



The Ethics of Workplace Investigations

With lawyers increasingly conducting workplace investigations, they must be mindful of their ethical responsibilities under the Minnesota Rules of Professional Conduct (MRPC). Proper adherence to one's ethical responsibilities is an important element in conducting a thorough, informative investigation. In addition, it eliminates a basis to discredit the investigation that could subject an employer to tort liability on claims of negligent investigation, or defamation, for example. Therefore, whether the investigator-attorney is representing the employer or conducting the investigation as a neutral, the attorney must remember to:

- Disclose the nature of his or her relationship with the employer to all witnesses, including whether the attorney-investigator is representing the employer, and an explanation that the attorney-investigator is not representing witnesses. *Rule 4.3(a), MRPC and proposed Rule 2.4 of the recently amended ABA Model Rules of Professional Conduct.*
- Avoid providing legal advice, other than advice to secure counsel, to a witness not represented by counsel. *Rule 4.3(c), MRPC.*
- Be respectful and courteous to all individuals involved. *Rule 4.4, MRPC.*
- Do not make false statements to elicit a confession. *Rule 4.1, MRPC.*
- If acting as legal counsel, advise employers of your possible disqualification at trial to act as a fact witness. *Rule 3.7, MRPC.*
- If acting as legal counsel, advise employers of potential waivers of the attorney-client and work product privileges. *Harding v. Dana Transport, Inc., 914 F.Supp. 1048 (D.N.J. 1996).*
- Maintain confidentiality of information during and after the investigation. *Rule 1.6, MRPC.*
- Watch for and avoid conflicts of interest, especially if the attorney-investigator is representing the employer and conducting the investigation. *Rule 1.7, MRPC.*

For more information, please contact John A. Mack at 612-867-4283.