



How many lawyers does it take to change the bias against lawyers?

Attorneys take a vow to be honest but still have to suffer through “jokes” implying they are not

BY ALLISON J. FAIRCHILD

I was recently faced with yet another attack on my personal integrity just because I am an attorney. It did not come in the form of the usual, and usually bad lawyer joke. Have you heard these?

“What’s the difference between a catfish and a lawyer? One is a scum sucking bottom dweller, and the other is a fish.”

“Why does California have the most lawyers and New Jersey the most toxic waste dumps? New Jersey had first pick.”

“How can you tell when a lawyer is lying? Their lips move.”

“What’s wrong with lawyer jokes? Lawyers don’t think they’re funny, and nobody else thinks they’re jokes.”

Of course, we all probably know the famous Shakespeare quote, “The first thing we do, let’s kill all the lawyers.” (“Henry VI,” Part II, act IV, Scene II, Line 73.) There are as many articles arguing this line as a lampoon of our profession, as there are articles arguing that Shakespeare is actually presenting lawyers as the preservers of law and order.

A joke or an accusation?

This time, I was not faced with yet another lawyer joke. This time, it was a straight-up accusation of dishonesty, and it came from the most unlikely of sources: a meditation teacher. Her question to me was, “Well, you’re an attorney, how do I know you’re not bamboozling me?” My first reaction was, who uses the word “bamboozle?” My second reaction was to

treat her question as a joke – but she wouldn’t let me. She was quite serious. Well, I normally let this sort of attack, including the jokes, wash over my proverbial duck feathers. After all, if I let a little ignorance get to me, how would I maintain my professional demeanor in say, a deposition?

On this occasion, however, I decided to challenge the notion that attorneys are, by nature, prone to dishonesty and manipulation. I’m not sure I really got through to the meditation teacher, but it felt really good to not just defend myself, but to face head-on the bias that we, as attorneys, encounter due to popular misconceptions about our profession.

I don’t know about you, but I spent the last 17 years working *hard* on behalf of personal-injury victims. There were times I was so buried under a pile of motions and depositions that I could barely remember my name, but I never forgot about the rules of professional conduct and responsibility. Nor could I ever forget that I was a fiduciary for every single client I represented.

The rules that define our duty to the truth are contained not in one or two code sections, but in *multiple* codes, including, but not limited to California’s Code of Civil Procedure, Business and Professions Code, the Rules of Professional Conduct, the Evidence Code, the Penal Code, California Rules of Court, as well as local rules in the counties in which we practice. If we violate these code sections and rules, we risk judicial

sanction, disciplinary action by the California State Bar, and public censure. In fact, and it might just surprise the lawyer bashers (or maybe even you), that any act of a California attorney involving moral turpitude, dishonesty or corruption is grounds for disbarment or suspension from the practice of law – *whether or not* the act is committed in the course of our law practice. (Bus. & Prof. Code, § 6106.)

Keeping our reputation

In addition, once an attorney is known as someone who misrepresents the truth or the law, there may never be a way to build back respect or trust with judges and other counsel. In other words, we all face losing our reputations and our livelihood should we choose to breach our ethical and professional obligations.

Public opinion does not appear to track this reality. (See jokes, *supra*.) It could be argued that the negative press against attorneys is based on the normal human desire for black and white answers. Given that answers in the law often fall somewhere in between, perhaps it is not surprising that our endless Socratic questioning of the facts might be mistaken for prevarication and manipulation. There is also, of course, the common adage that a few bad apples spoil the bunch, and public opinion cannot help but be swayed by stories of lawyers gone bad. Political rhetoric also contributes to the negative press attorneys get, especially plaintiffs’ attorneys. After all, we are



completely responsible for the astronomical rise in insurance premiums and the fall of Western civilization. Right?

Contrary to the popular perception that attorneys prevaricate and manipulate for a living, most attorneys actually understand more acutely the difference between “persuasion” and “misrepresentation” of the truth. It is our professional responsibility as licensed attorneys to consider and judge for ourselves what it means to tell the truth, the whole truth and nothing but the truth. After all, we are officers of the court and whether we sign a letter, a brief or a pleading, and when we present argument in court, we are certifying the truth of the matter presented. All attorneys are subject to severe legal and professional sanctions should we tell even a convenient white lie.

It might be more difficult to understand from a layperson’s position, but as attorneys, we must also engage in an equally vigorous analysis of the law and our own intentions when faced with competing legal duties; eg., the duty to zealously represent our client versus the duty not to present frivolous claims or defenses.

In my own practice, I have refused to sign declarations or briefs because I was not certain that I had personal knowledge, or sufficient information or belief to sign them. I have also refused to sign off on briefs and pleadings presenting legal theories for which I could find little, or no support. These were never popular decisions with the boss, and sometimes, in hindsight, I was being a bit overly cautious. Even so, I am not sorry that I engaged in such a dance with the truth, because when it comes down to it, my license to practice law is *my* license to protect.

What is honesty?

Honesty is an integral part of our duties as attorneys. Even before we obtain our ticket to practice law in California, we are charged with this duty:

(A) member shall not knowingly make a false statement regarding a material fact or knowingly fail to

disclose a material fact in connection with an application for admission to the State Bar.

(Cal. Rules of Court, rule 1-200.)

Once we get past the bar examination, we must also take an oath of office. For those of you without photographic memories, the Attorney’s Oath goes like this:

I solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of an attorney and counselor at law to the best of my knowledge and ability.

Any violation of this oath constitutes a cause for disbarment or suspension. (Cal. Bus. and Prof. Code, § 6103.)

Many of the “duties” referenced in our oath are listed in Business and Professions Code section 6068 (a) through (o). It is a long list, and you may or may not be completely familiar with all of its sections. However, any violation of these duties is also cause for disbarment or suspension of one’s license to practice law. (Cal. Bus. and Prof. Code, § 6103.)

Legal duties

The long list of our duties as attorneys practicing in California includes the explicit duty to tell the truth. Licensed attorneys in California must,

...employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or judicial officer by an artifice or false statement of fact or law...

(Bus. & Prof. Code, § 6068(d); see also Cal. Rules of Prof. Conduct, rule 5-200(A)-(B).)

In addition, and as introduced above, section 6106 of the Business and Professions Code states that any act involving moral turpitude, dishonesty or corruption are grounds for disbarment or suspension from the practice of law. (Bus. & Prof. Code, § 6106.) This is so “...whether the act is committed in the course of his [sic] relations as an attorney

or otherwise...” (*Ibid.*) This is so even if the action is neither a felony nor misdemeanor. (*Ibid.*)

Further, attorneys not only have to track our own ethical obligations to tell the truth, but we are also tasked with the duty to track the truth of clients, experts and witnesses in our cases. Offering false evidence or suborning perjury are acts of moral turpitude in violation of an attorney’s ethical duties. (*In re Jones* (1971) 5 Cal.3d 390, 400; see also Penal Code, §§ 127, 132, 134-135; see also L.A. County Bar Association Professional Responsibility And Ethics Committee Formal Ethics Opinion No. 497, March 8, 1999, “Consulting With A Client During A Deposition.”)

In addition to an attorney’s obligation to protect his or her client’s interests, an attorney also has the obligation to respect the legitimate interests of other members of the bar, the judiciary, and the administration of justice. (*Kirsch v. Duryea* (1978) 21 Cal.3d 303, 309; see also L.A. County Bar Association Professional Responsibility And Ethics Committee Formal Ethics Opinion No. 497, March 8, 1999, “Consulting With A Client During A Deposition.”) This is yet another set of seemingly competing legal duties that attorneys often face, which require a vigorous analysis of varying interests and the attorney’s own intentions in order to meet our ethical duties.

Direct suppression of evidence, or suborning the false testimony of witnesses are obvious grounds for sanctions, suspension and/or disbarment. However, it is not just overt misrepresentations of law or fact that constitute actions sufficient to trigger sanctions, suspension and/or disbarment. Indirect means of concealing, distorting or misrepresenting the facts can also be subject to the same sanctions, suspension and/or disbarment. As an example, using objections at a deposition to conceal, distort or misrepresent the facts (that are required to be disclosed) constitutes a violation of an attorney’s ethical duties. (See L.A. County Bar Association Professional Responsibility And Ethics



Committee Formal Ethics Opinion No. 497, March 8, 1999, "Consulting With A Client During A Deposition;" Bus. and Prof. Code §6068(d); Cal. Rules of Prof. Conduct, rule 5-220.)

There are other duties contained in Business and Professions Code section 6068 that inherently, rather than explicitly, require attorneys practicing in California to be honest and forthright in their practice of law. For instance, we have an explicit duty not to bring actions, or present defenses or positions that are frivolous in nature. The law insists that attorneys in California must only present actions, proceedings and defenses that are "legal and just." (Bus. and Prof. Code, § 6068(c).) Further, the Code prohibits attorneys in California from bringing or continuing an action or proceeding based on "...any corrupt motive of passion or interest." (Bus. and Prof. Code, § 6068(f).)

These duties are reflected in the California Rules of Professional Conduct section 3-200 which prohibits attorneys in California from accepting or continuing to maintain employment if he or she "knows or should know" that the representation is meant to present an action, position, defense or appeal without "...probable cause and for the purpose of harassing or maliciously injuring any

person..." (Cal. Rules Prof. Conduct, rule 3-200(A).)

If you sign, file, submit or advocate any "...pleading, petition, written notice of motion, or other similar paper..." you certify that to the best of your "...knowledge, information and belief, formed after an inquiry reasonable under the circumstances..." that such matters are not presented for frivolous purposes, and are, or will be supported by the evidence. (Cal. Code Civ. Proc. § 128.7(b).) Sanctions may be imposed if any attorney in California certifies a document or advocates a position in violation of section 128.7(b). (*Id.* at (c).)

The requirements that an attorney in California must not present frivolous actions, defenses or arguments is another good example of the tricky balancing act that we, as attorneys, must employ in order to stay on the right side of our professional duties. In addition to the prohibition against "frivolous" matters, we are also subject to the duty to zealously represent our clients. (See *Grindle v. Lorbeer* (2nd Dist. 1987) 196 Cal.App.3d 1461, 1467.) The line between frivolous and zealous requires that we engage in a vigorous analysis of our professional knowledge and our own intentions in order to fulfill our professional duties.

Please don't misunderstand – I am not so idealistic to believe that all attorneys fall on the same side of the truth line as I do. However, I think that the majority of us value both our own credibility, and the credibility of our profession. It may take a sort of grassroots approach, one lawyer at a time, to dispel the negative press and political backlash against our profession.

The bottom line is that attorneys must be true to the truth in order to protect our clients and our professional license to practice law. The next time you are expected to honor the assumption that attorneys are all liars, or laugh at a joke about those lying, thieving lawyers, please remember that you are actually in a position to *teach* the lay public something about personal integrity.



Fairchild

Allison J. Fairchild has represented plaintiffs in personal injury, products liability and employment cases in Sacramento, the Bay Area and Los Angeles for 17 years. Currently, she is taking a break from the practice of law to finish her novel, walk her flat-coated retriever in Wildcat Canyon, practice yoga, and care for her family.

