why don't you disbar the crooks and let all of us honest procrastinators go?"

For years this question has been good for a laugh at bar gatherings. In light of recent developments, it may go the way of jokes from the past about drunk driving.

In the last year or two approximately 20 attorneys have been subject to discipline proceedings for lying to conceal neglect of files. Disciplines have ranged from public reprimand to suspension or disbarment.

In the worst of these cases, Louis McCoy was disbarred for neglecting the affairs of 11 clients, and lying to about half of them. In one case, McCoy told a couple to wait outside a courtroom, with their child, while he completed adoption proceedings. In fact, he had never filed an adoption petition. No hearing took place while he was in the courtroom and the courtroom was not even located in the county where the clients resided. *In re McCoy*, No. C3-85-27, Slip. op. (Minn. Nov. 17, 1989); *In re McCoy* 422 N.W.2d 731 (Minn. 1988); *In re McCoy*, 375 N.W.2d 471 (Minn. 1985).

In another case, McCoy's lies to an incarcerated client led to the client's loss of his home and his visitation rights with his children. McCoy's neglect of another client's case resulted in eviction from their home and loss of nearly \$40,000 in equity. After the eviction, McCoy again lied, telling the clients to resume possession of their home and that he had hired a moving truck to assist them. In fact, he had taken no action on the matter.

Some of the neglect and lying resulted from attorneys' inability to proceed with difficult, or losing cases. One attorney, with a successful general practice, discovered the hard way that plaintiffs medical malpractice cases are difficult to evaluate and pursue. He was suspended for telling nine clients a series of lies about the status of their cases. Another attorney, having undertaken a wrongful death action that proved to be without merit, told the client the case had been settled, and wrote a check for \$15,000, of his own money, for the purported settlement amount.

Learning to be the bearer of bad news is a necessary part of being an attorney. No news is often a form of bad news. 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.

Sometimes the motivation for lying is simply to cover up neglect. Consider the following testimony by an attorney now suspended:

A. There were times that I told him that there were court appearances scheduled.

Q. Were there in fact court appearances scheduled?

A. No.

Q. Why did you tell him there were court appearances scheduled?

A. Because I didn't have the work done and I had done - I guess I had done a number of things for him that had went [sic] quite well and it was a way, I guess to buy time to get me to get it done, thinking I could get it done.

In several cases the motivation for lying was very specific - to cover up the fact that a deadline had already been missed.

Clients are not the only ones who have been deceived. Attorneys have lied to courts to conceal the untimeliness of certain filings. Several attorneys have lied to their employers or partners when the firm began to receive complaints.

Deceit has sometimes progressed down a slippery slope. The lying may have begun as a slight deception, such as saying that a document has been filed when it is still being prepared. A couple of the attorneys obviously took on too much work, and lied to cover up their inability to deal with files promptly. A few attorneys have gone so far as to create false court documents, displaying them to show skeptical clients that proceedings really are underway.

Lawyers in a firm may come to have responsibilities to report other lawyers who conceal neglect. If a lawyer has missed a statute of limitations or lied about the status of a case, Rule 1.4 (reasonable communication) requires that the client be informed. Rule 8.3 requires that serious professional misconduct be reported to the Office of Lawyers Professional Responsibility. Rule 5.1 requires that partners take reasonable steps to insure that firm members comply with the Rules of Professional Conduct.

The Court has stated that it imposes "severe sanctions in cases involving repeated instances of client neglect." Even when neglect is isolated, lying to conceal it will normally result in public discipline. Clients are often vulnerable to such lies. They may have little idea of the expected pace of legal proceedings, and may be unable to distinguish between unfortunate but necessary delays and delays caused by neglect. Courts also necessarily rely to a great extent on attorneys' truthfulness in matters such as affidavits of service. Especially because of this vulnerability and dependence, lying usually results in public discipline, and often in suspension or disbarment. Even when lying is readily detected, public discipline is to be expected, because of that "loyalty to the truth without which [one] cannot be a lawyer in the real sense of the word." *In re Nilva*, 123 N.W.2d 803, 809 (Minn. 1963).

The honest procrastinator is perhaps someone we will always have with us. Year in and year out nearly half the complaints received allege neglect, noncommunication, and the like. Dishonest procrastinators have too frequently been with us of late. Many of them have now been removed from our number by the Court.

The number of dishonest procrastinators is bad news indeed. Learning to deal with this bad news, and the bad news that is part of lawyering, is a matter of professional responsibility.