

1 Rule 4.1. Truthfulness in Sstatements to Others.

2 In the course of representing a client a lawyer shall not knowingly:

3 (a) Make a false statement of material fact or law to a third person; or

4 (b) Fail to disclose a material fact ~~to a third person~~, when disclosure is necessary to  
5 avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by  
6 Rule 1.6.

7 Comment

8 Misrepresentation

9 [1] A lawyer is required to be truthful when dealing with others on a client's behalf,  
10 but generally has no affirmative duty to inform an opposing party of relevant facts. A  
11 misrepresentation can occur if the lawyer incorporates or affirms a statement of another  
12 person that the lawyer knows is false. Misrepresentations can also occur by ~~failure to~~  
13 act partially true but misleading statements or omissions that are the equivalent of  
14 affirmative false statements. For dishonest conduct that does not amount to a false  
15 statement or for misrepresentation by a lawyer other than in the course of representing  
16 a client, see Rule 8.4.

17 Statements of Fact

18 [2] This ~~R~~ule refers to statements of fact. Whether a particular statement should be  
19 regarded as one of fact can depend on circumstances. Under generally accepted  
20 conventions in negotiation, certain types of statements ordinarily are not taken as  
21 statements of material fact. Estimates of price or value placed on the subject of a  
22 transaction and a party's intentions as to an acceptable settlement of a claim are  
23 ordinarily in this category, and so is the existence of an undisclosed principal except  
24 where nondisclosure of the principal would constitute fraud. Lawyers should be mindful  
25 of their obligations under applicable law to avoid criminal and tortious  
26 misrepresentation.

27 Crime or Fraud by Client

28 [3] Under Rule 1.2(d), a lawyer is prohibited from counseling or assisting a client in  
29 conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) ~~recognizes that~~  
30 states a specific application of the principle set forth in Rule 1.2(d) and addresses the  
31 situation where a client's crime or fraud takes the form of a lie or misrepresentation.

32 Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the  
33 representation. Sometimes it may be necessary for the lawyer to give notice of the fact  
34 of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme  
35 cases, substantive law may require a lawyer to disclose ~~certain~~ information relating to  
36 the representation to avoid being deemed to have assisted the client's crime or fraud.  
37 ~~The requirement of~~ If the lawyer can avoid assisting a client's crime or fraud only by  
38 disclosing this information, then under paragraph (b) the lawyer is required to do so,  
39 unless the disclosure ~~created by this paragraph is, however, subject to the obligations~~  
40 created is prohibited by Rule 1.6.

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