

Commandment #8: Don't Lie - Tell the Truth (to Law Enforcement, the Media, AND YOUR OWN ATTORNEY!)

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You've heard this from previous Commandments, but it is worth repeating: Don't Lie. Regardless whether you are speaking to law enforcement (Commandment #6) or the media (Commandment #7), the bottom line is you probably cannot talk your way out of a problem by lying. And if you are untruthful, chances are sooner or later it will come back to hurt you more than it possibly could have helped you. You are better off not saying a word than lying. Commandment #8 follows this common theme: don't misrepresent the truth - especially when you are talking with your own attorney or your company's attorney.

If you are talking with your own privately retained attorney, your attorney can best help you by knowing the full truth.

It is better for you to tell your attorney you would prefer not to comment and that the attorney should see what comes out of discovery requests or what law enforcement voluntarily provides than to lie. By misleading your attorney on the truth, you are only hurting yourself. I start most conversations with new clients in civil, regulatory and criminal investigations with this admonition: "I am your attorney and I am bound by the attorney client privilege. In most situations, I cannot and will not repeat what you tell me without your permission. We can discuss the exceptions to the rules on attorney client privilege, but I need to know the truth so I can give you the best advice under the circumstances. If you tell me one thing that leads me to provide "Advice A" and it turns out that I would have given completely different advice, "Advice B", had I known the truth, we may end up having a much worse and more expensive problem. So please tell me the truth."

Now let's talk about your conversation with the company's attorney. The company attorney wants to help the company and you as a valued employee. But you need to know that corporate counsel has a fiduciary responsibility to the company. The corporate counsel has certain duties that she must follow and she must act in the best interests of the company. She may be required to give certain warnings that incriminating information must be reported and can be used against you. If you reveal information that is personally harmful to you, you cannot expect the company attorney to hold that information in confidence. So you might need to talk with privately retained counsel BEFORE you talk with the company's attorney. You might have a tough choice on whether to tell the truth or not speak. Of course, if a corporate employee refuses to provide information, that may hurt the employee in other ways and it might result in termination of employment. But if one lies or deliberately conceals known facts, if and when the deception is discovered, the result will most likely result in dismissal and the consequences can be far more egregious.

If the attorney is headed in one direction while the truth would lead him in the other direction, it's potentially damaging and will prove to be a waste of time, effort and money.

Even though your conversation might fall under the sacrosanct "attorney client privilege" confidential communication, please do not lie. Tell the truth to your own attorney and the company attorney, or say nothing at all.

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