

The following scenarios were presented to the APTA Legal Affairs Committee during the panel discussion entitled "Ethics Hour". There was a discussion related to the identity of the client for Counsel representing transit authorities and transit authority boards under the model rules.

The session included an open and frank discussion as to real life ethics issues actually faced by in-house and outside counsel. Attendees had the opportunity to listen and participate in a lively, interactive discussion regarding ethical dilemmas and professional responsibility conundrums that transit lawyers face on a daily basis. Scenarios based on actual experiences of transit lawyers were presented and discussed, i.e. what is the obligation of the transit lawyer to the board, general manager, or division head within the transit agency? What actions should--or must--the transit lawyer take when a person asks the lawyer for legal advice or takes unilateral action with other persons within the transit agency? What action should--or must--the lawyer take when he/she learns of improper or unauthorized conduct by a board member or employee of the transit agency? The panel included over 50 years of combined legal experience addressing ethical issues and other legal matters.

The session continued with an interactive session which included the review/discussion of the scenarios detailed below:

Scenario 1

Your procurement department is currently entertaining responses to a Request for Proposals ("RFP") for complementary paratransit services to be provided by a third party contractor. A member of your board of trustees, has approached the contracting officer and requested that the board member be provided a copy of the independent cost estimate related to the RFP. The member is friends with a company that is expected to submit a response to the RFP.

Scenario 2

You are reading your morning newspaper and notice a headline that refers to upcoming purchases of real property targeted for specific areas of the city by your organization. The information related in this article has not been previously disclosed and was most recently discussed at last night's meeting of your organization's board of trustees while in closed session.

Scenario 3

Your organization employs internal legal counsel that advises the organization; as well as outside legal counsel that advises the board of trustees. A member of the board of trustees, without knowledge or approval of the remainder of the board of trustees, is consistently contacting outside legal counsel to solicit opinions and incurring legal fees. This contact frequently occurs after internal legal counsel has rendered a legal opinion specific to the member's request and that is imparted to all of the members of the board of trustees. The outside legal counsel usually concurs with the opinion of the internal legal counsel. Additionally, when the outside legal counsel concurs with internal legal counsel, the board member further engages in opinion shopping and seeks a legal opinion from another legal counsel.