Nothing but the Truth? Candor and Honesty for City Attorneys

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Nothing but the Truth? Honesty and Candor for Municipal Lawyers

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INTRODUCTION

The duty of honesty is among the most fundamental obligations of the legal profession. Every municipal lawyer serves within a justice system that depends upon truthful representations. Courts, opposing counsel, government officials, and the public must be able to trust that lawyers will not knowingly make false statements or advocate unsupported claims. Although lawyers are expected to represent their clients zealously, that duty never supersedes the obligation to act with honesty and integrity. Without lawyers' adherence to such principles, the legal system cannot function effectively or maintain public confidence.

The disciplinary proceedings involving former lawyer and law professor John Eastman provide a cautionary reminder of the consequences for abandoning these ethical duties. In the weeks following the 2020 presidential election, Eastman emerged as one of the principal legal architects of an effort to prevent or delay the certification of former President Joe Biden's electoral victory.[1] Eastman, along with lawyer Kenneth Chesebro, developed "something that looked like a legal framework under which Vice President [Mike] Pence could refuse to certify the election based on electors submitted in several swing states."[2] Eastman set forth his theories in memoranda arguing that the Vice President possessed authority to decline to count electoral votes from states in which the Trump campaign alleged election irregularities. Eastman "advised Pence that he had several options, including delaying the vote count, allowing state legislatures to certify alternate slates of Trump electors, unilaterally deciding not to count Biden electors where there was a question about the validity of their designation, and referring the decision to the House of Representatives."[3] Eastman's advice became part of a broader effort to persuade Pence to depart from the traditional understanding of the Vice President's largely ministerial role in counting electoral votes.

The problem was that Eastman's legal advice was based on both dubious legal arguments and false factual claims. According to the findings subsequently made in Eastman's California disciplinary proceeding, Eastman continued to advocate his position despite substantial authority contradicting it and despite acknowledging aspects of his theory that were inconsistent with existing law and historical practice. Indeed, Eastman himself had stated before the November 2020 election that the Vice President did not have the authority to unilaterally decide which votes to count.[4]

In addition, in advocating efforts to challenge the election results, Eastman relied upon and repeated allegations of election fraud and voting irregularities in several states. The California State Bar Court later found that a number of those factual assertions were false or misleading and

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[1] *In the Matter of John Charles Eastman, State Bar No. 193726*, 6 Cal. State Ct. Rptr. 186 (June 13, 2025).
[2] W. Bradley Wendel, *The Good Lawyers of January 6*, 46 CARDOZO L. REV. 2143, 2151 (July 2025).
[3] Id. at 2158.
[4] *Matter of Eastman*, 6 Cal. State Bar Ct. Rptr. 186, 200.

that Eastman made statements concerning the election without an adequate factual basis. For instance, "Eastman ignored various statements regarding the election, such as former U.S. Attorney General William Barr's December 1, 2020 conclusion that insufficient evidence existed of widespread outcome-determinative fraud."[5] The disciplinary proceeding therefore presented an issue broader than whether Eastman's constitutional interpretation was novel, aggressive, or ultimately incorrect: it required the court to determine whether a lawyer may invoke uncertain or disputed legal theories while simultaneously relying upon factual claims the lawyer knows, or should know, are unsupported.

In January 2023, the State Bar of California filed eleven disciplinary charges against Eastman arising from his post-election conduct. Following 34 days of trial, State Bar Court Judge Yvette Roland found Eastman culpable on ten of the eleven counts and recommended that he be disbarred.[6] The court concluded that Eastman's conduct went beyond zealous advocacy and constituted serious professional misconduct, including two counts of seeking to mislead a court, and seven counts of moral turpitude through misrepresentations or other acts of dishonesty or corruption. The Review Department of the State Bar Court subsequently upheld the recommendation,[7] and in April 2026, the California Supreme Court ordered Eastman disbarred.

The Eastman case thus presents a sobering reminder of the professional responsibilities of lawyers engaged in high-stakes advocacy. Lawyers must have substantial freedom to advance novel legal theories, challenge existing precedent, and represent unpopular clients and causes without fear that an unsuccessful argument will later become the basis for professional discipline. That freedom, however, is constrained by duties of honesty, candor, and loyalty to the legal system.

The following article serves as a brief reminder for municipal lawyers on their ethical duties of honesty and candor. Municipal lawyers routinely face situations in which pressure from clients or supervising attorneys may tempt them to spin the facts, omit material information, or overstate the law. The State Bar Act (sometimes, the "Act")[8] and the California Rules of Professional Conduct (CRPC) exist to ensure that lawyers remain faithful to their professional obligations even when doing so is embarrassing or inconvenient. This article summarizes key rules within the Act and the CRPC and provides context for the rule within the municipal law space. The article concludes with key takeaways for municipal lawyers.

A FEW REMINDERS AT THE OUTSET

Before we review the ethical rules, a few reminders:

It bears mentioning that for municipal lawyers, "the client is the organization itself, acting through its duly authorized directors, officers," etc.[9] That means the lawyer's duties of loyalty,

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[5] Id. at 195.
[6] Id. at 186.
[7] Id. at 187.
[8] Bus. & Prof. Code § 6000 et seq.
[9] CRPC Rule 1.13, a lawyer retained or employed by an organization represents the organization acting through its duly authorized constituents

confidentiality, independent judgment, and candid legal advice run to the city as an entity. Municipal lawyers should be mindful that elected officials and city staff members may change over time, but the client remains the governmental entity and its long-term legal interests. Being mindful of the identity of the client helps municipal lawyers preserve their professional independence and fulfill their role as trusted advisors to the public institution they serve.

Of course, entities cannot speak or give direction on their own, so the ethics rule recognizes that the organization needs constituents to function, and those constituents have an important role to play. Anyone authorized to act on behalf of an organization is a constituent of the organization[10]; depending on how a city is organized, the most common constituents will be the mayor and city council. Because the municipal lawyer's ethical duties – such as candor and confidentiality – run to the entity, if a constituent is acting in a way that is adverse to the city, the municipal lawyer must explain the identity of the lawyer's client to the constituent.[11] That way, the constituent is on notice that any potential violations of the law that could be imputed to the organization may have to be reported to city leadership.[12] Ultimately, the municipal lawyer must "proceed as is reasonably necessary in the best lawful interest of the organization."[13]

Also, when reviewing the following ethical rules, keep in mind that "honesty" and "candor" mean different things. Candor, or being truthful,[14] means actively making known the full truth of a matter. On the other hand, being honest means not telling lies. Thus, according to one legal scholar, while lawyers must always be honest (*i.e.*, not tell lies), they do not always need to be truthful (*i.e.*, they need not always make known the full truth). For example, in the context of litigation, "[c]ounsel may not deliberately mislead the court, but has no obligation to tell the defendant's whole story."[15] For municipal lawyers, this distinction between being honest and truthful is best shown during "report outs" of closed session, as described in the next section.

NAVIGATING ETHICAL RULES AND THE BROWN ACT IN "REPORT OUTS" OF CLOSED SESSION

The obligation to "report out" of closed session is an example of how a California municipal lawyer's duty of honesty operates alongside duties of confidentiality and loyalty to the municipal client. Under the Brown Act, a legislative body must publicly report certain actions taken in closed session, such as specified approvals of litigation decisions, settlements, and employment actions.[16] The municipal lawyer often advises the city council about whether a reportable action has occurred and sometimes makes the report on the council's behalf. Although much of what occurs during a lawful closed session remains confidential[17] and may also constitute attorney-client privileged information, the confidentiality of the closed session does not authorize the municipal lawyer to make a false or materially misleading public statement about what occurred.

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[10] CRPC Rule 1.13, comment [1].
[11] CRPC Rule 1.13(f).
[12] CRPC Rule 1.13(b).
[13] Id.
[14] The terms "truthfulness" and "candor" are used interchangeably in ABA Model Rules.
[15] Dennis A. Rendleman, *"Truthiness" and Professional Responsibility*, Ethics in View (Dec. 2019), citing Matthew Frederick and Vibeke Norgaard Martin, <u>101 Things I Learned in Law School</u> (2013).
[16] Gov. Code § 54957.1(a).
[17] Gov. Code § 54963.

The lawyer's ethical duties reinforce this distinction between remaining silent about confidential information and affirmatively misleading the public. As discussed in more detail below, there are several ethical rules that prohibit lawyers from knowingly making false statements.[18] Thus, while a municipal lawyer often must decline to disclose confidential details, the lawyer should not use confidentiality as a basis for providing an inaccurate account of what occurred.

The distinction becomes particularly important when no "reportable" action was taken. A municipal lawyer may appropriately state that "there is no reportable action" when that statement accurately reflects the requirements of the Brown Act. That statement does not ordinarily mean that nothing happened in closed session; rather, it means that the council did not take an action that the Brown Act requires to be publicly reported. But a municipal lawyer must take care to not embellish that statement – for example, by saying that the council "did not discuss" a particular matter when it did. Even if the lawyer is attempting to protect privileged or confidential information, an affirmative falsehood is fundamentally different from declining to disclose information that the law permits or requires the city to keep confidential.

Accordingly, a municipal lawyer must navigate three complementary obligations: transparency where the Brown Act requires disclosure, confidentiality where the law protects closed-session communications, and ethical duties prohibiting dishonesty. The safest approach is often to "stick to the script": disclose exactly what the statute requires,[19] avoid revealing protected closed-session communications, and avoid "off script" characterizations that could create a false impression about what occurred. Municipal lawyers should keep in mind that while client confidentiality rules may limit what a lawyer can say, such rules do not give the lawyer permission to say something that is untrue.

THE MOST ROBUST ETHICAL RULES REQUIRING CANDOR APPLY IN COURT

Our legal system depends on the principle that cases will be decided on the truth and not lies. Witnesses who appear in court are often required to tell "the truth, the whole truth, and nothing but the truth." A case would be wrongly decided if it was decided on anything but the "whole truth."

For this reason, the most robust ethical rules relating to candor apply to a lawyer's conduct in court. Per CRPC Rule 3.3, a lawyer shall not knowingly make false statements of fact or law, knowingly disclose or misquote legal authorities, or offer evidence the lawyer knows to be false.[20] The rule also imposes an affirmative duty to correct false statements of material fact or law made by the lawyer, and correct false evidence or representations, when necessary, even when doing so may be adverse to the client's interests.[21] The rule calls these "remedial measures," and they include explaining to the client the lawyer's obligations and seeking permission from the tribunal to withdraw. Note, however, although the lawyer may need to speak with a judge to fulfill her obligation under the rule, the lawyer still has a duty to maintain

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[18] *See, e.g.,* CRPC Rules 4.1, 8.4(c); Bus. & Prof. Code § 6106.
[19] Gov. Code § 54957.1.
[20] (a)(1), (2) and (3).
[21] CRPC 3.3(a)(1), (3).

client confidences.[22] Accordingly, this rule reinforces the integrity of the judicial process and makes clear that, in the event of a conflict, the lawyer's role as officer of the court supersedes the lawyer's duty of loyalty to their client.

Other rules within Chapter 3 of the CRPC expand on a lawyer's duty to be honest within litigation. For example, Rule 3.4 obligates a lawyer to act fairly in litigation and prohibits conduct that improperly interferes with the truth-seeking process or an opposing party's access to evidence. Among other things, the rule prohibits a lawyer from unlawfully obstructing another party's access to evidence or unlawfully altering, destroying, or concealing evidence; and falsifying evidence or assisting a witness in giving false testimony.[23] In short, Rule 3.4 reinforces that zealous advocacy does not permit lawyers to manipulate evidence, abuse discovery, improperly influence witnesses, or otherwise undermine the fairness of the adversarial process.

The cases lawyers file, and the claims and contentions that lawyers make in court, must be "honest" as well. CRPC Rule 3.1 prohibits a lawyer from bringing or continuing an action, conducting a defense, asserting a position in litigation, or taking an appeal without probable cause and for the purpose of harassing or maliciously injuring any person. Except for criminal cases,[24] lawyers must have a good faith basis in law and fact for their arguments. The rule does not prevent a lawyer from pursuing a claim or defense that may ultimately be unsuccessful, nor does it prohibit a good-faith argument for an extension, modification, or reversal of existing law. At its core, Rule 3.1 seeks to prevent lawyers from misusing the judicial process through frivolous or abusive litigation while preserving their ability to advocate vigorously for clients and to advance legitimate arguments for changes in the law.

Similarly, the California Code of Civil Procedure (CCP) imposes obligations on lawyers and parties who present pleadings, motions, and other papers to a court.[25] By presenting a filing, an lawyer or unrepresented party effectively certifies that, after a reasonable inquiry, the filing is not being presented for an improper purpose, such as harassment, unnecessary delay, or needless increase in litigation costs; that its legal claims and arguments are warranted by existing law or by a nonfrivolous argument to change or establish the law; and that its factual allegations and denials have, or are likely to have after reasonable investigation or discovery, appropriate evidentiary support.[26] The statute, CCP § 128.7, permits a court to impose sanctions for violations, either on motion or on its own initiative, with sanctions generally limited to what is necessary to deter similar conduct. Section 128.7 thus serves as an important safeguard against frivolous filings and misuse of the judicial process.

The State Bar Act complements the CRPC by emphasizing that effective advocacy must always be grounded in honesty. Specifically, Section 6068(d) of the Act requires lawyers employ only those means that are consistent with truth and never to seek to mislead a judge or judicial officer

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[22] CRPC 3.3(a)(3).
[23] CRPC 3.4(a).
[24] In criminal cases, Rule 3.1 recognizes that defense counsel may require the prosecution to establish every element of the offense even when there may not otherwise be a basis for contesting the charge.
[25] CCP § 128.7.
[26] Id.

through false statements of fact or law.[27] The statute also requires lawyers to maintain only those actions, proceedings, or defenses that appear legal and just.[28]

Last but certainly not least, municipal lawyers should also keep in mind that courts have articulated a higher ethical obligation for public lawyers. At least one court has observed that "[a] government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record." The court applied the higher ethical obligation to a private lawyer retained by a city and applied the rule to either prosecuting a criminal case or representing the government in a civil action.[29] For municipal lawyers, whose advice often influences significant public decisions, the obligation underscores that legal advocacy must never come at the expense of truthfulness or the fair administration of justice.

ETHICAL RULES REQUIRING CANDOR ALSO APPLY OUTSIDE OF COURT

Because the justice system depends on the truth to function effectively, the strongest ethical rules requiring candor apply to litigation. But many municipal lawyers spend much of their time outside of court. The following summarizes the rules that apply outside of litigation.

CRPC Rule 4.1 governs a lawyer's communications with individuals *other than the court*, including opposing counsel, witnesses, members of the public, and third parties. The rule prohibits lawyers from knowingly making false statements of material fact or law or failing to disclose material facts when disclosure is necessary to avoid assisting a client's criminal or fraudulent conduct.[30]

There are some important exceptions to the general rule. First, confidential client information must not be disclosed.[31] In addition, a lawyer "generally has no affirmative duty to inform an opposing party of relevant facts."[32]

For a municipal lawyer in the middle of a negotiation, the lawyer has latitude with certain statements that do not constitute "statements of material fact." For example, "[e]stimates of price or value on the subject of a transaction and a party's intentions as to an acceptance of a claim" do not normally qualify as statements of material fact, and therefore the lawyer is not obligated to disclose such facts.[33]

Interestingly, Rule 4.1 does not apply to statements by a lawyer to their client.[34] In fact, there is no rule that *expressly* requires a lawyer be honest to their client. There are, however, several

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[27] Bus. & Prof. Code § 6068(d).
[28] Id. at (c).
[29] *People ex. rel Clancy v. Superior Court*, 39 Cal.3d 740, 745-46 (1985); *see also* Manuela Alburquerque, "City Attorney Ethical Issues," League of California Cities paper, 1993 City Attorney's Spring meeting, available at: https://www.cacities.org/UploadedFiles/LeagueInternet/62/62f7452a-cfb3-4612-b205-593e899200f0.pdf
[30] CRPC Rule 4.1(a), (b).
[31] Id. at (b).
[32] CRPC 4.1, comment [1].
[33] Comment [2] to Rule 4.1.
[34] Rule 4.1 only refers to "third persons" and is part of Chapter 4 "Transactions with Persons *Other that Clients*." (emphasis added).

rules that require honesty generally, so although it is interesting that there is no express rule, the general rules would apply to the lawyer's communications with a client. Speaking of lawyer-client communications, a lawyer is required to explain matters to the extent reasonably necessary to the client so that the client can make informed decisions.[35] That same CRPC rule also states that a lawyer "may delay transmission of information to a client if the lawyer reasonably believes that the client would be likely to react in a way that may cause imminent harm to the client or others."[36] This rule is a rare instance allowing the lawyer to *delay* speaking the truth for a reason other than to maintain client confidentiality.

Lastly, the ethical rules requiring candor even apply to communications with prospective clients. Rule 7.1 prohibits a lawyer from making false or misleading communications about the lawyer or the lawyer's services. "A communication is false or misleading if it contains a material misrepresentation of fact or law, or if it omits a fact necessary to make the communication, considered as a whole, not materially misleading."[37] The rule recognizes that lawyers may conveniently leave out necessary facts; for this reason, the comments to the rule make clear that even "truthful statements" can be misleading if such statements leave out other details.[38] For example, a lawyer's communication stating "no fee without recovery" would be misleading unless the communication also expressly discloses whether or not the client will be liable for *costs*.[39]

ETHICAL RULES REQUIRING CANDOR APPLY TO A LAWYER'S PERSONAL LIFE (!!!)

Fun fact: at least one ethical rule, and one State Bar Act section, not only prohibit dishonest acts by a lawyer during the practice of law but also extend to a lawyer's personal life as well.

CRPC Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation. Unlike rules that govern specific aspects of legal representation, Rule 8.4(c) reaches a broad range of conduct, whether occurring in litigation, transactional practice, interactions with clients, *or even outside the practice of law* when the conduct reflects on the lawyer's fitness to practice.[40]

Likewise, Section 6106 of the Act authorizes professional discipline when a lawyer commits acts involving moral turpitude,[41] dishonesty, or corruption, whether committed during the practice of law "or otherwise."[42] The statute reflects the principle that honesty is a fundamental qualification for membership in the legal profession. California courts and the State Bar have long recognized that conduct involving deceit, intentional misrepresentation, or fraudulent behavior may warrant

[35] CRPC Rule 1.4(b).
[36] Id at (c).
[37] CRPC Rule 7.1(a).
[38] CRPC Rule 7.1, comment [3].
[39] Comment [3].
[40] Comment [1] to Rule 8.4 ("A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.")
[41] "Moral turpitude, broadly defined, is conduct which is contrary to justice, honesty and good morals." *Calzada v. Sinclair* (1970) 6 Cal. App. 3d 903, 915.
[42] Bus. & Prof. Code § 6106.

significant discipline, including suspension or disbarment, because such conduct demonstrates a lack of the integrity required of lawyers.

For municipal lawyers, whose responsibilities include safeguarding the public interest and advising governmental decision-makers, compliance with Section 6106 reinforces the profession's expectation that lawyers maintain the highest standards of honesty both inside and outside the practice of law.

OTHER LAWYERS HAVE A DUTY TO REPORT DISHONEST BEHAVIOR THAT RAISES A SUBSTANTIAL QUESTION AS TO THE LAWYER'S HONESTY

CRPC Rule 8.3, which took effect in California on August 1, 2023, requires a lawyer to:

> "inform the State Bar, or a tribunal …when the lawyer knows of credible evidence that another lawyer has committed a criminal act or has engaged in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation … that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects."

Importantly, the reporting obligation is subject to significant exceptions. A lawyer may not disclose information protected by the duty of confidentiality or information obtained while participating in an approved lawyer assistance program, and no report is required if doing so would violate those obligations.[43]

For municipal lawyers, Rule 8.3 reinforces the principle that maintaining the integrity of a "self-regulating" profession is a shared responsibility. Although the rule has suffered from disparaging names and comparisons to "Soviet Big Brother tactics,"[44] the rule is intended to require lawyers to report only "those offenses that a self-regulating profession must vigorously endeavor to prevent,"[45] thereby protecting clients, the courts, public agencies, and the legal profession as a whole.

MODELING CANDOR AND HONESTY IN PUBLIC PRACTICE

Based on the rules above, the following is a list of practical takeaways for municipal lawyers:

1. Protect your credibility as diligently as you do your bar license.
Municipal lawyers regularly advise city councils, planning commissions, city managers and department heads. Every interaction either strengthens or weakens your reputation. Once credibility is lost, it is difficult to fully restore.

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[43] CRPC Rule 8.3; *see also* comments [2], [4].
[44] *See, e.g.,* Panda L. Kroll, "*New CRPC Rule 8.3 that mandates we report each other raises the specter of Soviet Big Brother tactics*," DAILY JOURNAL (July 27, 2023), available at https://www.dailyjournal.com/articles/373971-new-crpc-rule-8-3-that-mandates-we-report-each-other-raises-the-specter-of-soviet-big-brother-tactics.
[45] CPRC Rule 8.3, comment [4].

Professional reputation is built one conversation at a time. Your reputation is shaped by countless small decisions over the course of your career:

- accurately citing authority;
- correcting inadvertent mistakes;
- acknowledging unfavorable precedent;
- avoiding exaggeration;
- admitting when you do not know the answer.

These habits distinguish trusted advisors from merely competent lawyers.

2. Candor strengthens public trust.
Municipal lawyers serve public institutions, and candor strengthens such institutions. Indeed, local governments depend upon public confidence to function effectively. When legal advice is honest and objective, staff reports accurately present the law, and government lawyers are known for their integrity, residents are more likely to trust governmental decision-making even when they disagree with the outcome.

3. Ethical compliance is the floor, not the ceiling.
The State Bar Act and CRPC establish minimum standards of conduct. Exceptional municipal lawyers strive for more than simply avoiding discipline. They cultivate a reputation for fairness, objectivity, and integrity. Being technically compliant is not always the same as exercising sound professional judgment.

4. Candor sometimes requires delivering unwelcome or unpopular advice.
Municipal clients occasionally face significant political pressure. Your role is not to provide the advice elected officials want to hear—it is to provide the advice the law and your independent professional judgment requires. A municipal lawyer must have the courage to say, "The law does not permit that course of action."

5. Correct mistakes promptly.
Lawyers are human beings and make mistakes. Candor is demonstrated by acknowledging and correcting material errors when they are discovered – even when doing so is embarrassing or inconvenient.

6. Never sacrifice long-term credibility for a short-term victory.
A misleading statement may provide a temporary win in litigation or a political advantage. A reputation for honesty will benefit you throughout your career. Judges, opposing counsel, and public officials remember lawyers whose representations consistently prove accurate.

7. Tread ethically during Brown Act report outs. When reporting action taken in closed session, accurately describe what occurred and avoid wording that is technically defensible but materially misleading. Disclose exactly what the Brown Act requires, avoid revealing protected closed-session communications, and avoid "off script" characterizations that could create a false impression about what occurred.

8. Omissions can be as problematic as affirmative misrepresentations.
Municipal lawyers should continually ask:

- *Does this statement create a misleading impression?*
- *Am I accurately characterizing the law?*
- *Have I fairly described the facts?*
- *Would I be comfortable defending this representation if it appeared in a published opinion?*

9. Candor extends beyond the courtroom.
The duty of honesty applies in every aspect of municipal practice, including preparing staff reports on controversial topics, responding to Public Records Act requests, contentious settlement negotiations, communications with opposing counsel, and public presentations and community meetings. A lawyer's integrity should never vary depending upon the audience. And, as stated above, the ethical rules prohibiting dishonesty, fraud, deceit, or misrepresentation extend to a lawyer's personal life.

CONCLUSION

Municipal lawyers occupy a position of exceptional public trust. Our effectiveness depends not simply on our knowledge of the law, but on the confidence that judges, public officials, opposing counsel, and our communities place in our integrity. The State Bar Act and CRPC establish the minimum standards for honesty and candor. The best municipal lawyers strive to exceed those standards every day, understanding that credibility is not merely an ethical obligation—it is integral to effective public service.