

This version is for the audience

[FIRST SET OF HYPOS]

1. The Persistent Local Reporter

The City Council meets in closed session with the City Attorney to discuss pending litigation. During the closed session, the Council discusses whether to settle the case but takes no reportable action.

After the meeting, a persistent local reporter asks the City Attorney: “Did the Council discuss settling the lawsuit in closed session?”

The City Attorney does not want to reveal confidential closed-session discussions and responds: “No. The Council did not discuss settlement.”

Question: Is the City Attorney’s response ethically permissible?

- A.** Yes, because the discussion occurred in a lawful closed session, the City Attorney may deny that the discussion occurred in order to preserve confidentiality.
- B.** Yes, because no reportable action was taken, the City Attorney has complete discretion regarding how to characterize what occurred in closed session.
- C.** No, the City Attorney may be prohibited from revealing the substance of the closed-session discussion, but that does not authorize the attorney to make a knowingly false statement about what occurred.

2. The Bad Case Citation

You are defending a city in a lawsuit. During oral argument, opposing counsel relies on a recent case that appears to be directly against your position. You have not yet had time to read the full opinion, but you know from speaking with your city manager before the court appearance that the city manager is expecting you to argue aggressively that the case does not apply.

Question: What should you do?

- A.** Tell the court that you have not yet reviewed the case sufficiently to address it, ask for a brief opportunity to do so, and then candidly explain whether it affects your position.
- B.** Argue that the case is distinguishable based on your preliminary understanding and discussion with the city manager and, if necessary, clarify the record later.
- C.** Say, “Your Honor, that case is interesting, but fortunately I have never allowed a published opinion to interfere with a good municipal argument.”

3. The Mistake in the Brief

After filing a brief on behalf of a city, you discover that one of your factual statements is incorrect and that the error makes the city's position appear stronger than it actually is. Opposing counsel has not noticed the mistake.

Question: What should you do?

- A.** Leave the brief alone because opposing counsel has the opportunity to discover the error independently.
- B.** Correct the mistake promptly, notify the court as appropriate, and advise the city about the error and its potential consequences.
- C.** Hope the judge never notices, because "if the court doesn't ask a question, technically it's not a question."

[SECOND SET OF HYPOS]

4. Negotiation or Misrepresentation?

During settlement negotiations in a lawsuit against the City, opposing counsel demands \$500,000. The City Attorney responds, “That number isn’t even in the ballpark. The City would never pay anything close to \$500,000 to settle this case.”

In fact, the City has authorized the City Attorney to settle for up to \$450,000.

Question: Has the City Attorney violated the ethical rules against dishonesty?

- A.** Yes, a lawyer may never make a statement during negotiations that is not literally true.
- B.** Not necessarily. Statements about a party’s negotiating position or acceptable settlement amount ordinarily are not treated as statements of material fact.
- C.** No, lawyers are permitted to make any false statement during settlement negotiations.

5. The Client Wants “No Surprises”

You advise a city council about a proposed ordinance. Your legal analysis identifies a substantial risk that the ordinance could be struck down. The city manager tells you, “The council doesn’t want to hear all the legal caveats. Just tell them whether we can pass it.”

Question: How should you respond?

- A.** Give the council the bottom-line legal conclusion while withholding the more significant risks unless a councilmember specifically asks about them.
- B.** Clearly explain the legal risks, distinguish between what is legally permissible and what is legally advisable, and let the council make the policy decision.
- C.** Tell the city manager, “Of course. I’ll give them the answer in exactly the number of syllables they requested: ‘Probably.’”

[THIRD SET OF HYPOS]

6. The Minor Car Accident

A City Attorney is involved in a minor car accident while driving the attorney's personal vehicle on the weekend. No City vehicle or City business is involved, and the attorney was on his "free time" at the time of the accident.

When speaking with the other driver and later the insurance company, the attorney knowingly lies about how the accident occurred to avoid responsibility.

Question: Could the attorney's conduct potentially result in professional discipline?

- A.** No, the incident occurred entirely outside the practice of law.
- B.** Yes, but only if the attorney is convicted of a crime.
- C.** Yes, a lawyer may be disciplined for dishonesty or conduct involving moral turpitude even when the conduct occurs in the lawyer's personal life.

7. The Council Member Who Wants to Participate

Before a City Council meeting, a council member—who is also a California-licensed attorney—privately tells the City Attorney, “I have a financial interest in this matter, but I don’t want to recuse myself from participating in making the decision. If anyone asks tonight, I’m going to say I don’t.”

The City Attorney tells the council member that he should not lie. The council member’s financial interest would require the member to recuse himself from participating in the decision.

During the meeting, however, the council member is asked about the financial interest and – as promised – the council member knowingly and publicly denies having one.

Question: Must the City Attorney report the council member to the State Bar?

- A.** Yes, the City Attorney has direct knowledge that another lawyer intentionally lied, so a report is automatically required.
- B.** Potentially, but the City Attorney must consider both whether the conduct satisfies Rule 8.3’s reporting standard and whether the information necessary to make the report is protected by the duty of confidentiality.
- C.** No, the council member was acting as an elected official, not as an attorney, when the statement was made. Statements made by elected officials at public meetings are outside the State Bar’s jurisdiction.