



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I have a question about Model Rule 3.3 Candor to the Tribunal. I assisted a representative of a corporate client in testifying before a state legislative committee about an environmental matter. In follow-up conversations after the committee appearance, and with some additional investigation, I am concerned that the client spokesperson misrepresented the client's lack of knowledge of an environmental condition of concern. Looking at Rule 3.3 (a)(3), it appears to me that if the legislative committee is a "tribunal," I may have a duty to take "reasonable remedial measures" including, if necessary, disclosure of the falsity. Is a legislative committee a "tribunal" for this purpose? What are my obligations here?

A: "Tribunal" is defined in Model Rule 1.0(m) as a "court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity." "Adjudicative capacity" occurs when there is a "neutral official," that "after presentation of evidence or legal argument...will render a binding legal judgment directly affecting a party's interests in a particular matter." Using that as a foundation, most legislative proceedings will not fit this definition of "tribunal" to trigger Rule 3.3.

In considering your obligations here, there are other concerns. For example, under Rule 8.4, you may not engage in conduct involving dishonesty. If the committee's proceedings require follow-up submissions, you will need to examine whether you may participate in anything that does not correct the false statement. Moreover, you have duties under Model Rule 1.13(b) to your corporate client if the spokesperson is engaged in action (promulgating false statements) that is a violation of law that could be imputed to the organization or a violation of a duty to the organization. Allowing the false committee testimony to stand uncorrected while the record is still open may fit this standard. In that instance, you have an obligation to refer the matter to higher authority in the organization to urge corrective action, in the stepped manner set forth in Rule 1.13. Finally, if no remedial action is taken, you should consider withdrawal based on the considerations of Rule 1.14 and 1.16(2). This may be a situation in which you should seek advice from independent ethics counsel.

The Ethics Lawyer

About Dear Ethics Lawyer

The twice-monthly "Dear Ethics Lawyer" column is part of a training regimen of the Legal Ethics Project, authored by [Mark Hinderks](#), former managing partner and counsel to an AmLaw 132 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP's [Legal Ethics & Professional Responsibility](#) practice, offering advice and "second opinions" to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to mark.hinderks@stinson.com.

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.