

What Is Worse Than Hiding Your Head in the Sand? A Few Examples

There are a surprising number of instances where attorneys engage in conduct that is even worse than hiding their heads in the sand. Several recent headline-making cases include attorneys creating fake court orders, a fake certificate of completion for a rehab program, or in one case even faking depositions in order to hide their mistakes.

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One of the truisms of disciplinary and legal malpractice avoidance is that most mistakes can be fixed before they reach the stage where they would result in a disciplinary complaint or an action for legal malpractice. It is also true that even when a mistake cannot be fixed, a quick and honest acknowledgement is much less likely to result in a disciplinary complaint or an action for legal malpractice. However, this requires that attorneys quickly address problems and issues that they face, including communicating with clients about problems and how the attorney intends to address them. This, of course, can be harder than it sounds. Humans are wired not to acknowledge their mistakes. It is often difficult to see our own mistakes, let alone acknowledge them to a client.

Other than a missed statute of limitations or appeal period, most issues that arise from a lapse of attention to a matter can be cured if attended to expeditiously. However, problems tend to snowball the longer they remain unaddressed. Orders do not get overturned if they are ignored for weeks or

months. Clients complain to other attorneys, judges, or disciplinary authorities if they are ignored for weeks or months. Many, if not the majority, of complaints made to the Disciplinary Board arise from attorneys' failures to contact their clients.

However, there are a surprising number of instances where attorneys engage in conduct that is even worse than hiding their heads in the sand. Several recent headline-making cases include attorneys creating fake court orders, a fake certificate of completion for a rehab program, or in one case even faking depositions in order to hide their mistakes.

In October, a formerly admitted attorney in California was sentenced to 37 months imprisonment and ordered to pay restitution of \$254,000 after pleading guilty to wire fraud. Matthew Charles Elstein, a former partner at Gordon & Rees, was accused of and pleaded guilty to a wide-ranging scheme over several years in which he told multiple clients he was doing work on cases that he

did not do, and even misled clients about whether actions were actually commenced.

In one particularly egregious matter, he asserted he had filed a complaint in a case that he never commenced. Elstein then provided the client with a faked complaint that included fake Pacer markings. He charged the client for travel and attendance at depositions that were fake, but where Elstein had a court reporter and made a false record of nonattendance. In describing this matter, Elstein's plea agreement continued:

In January 2018, defendant falsely represented to I.F. that he had obtained a \$4,250,000 judgment in favor of I.F. and the debt settlement companies in the Washington federal case.

Around July 2018, I.F. wanted to personally travel to Seattle to collect on this judgment. In advance of that trip, the defendant handed I.F. a copy of what the defendant represented to be the judgment in the Washington federal case. The fraudulent order contained a forged electronic signature of Judge James L. Robart of the U.S. District Court, Western District of Washington.

On July 11, 2018, I.F. traveled to the district court to collect his judgment. On that day, I.F. realized the defendant's deceit. The clerk could not find the case number. A senior inspector from the USMS's office confirmed it looked suspicious and then checked with Robart who confirmed that he had never heard of the federal case.

This was only one of three cases described in the criminal plea agreement.

Elstein is not alone in making headlines by creating fake orders. On April 28, the Florida Supreme Court entered an order granting former attorney Leonid Nerdinsky's uncontested petition for disciplinary revocation with leave to seek readmission after five years. See *In re Petition for Disciplinary Revocation of Leonid Nerdinsky*, No. SC22-289, (Fla. April 28, 2022). Disciplinary revocation is tantamount to disbarment under Rules 3-7.12 and 3-5.1(g) of the Rules Regulating The Florida Bar. Nerdinsky was then disbarred by Southern District of Florida by order dated June 10.

Nerdinsky was retained in May 2018, to probate an estate for clients. Nerdinsky did not file the petition for summary administration until March 2019. "In late October 2019, after failing to diligently pursue the case and receiving numerous inquiries from [his clients] as to the status of the case, [Nerdinsky] falsely created an order of summary administration dated Oct. 25, 2019, scribbled a signature above the signature line for 'Circuit Judge' on the falsified order and handed it to [his client], representing that it had been entered by the court." Nerdinsky "admitted in his testimony that he signed and dated the order of summary administration as if it were executed by a judge." Nerdinsky was found guilty of criminal contempt due to his forgery of the order. Nerdinsky acknowledged he created the falsified order.

On June 8, 2021, the Florida Bar issued a disciplinary complaint against Nerdinsky. On Feb. 25, Nerdinsky submitted his petition for disciplinary revocation. On April 28, the Florida Supreme Court granted Nerdinsky's uncontested petition.

In another case of an attorney submitting a false document, in October of this year, the New Jersey Supreme Court suspended attorney Andrew R. Hurda for four years after he presented a judge with a forged certificate of completion for a rehab program. Hurda submitted the forged document in conjunction with a trial for driving on a suspended license.

The lesson here is that attorneys who recognize and address problems can usually solve them, or at least avoid them becoming bigger problems. Attorneys who ignore problems risk them becoming much bigger problems. Attorneys who double down and

create fake orders or other forged documents to hide problems will be criminally prosecuted and face serious discipline.



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