

The logo for "Dear Ethics Lawyer" is written in a black, cursive script font. The word "Dear" is smaller and positioned to the left of "Ethics Lawyer". A small "TM" trademark symbol is located to the right of "Lawyer". The background of the logo is a light-colored, textured surface with some faint, illegible handwriting and a red diagonal stripe in the upper right corner.

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

Our client was sued for breach of contract, and discovery requests were served with the complaint. I was subsequently engaged for the matter, immediately reviewed relevant documents and determined that a constituent of the client had fraudulently entered the contract knowing it could not be performed. He did this on his way out the door in order to boost the sales figures upon which bonuses would be based. May we settle the case immediately for the full amount requested, or even confess judgment on the contract claim, in order not to reveal the fraud reflected in the internal documents that would otherwise have to be disclosed?

A: Yes. Under these circumstances, the Model Rules contain no affirmative obligation for the lawyer to reveal to the opposing party or court information concerning a completed fraud discovered under the umbrella of privilege and Rule 1.6, not previously involving the lawyer's services. Indeed, under Rule 1.6(a), the lawyer would require the client's consent to make a disclosure, subject to certain exceptions relating to permissive disclosure found in Rule 1.6(b)(2) and (3). In that regard, the lawyer should counsel the client on the adverse effect in the litigation (or otherwise) of discovery of an unmitigated or uncorrected fraud in the event the matter cannot be immediately settled. Of course, the lawyer may not participate in any obstruction of access to or falsification of evidence, and should make no misleading statements (affirmative or by omission) about the underlying facts in attempting to settle the matter. See Rule 3.4.

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 125 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.