



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

Many of our vendors have a provision in their agreements limiting their liability related to their work to the amount of their fee, or to some other capped limit. Could we insert a similar provision in our standard form of engagement letter? For example, our firm has a primary malpractice insurance limit of \$25 million. Could we include in our engagement letter a provision disclosing that, and limiting our liability for malpractice to the amount of our insurance?

A: You have asked The Ethics Lawyer the rare question that can be answered unequivocally and without much discussion. Model Rule 1.8(h)(1) precludes an agreement prospectively limiting a lawyer's liability for malpractice, unless the client is independently represented in making the agreement. In theory, this might permit negotiation of a limitation of liability provision if the prospective client is represented by independent counsel in the matter, but otherwise the answer is no. Comment 17 to the Rule does clarify that this does not preclude agreement for arbitration of claims, agreement to limit the scope of representation or practice as a limited liability entity when certain conditions are met.

The Ethics Lawyer

About Dear Ethics Lawyer

The twice-monthly "Dear Ethics Lawyer" column is part of a training regimen of the Legal Ethics Project, authored by [Mark Hinderks](#), former managing partner and counsel to an AmLaw 132 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP's [Legal Ethics & Professional Responsibility](#) practice, offering advice and "second opinions" to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to mark.hinderks@stinson.com.

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.