Truth or Consequences

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by Grace M. Giesel

A lie. Is a lie. Is a lie. I often tell my students in Professional Responsibility class that a large portion of the material in the course boils down to the statement, “Don’t lie, cheat, or steal.” In other words, do not act dishonestly.

Recently, the Oregon Supreme Court in the case of In re Carpenter disciplined an attorney for violating this principle. The attorney had learned that a high school classmate was working at the high school as a guidance counselor and coach. The attorney also had heard rumors that the classmate-turned-coach had been involved in an extramarital affair with a student. The attorney logged on to www.classmates.com, a Web site that provides a venue for graduates of schools to communicate with and renew acquaintances with classmates. Unfortunately, the attorney logged on as the classmate-turned-coach. The attorney, masquerading as the classmate-turned-coach, then left a message on the Web site, written in the first person, boasting about his (the coach’s) wife and all the high school women he (the coach) had access to and opportunity to enjoy. The message stated that the coach had been “lucky” with a few of them.

Once the ruse was discovered, the attorney stated that he thought this message would be a “practical joke,” and that he wanted “to be a thorn in [the classmate-turned-coach’s] side.” The attorney succeeded in being a “thorn” in the coach’s side. The message caused all sorts of problems for the coach. His employer, the school, became aware of the message and required the coach to establish the source of the message. The coach reported the matter to the Oregon State Police. The authorities ultimately determined that the attorney had sent the message.

The attorney was not charged with any crime. He apologized to the coach and claimed that he had ceased to campaign for the office of district attorney because he wanted to avoid any additional publicity about the matter. On the basis of these facts, the Bar filed a complaint against the attorney.

The attorney took the position that he should not be disciplined because even if the “practical joke” was lacking in honesty, it did not relate to the attorney’s practice of law. The Oregon Supreme Court determined that the attorney had committed an act of dishonesty by creating the Classmates.com account in the coach’s name, posting a message supposedly written by the coach, and leading others to believe that the coach authored the message. In addition, the Court stated that the context was irrelevant. The Court concluded: “[T]he accused engaged in conduct involving dishonesty, because that conduct indicates that the accused lacks aspects of trustworthiness and integrity that are relevant to the practice of law.” A lie, is a lie, is a lie.

While many of the Rules of Professional Conduct deal with dishonesty in specific contexts, Rule 8.3 (Oregon Supreme Court Rule 3.130 (8.3)) is more general. Rule 8.3 contains two provisions dealing with dishonesty. First, Rule 8.3(b) provides that it is professional misconduct to “commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.” Rule 8.3(c) states that it is professional misconduct to “engage in conduct involving dishonesty, fraud, deceit, or misrepresentation,” regardless of whether the conduct is a crime.

When a lawyer is involved in any criminal act, the lawyer’s fitness to practice law is in question because a failure to abide by the law is problematic for one whose role requires utmost respect for the law and the system of law. This relationship between the fitness to practice and the crime exists whether or not the crime relates to the representation of a client and whether or not the crime involves dishonesty. When the crime involves dishonesty, however, the attorney’s fitness to practice is even more suspect. Mindful of the inverse relationship between the commission of crimes and fitness to practice law, Kentucky has a provision that automatically suspends a lawyer’s license to practice when that lawyer pleads guilty to or is convicted of any felony. Lawyers have been disciplined in Kentucky under Rule 8.3(b) and in other jurisdictions under similar rules for the commission of all manner of offenses such as violent crimes, crimes involving the use or possession of drugs or the use of alcohol, harassing crimes, and fraud.

The authorities in the In re Carpenter situation did not charge the attorney with any crime. Rather, he was disciplined under a rule almost identical to Kentucky’s Rule 8.3(c) that prohibits “conduct involving dishonesty, fraud, deceit, or misrepresentation.” As the Oregon Supreme Court did in In re Carpenter, Kentucky has disciplined attorneys for violations of Rule 8.3(c) regardless of whether the conduct was in the context of representing a client. For example, in Kentucky Bar Association v. Basinger, a lawyer conveyed real estate he claimed to own though he

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The story of the case is that dishonesty by a lawyer in any form and in any context can be professional misconduct under Kentucky’s Rule 8.3. A lie, is a lie, is a lie.

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Endnotes

1 I must apologize to Gertrude Stein.
2 95 P.3d 203 (Or. 2004).
3 This provision is found at Rule 8.4 of the American Bar Association Model Rules of Professional Conduct.
4 See Kentucky Supreme Court Rule 3.166.
5 See, e.g., KBA v. Dunn, 90 S.W.3d 461 (Ky. 2002) (felony assault as the result of a collision involving the driving under the influence); KBA v. Thomas, 999 S.W.2d 712 (Ky. 1999) (manslaughter and attempted murder).
6 See, e.g., KBA v. Bertram, 126 S.W.3d 358 (Ky. 2004); KBA v. Dunn, 90 S.W.3d 461 (Ky. 2002) (DUI and possession of controlled substances).
8 See, e.g., KBA v. Matthews, 131 S.W.3d 744 (Ky. 2004).
9 Kentucky Supreme Court Rule 3.130 (8.3(c)).
10 96 S.W.3d 796 (Ky. 2003).
11 Id. at 797.
12 54 S.W.3d 158 (Ky. 2001).
13 See also Lile v. Kentucky Bar Association, 983 S.W.2d 511 (Ky. 1999).
14 See, e.g., In re Courtney, 538 S.E.2d 652 (S.C. 2000) (attorney filed a false credit application to obtain a mortgage); In re Bennett, 975 P.2d 262 (Kan. 1999) (on an insurance claim form attorney fraudulently claimed items as lost in a burglary).