

**KENTUCKY BAR ASSOCIATION
RULES OF THE SUPREME COURT OF KENTUCKY**

PRACTICE OF LAW

SCR 3.130(4.1) Truthfulness in statements to others

In the course of representing a client a lawyer:

- (a) shall not knowingly make a false statement of material fact or law to a third person; and
- (b) if a false statement of material fact or law has been made, shall take reasonable remedial measures to avoid assisting a fraudulent or criminal act by a client including, if necessary, disclosure of a material fact, unless prohibited by Rule 1.6.

HISTORY: Amended by Order 2009-05, eff. 7-15-09; adopted by Order 89-1, eff. 1-1-90

SUPREME COURT COMMENTARY

2009:

Misrepresentation

(1) A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Statements of Fact

(2) This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

Crime or Fraud by Client

(3) Under Rule 1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily a lawyer can avoid assisting in a client's crime or fraud by withdrawing from the representation. Nonetheless, sometimes a lawyer is required to take more overt measures such as giving notice of the fact of withdrawal, disaffirming an opinion, document, affirmation or the like, to prevent the lawyer's services' being used to further the client's crime or fraud. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted in the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6. [See also, Rules 1.6(b), 1.13 (c) and 8.4(c).]