

**Supervised Practice Portfolio Examination (SPPE)
Professional Responsibility or Professionalism
Journal Entry Template**

Provisional Licensee's SPPE Number: xxxxx

Journal Entry Number: 2

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Lawyering Situation. *Describe a lawyering situation that you have experienced or personally observed:*

I am working as a prosecutor and today I encountered an unexpected ethical issue in court. I met with a defense lawyer who initially claimed I had not provided discovery, but upon checking his phone, he confirmed receipt. We agreed to request a continuance so he could review the discovery. However, in court, the defense lawyer told the judge that we needed a continuance because I hadn't provided discovery, which was untrue. The judge then asked me whether the prosecution agreed to a continuance. I said "yes," because we did. But I was so surprised by the defense lawyer's misstatement that I didn't say anything further. I wasn't sure if I should accuse the defense lawyer of lying to the judge. Maybe it wasn't a lie? Maybe he was handling several cases today and was momentarily confused or distracted?

The judge gave us a continuance, which I had agreed to, but I am bothered by the defense lawyer's behavior.

Professional Responsibility or Professionalism Issues. *Describe the professional responsibility or professionalism issue(s) that arose in the situation you described. If more than one issue arose, number them:*

1. Did the defense lawyer violate an ethical duty by making this false statement to the court?
2. Should I have pointed out this error?

Research and Consultation. *How did you explore these issues? Did you consult with an attorney in your organization or talk to another attorney? Call the State Bar's Legal Ethics Hotline? Review Oregon's Rules of Professional Conduct, ethics opinions, or other guides?*

I looked at the Rules of Professional Conduct and found Rule 3.3, which requires candor to the tribunal. I also talked with an experienced attorney about how to handle a situation like this.

Relevant Oregon Rules of Professional Conduct, Ethics Opinions, or Other Sources.

Identify the rules, ethics opinions, or other sources that informed your analysis of each issue listed above. If you did not find any relevant rules or other sources, note that:

1. Oregon Rule of Professional Conduct 3.3(a)(1), Candor toward the tribunal, directly addresses defense counsel's conduct. This rule says that "a lawyer shall not knowingly make a false statement of fact or law to the tribunal."
2. I did not find any rule requiring me to point out defense counsel's error. Rule 3.3(a)(1) requires a lawyer "to correct a false statement of material fact or law previously made to the tribunal by the lawyer," but that provision applies to the lawyer who made the statement. I did not make a false statement to the court. Rule 8.3 requires lawyers to report another lawyer's misconduct to the Oregon State Bar Client Assistance Office under certain circumstances, but that is different from correcting the record in court. And, as noted below, I'm not sure that defense counsel violated Rule 3.3.

Analysis. *Apply the rules, ethics opinions, and other sources that you have identified to each issue listed above.*

1. The defense lawyer made a false statement, but I don't know if his misrepresentation was knowing. As noted above, he might have been momentarily confused.
2. I didn't find any rules or advisory opinions suggesting that I had a duty to challenge defense counsel. But court records should be correct, and the defense lawyer's misrepresentation made our office look bad. I wish I had thought of a courteous, professional way to correct the record.

Conclusion and Concrete Steps for the Future. *State your conclusion on each issue and describe concrete steps you plan to take to prepare for or respond to a similar situation in the future.*

1. If the defense lawyer made a knowing misrepresentation, that violates Rule 3.3. Assuming that the lawyer merely misspoke, this still offers a valuable lesson. A lot goes on in court, and it's hard to keep the details straight. I want to keep careful notes of my discussions with opposing counsel and check them before I make a representation to the court.
2. I talked to an experienced attorney about how to respond professionally in a situation like this. They suggested several professional ways to correct a misrepresentation like this one. When the judge asked me if the prosecution supported a continuance, I could have said "Your honor, we do not oppose a continuance, but I want the record to reflect that the prosecution provided discovery on [date]." The judge could then have decided whether to pursue it further with defense counsel.

Alternatively, I could have asked to approach the bench with opposing counsel and politely informed the judge that the prosecution had already provided discovery but was content to give the defense more time to review that discovery. This would have been less publicly embarrassing to the defense lawyer, but it would have drawn more attention to the misrepresentation and brought the defense lawyer right up to the bench. I think I prefer the first approach and will keep that in mind for future cases.

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