

Attorney/Client Privilege, Concealment of Information Examined by Hinderks in *Legal Intelligencer* Column

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Stinson LLP's [Mark Hinderks](#) authored a column for *The Legal Intelligencer*, "Disclosure of Client Document Concealment Learned Post-Settlement."

Hinderks provides insight into an attorney's duties upon learning after a settlement has occurred, but before case dismissal, of documents previously concealed by a client. He focuses on Model Rule 1.6 (Confidentiality of Information) with further clarification through an analysis of Rule 3.3 (Candor Toward the Tribunal).

"The concealment of relevant information in order to induce a settlement is a fraud and, in some circumstances, also a crime," Hinderks writes.

He explains that the original version of Model Rule 1.6 precluded disclosure of information except to prevent a pending crime or fraud, similar to protection provided by the attorney-client privilege. However, "the current version of Rule 1.6 adopted in many jurisdictions, adds additional exceptions to the rule of confidentiality, including permissive disclosure to mitigate or rectify financial injury committed through the use of the lawyer's services, and where adopted, that type of exception may apply to permit disclosure here even if the original version of Rule 1.6 would not have."

He continues, "Regardless of which version of Rule 1.6 applies ... it requires a lawyer who knows that a client has engaged in fraudulent conduct related to the proceeding to take 'reasonable remedial measures,' including if necessary, disclosure to the tribunal."

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Hinderks leads the firm's Legal Ethics & Professional Responsibility practice. He is the author of Dear Ethics Lawyer, a twice-monthly newsletter with questions and answers concerning legal ethics, and a co-founder and presenter of "Ethics for Good," a twice-annual stage show which uses humor, skits and real-world scenarios to teach legal ethics to lawyers. Hinderks has presented more than 125 programs on legal ethics over the past 30 years, has authored many articles and handbook chapters on legal ethics, and has been deeply involved in professional organizations with legal ethics and professional responsibility as their focus.

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