
Psychology and Family Law

Is There a Penalty for Perjury?

By Mark Baer, Esq.



I was recently involved in a case in which I was retained to defend my client against an attempt to obtain a restraining order against him. The party seeking the order (the "Petitioner") alleged that she was fearful and afraid of my client, who was "bothering" her because he "seemed to feel that [she was] in his debt." In her papers, which she signed "under penalty of perjury," she stated that my client had given her some money (\$25,000.00) and a car, as *gifts*. She claimed that she "was never particularly close with" my client.

In response, my client provided evidence of emails the Petitioner had sent him wherein she had said, "I love you very much," "Thank you for rescuing me by lending me the attorney's fees," a request to "borrow one of the cars," and an email that she had sent to her attorney and forwarded to my client, which stated that my client had "financially supported the children and I since February, he has lent me money for legal fees, etc., as well as

providing me with a vehicle." Based on this evidence, the Petitioner was perjuring herself when she denied being close with my client, and that the money was a gift.

In the response papers, I said as much. I advised the Court that the Petitioner's attorney had a conflict of interest, because of his apparent knowledge of her perjury, and the fact that he may be a witness to that fact. I requested: (1) the Court deny Petitioner's request for a restraining order; (2) Petitioner's attorney be relieved as her attorney of record; (3) Petitioner and/or her attorney be ordered to reimburse my client for all of his attorneys fees and costs; (4) the Court report Petitioner to the authorities for perjury; and (5) the Court report Petitioner's attorney to the State Bar of California for having knowingly allowed the Petitioner to perjure herself. Since the crime of perjury can only be reported to the authorities by a judicial officer, I stated emphatically, "Unless and until the Courts appropriately penalize clients and their attorneys of record for such misconduct, the judicial system will continue to be used inappropriately by unscrupulous individuals and their legal representatives."

The Court denied the Petitioner's request for a restraining order, and ordered that Petitioner pay my client 100% of his requested attorney's fees. However, the Court denied my other requests, choosing in effect, to ignore the perjury.

I then reported Petitioner's attorney to the State Bar, which later advised me that it would not discipline the attorney for knowingly supporting his client's perjury.

The unhappy fact is that judges almost never refer a case to the District Attorney's office for a perjury prosecution, and prosecutors claim that if they were to prosecute such offenders, everybody who testifies in court would go to jail!

Clearly, then, the legal system does nothing to discourage people from committing perjury. Unless and until Courts refer cases of perjury to the District Attorney's office for perjury prosecution, and the District Attorney's office actually prosecutes such cases, everyone who testifies in court will continue to routinely commit perjury. Since the judicial system is not known for its ability to fetter out the truth, I contend that something must be done to reduce the incidence of perjury.

As attorneys, we swear to faithfully discharge the duties of an attorney to the best of our knowledge and ability. Among other things, the duties of an attorney include the following: (1) "To counsel or maintain those actions, proceedings, or defenses only as appear to him or her *legal or just*..."; (2) "To employ...those means only as are *consistent with truth*, ..."; and, (3) "Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest." (Italics added.)

Our legal system might improve if attorneys remembered the oath that they took *and* if the State Bar actually disciplined those attorneys who fail to "faithfully discharge the duties of an attorney and counselor at law to the best of [their] knowledge and ability."

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