

Client-Attorney Relationships, Conflict and Confidential Information Examined by Hinderks in *The Legal Intelligencer*

In the News
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Stinson LLP Senior Counsel [Mark Hinderks](#) authored a column for *The Legal Intelligencer*, "Navigating a Tricky Matter-Intake Problem Involving a Conflict and Confidential Information."

Hinderks discusses a situation in which a potential new client discloses confidential information to an attorney pre-engagement, including that they wish to quickly file a case against their competitor in a favorable forum before the competitor files elsewhere, and then learns that the competitor is already a client of the firm in an unrelated matter.

"At first read, this appears to be a straightforward Model Rule 1.7 concurrent conflict concerning unrelated matters that could be ameliorated by an appropriate waiver request to each client," Hinderks notes. "The twist here is that you may be unable to effectively ask for the waiver." He also states that the attorney receiving confidential information from the prospective client about their race-to-the-courthouse strategy and other matters creates a secondary dilemma concerning potentially conflicting duties to the existing and prospective clients about that information. Hinderks says Model Rule 1.8 addresses many of these issues.

"The best practice when discussing a new matter with a prospective client (or a current client) is to perform and clear a conflict check before acquiring any information the prospective client considers to be confidential," Hinderks writes.

To ensure confidentiality, Hinderks says to only obtain basic information during initial contact before performing a conflict check, such as the prospective client identity, the adverse party, any other potential parties and a general description of the matter. He also states that if an attorney learns confidential

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information that is beyond the scope of assessing a potential client, and then discovers a conflict of interest, the attorney may be disqualified from representing that client or being involved in a similar matter for the opposing party.

“Protect your existing and prospective clients, and yourself, by putting the conflict check first,” Hinderks writes. “No matter how anxious you are to assure a prospective client of your enthusiasm to get started on their matter!”

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 135 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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