

## CASELAW APPENDIX (A)

### *Attorneys Lying to Clients*

**Attorney Grievance Com'n of Maryland v. Reinhardt**, 391 Md. 209, 892 A.2d 533 Md., 2006. Background: Attorney disciplinary proceeding was brought arising out of loss of client's file. The Circuit Court, Baltimore County, Jakubowski, J., entered findings of fact and conclusions of law, but failed to find a violation on some charges. Bar Counsel filed exception. Holdings: The Court of Appeals, Raker, J., held that: (1) specific intent is not a necessary ingredient of dishonesty or misrepresentation under rule prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; (2) attorney was dishonest and misrepresented the truth when he told his client that he was working on the case when, in fact, he had lost the file and was not working on the case; (3) the misconduct was prejudicial to the administration of justice; and (4) the misconduct warranted indefinite suspension from practice of law, rather than disbarment or shorter suspension. Suspension ordered. Attorney was dishonest and misrepresented the truth and, therefore, violated prohibition against dishonesty and misrepresentation when he told his client that he was working on the case when, in fact, he had lost the file and was not working on the case; attorney exhibited a lack of probity, integrity, and straightforwardness, and the attorney told lie to client although he possibly acted as he did because he was embarrassed. Md. Rule 16-812, Rules of Prof. Conduct, Rule 8.4(c) (2005).

An attorney's behavior that may seriously impair public confidence in the entire profession, without extenuating circumstances, may be conduct prejudicial to the administration of justice. In determining the appropriate sanction to be imposed on an attorney, the Court of Appeals is guided by an interest in protecting the public and its attendant confidence in the legal profession. The purpose of attorney disciplinary proceedings is not to punish the lawyer, but to protect the public as well as to deter other lawyers from violating the Rules of Professional Conduct. In order to protect the public, the Court of Appeals imposes a sanction commensurate with the nature and gravity of the violations and the intent with which the violations were committed. Attorney's misconduct by losing client's file, failing to reconstruct it, and lying to client about working on case warranted indefinite suspension from practice of law, rather than disbarment or shorter suspension; nothing indicated fraudulent or selfish motive, and attorney

fully cooperated with Bar Counsel, engaged in negotiations with the client's attorney regarding restitution, expressed great remorse to the client, and continued to work with the client's new counsel to settle the matter.

**Supreme Court of Ohio. CINCINNATI BAR ASSN. v. Deaton No. 2003-1534 (2004).** Background: State bar association filed complaint against attorney charging attorney with numerous violations of Code of Professional responsibility. Following attorney's failure to answer complaints, the special master considered motion for default, made findings of fact and recommendation which were adopted by Board of Commissioners on Grievances and Discipline. Holding: The Supreme Court held that that attorney's misconduct warranted permanent disbarment. Disbarred. Attorney's conduct in failing to perform as promised for least 11 different clients, including the law firm for which he worked at the time, routinely lying to clients about his progress in their cases, and failing to respond to investigative inquiries, constituted violations of professional rules prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, charging a clearly excessive fee, neglecting an entrusted legal matter, failing to seek client's lawful objectives through reasonable means, failing to carry out a contract for professional services, causing client damage or prejudice, failing to promptly pay client funds to which the client is entitled, and failing to cooperate in disciplinary proceedings.

**Supreme Court of Iowa. Board of Professional Ethics & Conduct v. Lett No. 03-1646 (2004).** Background: Attorney disciplinary proceeding was brought. Holding: The Supreme Court, Streit, J., held that attorney's misconduct which included stealing client funds, not cooperating in disciplinary investigation, and lying to clients to cover her misdeeds warranted license revocation. License revoked. In an attorney disciplinary proceeding, the Supreme Court gives respectful consideration to the Grievance Commission's findings and recommendations, but it is not bound by them. The Supreme Court Board of Professional Ethics and Conduct must prove attorney misconduct by a convincing preponderance of the evidence; this burden is less than proof beyond a reasonable doubt, but more than the preponderance standard required in the usual civil case. Factors which help guide Supreme Court's determination in an attorney disciplinary proceeding include the nature of the alleged violations, the need for deterrence, protection of the public, maintenance of the reputation of the bar as a whole and the respondent's fitness to continue in the practice of law.

**Supreme Court of Minnesota.** *In re Petition for Disciplinary Action Against Steve C. Samborski* No. C0-00-1380 (2002). In attorney disciplinary proceedings, the Supreme Court held that: (1) disbarment was warranted sanction for attorney misconduct in multiple matters, and (2) attorney failed to establish that alcoholism was mitigating factor. Disbarment ordered. Supreme court imposes attorney discipline to protect the courts, the legal profession, and the public, to guard the administration of justice, and to deter similar misconduct. To determine the appropriate discipline for attorney misconduct, the Supreme Court will consider: (1) the nature of the misconduct, (2) the cumulative weight of the violations, (3) the harm to the public, and (4) the harm to the legal profession, as well as any aggravating or mitigating factors. While repeated neglect of client matters, misrepresentations, and failure to communicate with clients typically warrant indefinite suspension, disbarment is appropriate in extreme cases. Attorney has a duty to cooperate with disciplinary authorities in the investigation of client complaints. Attorney commits professional misconduct by committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. Supreme Court need not await a conviction to discipline an attorney for criminal acts. Even where no single act of misconduct standing alone warrants severe public discipline, the cumulative weight and severity of multiple disciplinary rule violations may compel such discipline.

**Supreme Court of Louisiana.** *In re Jason Blaine ROCHON.* No. 2000-B-3356. (2001). In an attorney disciplinary proceeding, the Supreme Court held that accepting petition for consent disbarment was warranted for numerous violations. Disbarment ordered. Seven instances of failing to communicate with clients and/or misrepresenting cases to clients; two instances of dishonesty, fraud, deceit, or misrepresentation (such as lying to clients); and four instances of engaging in conduct that is disruptive to a tribunal and prejudicial to the administration of justice. Standard 7.1, which provides that disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

**Supreme Court of Minnesota.** *In re Petition for DISCIPLINARY ACTION AGAINST William P. KASZYNSKI* No. C4-99-1780 (2001). The

purpose of attorney discipline is not to punish the attorney, but rather to protect the courts, the public, and the legal profession, as well as to guard the administration of justice. When warranted, the Supreme Court will not hesitate to impose the strictest discipline available, including disbarment, in order to maintain public confidence in the legal profession. While the attorney's prior disciplinary history for related violations was a consideration in *Harp*, we have never held that prior discipline is required before an attorney will be disbarred. Here, the pervasiveness and severity of Kaszynski's misconduct warrants disbarment. Similarly, Kaszynski's misconduct is equivalent to the misconduct warranting disbarment in *In re Jones*, 383 N.W.2d 303, 305-06 (Minn.1986). In *Jones*, the \*714 attorney neglected client matters and failed to take responsibility for errors when brought to her attention. *Id.* In addition, Jones eschewed her professional responsibility by filing fraudulent lawsuits, lying to clients, lying under oath, and failing to cooperate in the disciplinary proceedings. See *id.* As in these cases, the "cumulative weight and severity" of Kaszynski's disciplinary rule violations compel disbarment.

**Supreme Court of Louisiana. In re FLOYD M. GIBSON.** No. 00-B-2658 (2000). Office of Disciplinary Counsel (ODC) file formal charges against attorney. Hearing committee recommended disbarment. Disciplinary board also recommended disbarment, finding that attorney breached duties to clients, legal system, and profession, and that attorney's conduct was knowing and intentional. The Supreme Court held that attorney's knowing and intentional neglect of clients' cases, failure to communicate with clients, failure to provide accounting and return clients' funds, failure to comply with orders of federal judge, and failure to cooperate with ODC warranted disbarment. Disbarment ordered.

**Supreme Court of Louisiana. In re Danny L. GILBERT.** No. 99-B-2566 (1999). In attorney disciplinary proceeding, the Supreme Court held that disbarment was warranted for attorney who neglected client matters, failed to account for client funds, lied to clients regarding status of their legal matters, and failed to cooperate in disciplinary investigation. Disbarment ordered.

**Supreme Court of Appeals of W.V. The LAWYER DISCIPLINARY BOARD v. Geary M. BATTISTELLI,** No. 23938 (1999). Attorney disciplinary proceedings were instituted. The Supreme Court of Appeals held that failure to timely pay expert witness for his

testimony, over-withholding of client's settlement funds, obtaining loan from client with no security interest protecting client, failing to explain facts surrounding security interest, failing to pay back loan in timely manner, neglect of client affairs, repeatedly lying to clients about status of case, and failure to act with reasonable diligence in representing client, warranted license annulment. Annulment ordered.

**Supreme Court of Louisiana. In re Joyce H. WATTS.** No. 99-B-2071. (1999). In attorney disciplinary proceeding, the Supreme Court held that disbarment was warranted for attorney's pattern of neglect of client matters, attorney's failure to account for client funds, attorney's acts of lying to clients regarding status of their legal matters, and attorney's repeated commingling and conversion of funds. Disbarment ordered.

**Supreme Court of Rhode Island. In the Matter of Steven M. ROSSI.** No. 99-358-M.P. (1999). Attorney disciplinary proceeding was brought. The Supreme Court held that neglecting legal matters, lying to clients regarding status of cases, commingling and converting client funds, and abandoning responsibilities as member of bar warranted disbarment. Disbarment ordered. Lying to clients about status of case and neglecting case over a period of several years violated disciplinary rules requiring lawyer to provide competent representation, requiring lawyer to keep clients reasonably informed, requiring lawyer to act with reasonable diligence, and prohibiting lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

**Supreme Court of Georgia. In the Matter of W. Roy MAYS, III.** No. S98Y0455(1998). In attorney disciplinary proceeding, the Supreme Court held that attorney's misconduct in lying to client that her suit had settled when attorney had in fact let limitations period run, using his own funds to pay her the proceeds of the purported settlement, and lying about matter in disciplinary proceeding warranted disbarment. Disbarred. Disbarment is appropriate where lawyer makes false statements with intent to deceive court and causes serious injury to party or significant adverse effect on legal proceeding, and knowingly deceives client and causes serious injury.

**Supreme Court of Minnesota. Disciplinary Action Against Dovolis,** No. C2-97-11 (1998). Attorney's misconduct in misappropriating more than \$62,000 from 13 clients by purportedly settling their claims and then forging their

signatures on settlement checks and releases, in lying to clients and failing to communicate with them both before and after the misappropriations, in misrepresenting facts to opposing parties and counsel, and in maintaining inadequate books and records warranted disbarment, particularly absent proof that psychological gambling disorder caused misconduct, that recovery from disorder had arrested misconduct, and that misconduct was not apt to recur. Lawyers Prof.Resp., Opinion 9. Supreme Court does not hesitate to impose strictest discipline available, including disbarment, to maintain public confidence in legal profession. Supreme Court's primary responsibility in attorney disciplinary action is to protect public.

**Supreme Court of Ohio. Dayton Bar Assoc. v. Shaman**, No. 97-871 (1997). In attorney disciplinary proceeding, the Supreme Court, Douglas, J., held that attorney's misconduct in neglecting various legal matters entrusted to him, lying to clients, not cooperating with investigation, and improperly retaining retainer fees warranted indefinite suspension from practice of law in light of mitigating circumstances. Indefinitely suspended.

**Supreme Court of Ohio. Cincinnati Bar Assoc. v. Harvey**, No. 97-811 (1997). Disciplinary proceedings were brought against attorney. Disciplinary board recommended indefinite suspension. The Supreme Court held that neglecting case by failing to file suit, lying to client as to status of case, and attempting to mislead bar association in its investigation was conduct warranting indefinite suspension from practice of law. Suspension ordered.

**Supreme Court of Appeals of W.V. Office of Lawyer Disciplinary Counsel v. Tantlinger** No. 23972 (1997). In attorney disciplinary proceeding, the Supreme Court of Appeals held that physical and emotional obstacles faced by attorney following stroke did not exculpate attorney or otherwise mitigate appropriate sanction for attorney's misdeeds, which included embezzlement of client monies, lying to clients, and deceiving Disciplinary Counsel regarding status of settlement proceeds, and thus no justification existed for mitigation hearing, and attorney's law license would be annulled. License annulled.

**Disciplinary Board of the Supreme Court of the State of North Dakota v. Leier** Civil Nos. 960248-960257, 960390 (1997).

In attorney disciplinary proceedings, the Supreme Court held that disbarment, rather than acceptance of resignation from practice of law, was appropriate sanction for attorney's misconduct, despite attorney's allegedly severe depression at time in question. Disbarred.

**Supreme Court of Kansas. In the Matter of Johnson,** No. 78093. (1997). In attorney disciplinary proceeding, the Supreme Court held that attorney's neglect of client's case, failure to communicate with client, lying to client about whether he had filed pleadings and set hearing, and failure to communicate with Disciplinary Administrator's office during investigation of complaint warranted indefinite suspension from practice of law. Suspended.

**Supreme Court of Ohio. Cleveland Bar Assoc. v. Rea,** No. 96-1433 (1997). City bar association, as relator, filed complaint-charging attorney in six counts with violating several disciplinary rules. Attorney did not respond or file answer to complaint, and relator moved for default judgment. The Supreme Court held that attorney's misconduct in neglecting legal matters entrusted to her, failing to return unearned retainers, and lying to clients, warranted sanction of indefinite suspension from practice of law. Indefinite suspension ordered.

**Supreme Court of Oklahoma. Oklahoma Bar Assoc. v. Perry, Jr.** (Two Cases) S.C.B.D. Nos. 4164, 4201 (1997). Disciplinary proceedings were brought against attorneys based on seven counts of professional misconduct, and proceedings were consolidated. The Supreme Court, Watt, J., held that attorney's conduct warranted disbarment. Disbarment ordered.

**Supreme Court of New Mexico. In the Matter of Josephine D. ROHR, An Attorney Admitted to Practice Before the Courts of the State of New Mexico.** No. 23771 (1997). In attorney disciplinary proceeding, the Supreme Court held that disbarment was appropriate sanction for converting client's funds, showing pattern of misconduct, and lying to client about settlement for several months. Disbarment ordered.

**Supreme Court of Nebraska. State of Nebraska ex rel. Nebraska State Bar Assoc. v. Gregory.** No. S-96-795. (1996). In attorney disciplinary proceedings, the Supreme Court held that disbarment from practice of law in state was warranted as only sanction which would adequately protect public, as well as

reputation of bar, in light of attorney's misconduct involving neglect of client matters and misappropriation of funds. Judgment of disbarment. To determine whether and to what extent discipline should be imposed, court considers nature of offense, need for deterring others, maintenance of reputation of bar as whole, protection of public, attitude of offender generally, and his or her present or future fitness to continue in practice of law.

**Supreme Court of Ohio. Office of Disciplinary Counsel v. Trumbo.** No. 96-522 (1996). Attorney disciplinary proceeding was instituted. Board of Commissioners on Grievances and Discipline recommended two-year suspension with one year stayed. The Supreme Court held that continually lying to clients, lying to court, and lying to Disciplinary Counsel warranted indefinite suspension. Indefinite suspension ordered. Purpose of disciplinary actions is not by way of punishment, but rather, courts on such cases exercise their discretion as to whether person whom they have formerly admitted is proper person to be continued on roll. Guiding principle in attorney disciplinary proceeding is public interest, and attorney's right to continue to practice profession imbued with public trust.

**Supreme Court of Mississippi The Mississippi Bar v. Robb** No. 93-BA-01051-SCT (1996) Supreme Court will not hesitate to impose substantial sanctions upon attorney for any act which evinces want of personal honesty and integrity or renders attorney unworthy of public confidence. For purposes of determining appropriate discipline for attorney, misrepresentations by omission are as egregious as overt misrepresentations. One purpose of punishment for ethical violations, to reinforce confidence of public in ability of legal profession to govern itself, is important because profession assumes responsibility of governing its members and, therefore, public's confidence and faith in integrity of entire Bar is dependent upon profession's willingness to impose appropriate sanctions on its members who have violated Rules of Professional Conduct. When imposing discipline, Supreme Court considers several factors: nature of misconduct involved; need to deter similar misconduct; preservation of dignity and reputation of legal profession; protection of public; and sanctions imposed in similar cases. Deceit by lawyer, whether visited on court, attorney who is officer of court, or private citizen, should be dealt with in firm manner; to allow lawyer to act in such manner without imposing appropriate sanctions is tantamount to condoning acts of deceit.

**Supreme Court of Ohio Dayton Bar Assoc. v. Overman**, No. 95-2139. (1996). Disciplinary proceeding was brought by local bar association against attorney, and panel of Board of Commissioners on Grievances and Discipline found numerous violations of disciplinary rules and recommended sanction of indefinite suspension from practice of law. After Board adopted panel's findings but recommended sanction of permanent disbarment, the Supreme Court held that course of conduct by attorney, which was characterized by neglect of legal matters and lying to clients and court, warranted permanent disbarment from practice of law. Disbarment ordered.

**Supreme Court of Oregon, En Banc. In re Complaint as to the Conduct of Dickerson**, Accused. OSB 94-76, 94-77, 94-78; SC S42276. (1995). On review of decision of the Trial Panel of the Oregon State Bar Disciplinary Board, the Supreme Court held that disbarment was appropriate sanction for attorney's cumulative misconduct that included lying to clients, converting and failing to account for clients' funds, failing to return clients' property or files, neglecting legal matters, abandoning clients, and failing to cooperate in disciplinary investigation. Disbarred.

**Disciplinary Board of the Supreme Court of the State of North Dakota, Dosch**, Civ. Nos. 940310 to 940315. (1995). Disbarment of attorney is authorized for single instance of stealing from client, lying to client for attorney's benefit, or intentionally interfering with administration of justice.

**Supreme Court of Colorado, People v. Bowman**, No. 94SA142. (1994), In disciplinary proceeding, the Supreme Court held that conversion of client funds, lying to clients to conceal failure to file their tax returns or pay their taxes, mailing altered tax return to Internal Revenue Service (IRS), and submitting forged evidence to disciplinary council warrants disbarment and payment of costs. So ordered.

**Supreme Court of Pennsylvania Office of Disciplinary Counsel v. Passyn**, 644 A.2d 699 (1994). In attorney disciplinary proceedings, the Supreme Court, No. 977 Disciplinary Docket No. 2, **Flaherty**, J., held that disbarment from practice of law is warranted by misconduct that includes mismanaging money of client subsequently adjudged incompetent, mismanaging real estate investment of another client, lying to clients and trial

court, failing to maintain records, and failing to return client property upon request. Disbarred.