



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I am an in-house corporate lawyer for a multinational agricultural products company. I was grinding away at 6 pm one evening when I received a call from a business colleague based internationally, with whom I have worked before. She explains that she is negotiating a license agreement to obtain rights to manufacture and sell some incredible new technology in the United States. She has an e-mail from the other party with the proposed form of licensing agreement. She tells me that the deal must be agreed upon in the next 12 hours or it will be lost to another bidder. Apparently she has been out of the office with an illness and had overlooked the email until just now. She wants me to review the proposed agreement immediately and advise her, but I've never done this before. She and I tried but were unable to reach an IP lawyer.

What do I do? I suppose my review is better than no legal review, but this is out of my area.

A: This question implicates Model Rule 1.1, which requires a lawyer to provide competent representation, defined as that which "requires the legal knowledge, skill, thoroughness and preparation necessary for the representation." It is obvious that you feel uncomfortable with advising the client in this specialized IP area, recognizing your lack of experience, exacerbated by the short turnaround time in question. Yet, it appears that you may be the only available option for your client to pursue this opportunity with any legal input at all.

Rule 1.1 recognizes that "[i]n an emergency, a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical." Comment 3. If this is the situation you are in, then you may proceed with as much competence and diligence as you can muster. Consistent with Rule 1.4 duties of communication, however, you should first communicate your lack of experience to the client and its consequences, i.e., that you might miss something or make a mistake that an experienced IP lawyer would not, to the detriment of the client. In that vein, you should also consider and discuss with the client representative

who has contacted you whether she is the person within the organization who should make the decision to proceed in these circumstances or whether you and her should seek higher authority, either within the law department or the business structure. See Rule 1.13. You should consider with the business representative whether delay to get additional input and approval should be undertaken even if it means loss of the opportunity.

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.