

That's All the News for Today. Stay Ethical, Austin!



**2019 Renewable Energy Law
AT&T Conference Center
January 28, 2019**

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Today's Panel

Panelists:

- Alison Leonard Gardner – SVP & GC, *E.On Climate & Renewables*
- Tracy L. Kepler, Director, *ABA Center for Professional Responsibility*

Moderator:

- Professor Irma S. Russell, *University of Missouri-Kansas City School of Law*

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SCENARIO #1

Hardball tactics or “grave betrayal”?

BigFirm represents a regional chemical fertilizer distributor for contract, real estate, and regulatory compliance matters. The lead partner managing the account has developed a close relationship with the CEO of the client distributor. CEO approaches partner for help in addressing brewing (non-public) allegations of sexual harassment against him, made by employees of the distributor working in the real estate management section. Partner demurs, suggesting representation would be outside the firm’s expertise. CEO identifies investigative agency that will undertake “deep background” development regarding his accusers’ histories, relationships, biases, etc., but asks partner (and BigFirm) to be the conduit by which the investigative agency is hired. Investigative agency then engages in a series of deceptive interactions with accusers (client employees), and their friends and family members, before providing a written report to Partner, for delivery to CEO.

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SCENARIO #1 Questions

- Are there any problems with Partner facilitating investigative work for CEO?
- To the extent this represents a conflict, is it a conflict to which the company can consent? Who should do so?
- Is the investigator’s conduct problematic and, if so, to what extent should Partner be responsible?

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SCENARIO #1 RPCs

- **All references are to the Model Rules**
- **Rule 1.7(a)(2)** – current conflict of interest based on obligations to another
- **Rule 1.6(a) and cmt [3]** – confidential information
- **Rule 1.8(b)** – using information to disadvantage of client
- **Rule 8.4(a) and 5.3(c)** – professional liability for acts of another
- **Rules 4.1 and 8.4(c)** – deception by investigators
- **Rule 4.4(a)** – methods designed to harass

SCENARIO #2

Representation When Your Client Wants to Violate the Law

ChemABC poses a potential health hazard individuals with compromised immune systems and the legislature has now enacted legislation and a related regulatory scheme limiting the knowing and intentional emission of ChemABC. The Commission is in charge of regulatory enforcement. Despite the potential fine or prison sentence available for knowing and intentional emission, Linda Lawyer's client informs her that it has made the business decision to continue to emit ChemABC in small and large amounts, subjecting it (and its aiders and abettors) to potential civil and criminal sanctions. As a result of her work, Linda knows that the Commission staff is overburdened and takes a lax approach to enforcement. Linda also knows that while the law criminalizes emission of ChemABC over 40 ppm, most prosecutors are not interested unless the emission level is over 100 ppm.

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First appeared as part of the conference materials for the
2019 Renewable Energy Law session

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