**The Legal Ethics Project. Supporting professionalism with information.**

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| **Q:** Dear Ethics Lawyer,I represented a closely-held LLC in the sale of real estate. A story broke yesterday that the LLC's principal is being investigated for various alleged frauds and tax evasion. Now, an IRS agent has made an unannounced visit wanting to talk to me about the transaction I was involved in, and asking to review at least the non-privileged information in our file. What should I do? What if, instead, I was served with a confidential grand jury subpoena that instructs me not to inform anyone about it? |
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| **A:** The answer here is fairly obvious, but sometime we get caught off-guard, particularly when approached without warning by a government investigator. Information about a closed matter, and relating to former clients does not lose its protection under Model Rule 1.6 or attorney-client privilege. It is also important to remember that Rule 1.6 protects all "information relating to the representation of a client," not just privileged material. Therefore, without client consent or legal compulsion, you should not permit this requested review. You should also advise the client of the request. You pose the alternate question concerning a grand jury subpoena labeled confidential. Rule 1.6 permits disclosure of information it protects to "comply with other law or a court order." The question concerning whether you could or should notify the client so that there is an opportunity for the client to undertake protective action is one as to which you should consult with counsel knowledgeable about grand jury proceedings in that forum. In addition, the disclosure of attorney-client privileged information is outside the scope of the exception to Rule 1.6. The right to assert or waive the privilege belongs to the client, however, and you should do nothing to waive it, at least in the absence of a specific court order. Again, this would be a matter to address with a lawyer knowledgeable in grand jury proceedings. |
| ***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](https://www.stinson.com/people-MarkHinderks), 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](https://www.stinson.com/capabilities-legal-ethics-and-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. |