

Truthfulness to Clients is a Must

by

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Honesty is universally recognized as the character trait most fundamental to the practice of law. Twenty years ago, in *Nix v. Whiteside*, 475 U.S. 157, 174, (1986), the U.S. Supreme Court reminded us that ethical lawyers and officers of the court are a “key component of a system of justice, dedicated to a search for truth.”

Similarly, the Minnesota Supreme Court has said that a lawyer who deliberately engages in deception “subverts that loyalty to truth without which he cannot be a lawyer in the real sense of the word.” See *In re Nilva*, 123 N.W.2d 803, 809 (Minn. 1963).

Requirements of truthfulness and honesty appear repeatedly in the Minnesota Rules of Professional Conduct. The preamble to the MRPC provides that, “In fulfilling our duties to each client, we will be mindful of our obligation to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner.”

As should be expected, Rule 3.3 of the MRPC forbids lawyers from making false statements of fact or law to a court, and if we did so unintentionally or did so the past, we are required to correct the false statements. Lawyers should never offer evidence that we know is false, and if our clients or witnesses happen to do so, we are required to promptly take “reasonable remedial measures,” including informing the court of the false evidence.

In addition, Rule 7.1 prohibits lawyers from misleading anyone about our professional legal services and practice by making false or misleading statements.

But what about our dealings with our own clients? Does the same high standard of veracity still apply?

Absolutely. And, in Minnesota, arguably a bit more so than in other states.

Rule 8.4(c) provides that “it is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” The reach of the rule is broad. In more than 50 public disciplinary actions in Minnesota since 1986, it has been applied to statements and transactions involving clients, third parties, the lawyer’s own law firm and the Director’s investigation.

The ABA Model Rules contain another rule related to honesty and truthfulness, Rule 4.1(a), which states that “In the course of representing a client a lawyer shall not knowingly make a false statement of material

fact or law to a third person.”

The Minnesota Supreme Court has adopted a similar rule, MRPC Rule 4.1, but with a significant deletion. Minnesota, like several other states, has stricken the word “material” from the scope of the model rule. Minnesota is perhaps unique, however, in also eliminating the final phrase, “to a third person.”

The rule thus extends to false statements of fact and law made to the lawyer’s clients — despite the irony that the rule appears in a section entitled “Truthfulness in Statements to Others” and requires that the lawyer be acting in the course of representing a client — the very client to whom false statements may not be made.

Nevertheless, Rule 4.1 has been frequently cited in Minnesota disciplinary actions involving false statements to clients. In many cases, the lawyer’s misrepresentations are made to conceal other wrongful conduct, such as the lawyer’s misappropriation of the client’s funds, neglect of the client’s case, settling the client’s case without the client’s permission or missing a filing deadline or statute of limitation.

Violations of MRPC Rule 4.1 appear in 43 public disciplinary actions in Minnesota since the year 2000, including nine in the year 2000 alone. In most cases, the violation of the rule was for the lawyer’s false statement(s) to his or her client.

For example, in *In re Nelson*, 733 N.W.2d 458, 461-62 (Minn. 2007), the respondent violated MRPC Rule 4.1 by falsely stating to his client that he had filed a motion to vacate a default judgment when, in fact, he had not, and that certain hearing dates had been scheduled or canceled when, in fact, no hearing date had been scheduled because the motion had not been filed.

In *In re Mayrand*, 723 N.W.2d 261 (Minn. 2006), the respondent lied to four clients in connection with their matters in violation of MRPC 4.1.

In *In re Berg*, 741 N.W.2d 600 (Minn. 2007), the respondent made false statements to two clients, including telling one of the clients that he was unable to release funds to which she was entitled without first obtaining additional signatures when the respondent had, in fact, misappropriated the funds.

In *In re Knutson*, 711 N.W.2d 807 (Minn. 2006), the respondent lied to several clients to conceal his neglect of their cases.

In most cases, the facts supporting a violation of MRPC 4.1 also serve as the basis for a violation of Rule 8.4(c). But lawyers have been disciplined in Minnesota for making knowing false statements to clients based only on Rule 4.1 and not Rule 8.4(c).

In 2006, an attorney was publicly reprimanded for making false statements to a client in connection with his handling of a probate estate, including statements to the client to conceal his neglect of the case. *See In re Mitchell*, 709 N.W.2d 261 (Minn. 2006).

It has been observed that the MRPC “state repeatedly that dishonesty in various contexts is subject to discipline.”^{Ftn1} Based on Minnesota’s unique and broad application of MRPC 4.1 — to clients and nonclients alike — Minnesota lawyers have an added incentive to deal truthfully and honestly with clients.

[1] “Perjury, Forgery and Fabrication,” Bench & Bar of Minnesota (October 1986).