



# Dear Ethics Lawyer™

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

**Q:** Dear Ethics Lawyer,

A lawyer is representing the plaintiffs, six people injured to various extents in an industrial accident. Is it unethical for a defendant's lawyer to extend an aggregate settlement offer to settle all the cases on an all or nothing basis? Must the plaintiffs' lawyer withdraw from representing the multiple plaintiffs when an aggregate settlement offer is received if it would be difficult to obtain agreement of the amounts that each should receive?

**A:** Although in some circumstances a lawyer could perhaps use an aggregate settlement offer to create a wedge between the multiple clients represented by another lawyer, or that lawyer and one or more of his clients, the making of an aggregate settlement offer is not prohibited by the Model Rules, and is provided for in Model Rule 1.8(g). The plaintiffs' lawyer may also continue to represent multiple clients in considering and determining whether to accept an aggregate settlement offer, provided they can and do comply with the provisions of Rule 1.8(g), which require the lawyer to obtain informed consent from each client in a signed writing, following disclosure by the lawyer concerning the existence and nature of all claims and the participation of each person/party in the settlement. The lawyer must provide each client with sufficient information to make an informed decision about their participation in the settlement. See ABA Formal Ethics Op. 06-438 (2006).

There are circumstances in which difficulties for the plaintiffs' lawyer may arise in the event of disagreements between clients about the settlement and/or about whether confidential information important to evaluate the respective settlement positions of the clients may be shared. Ultimately, if consent to the aggregate settlement cannot be obtained because of differences or disagreements between the multiple clients, the plaintiffs' lawyer must consider whether continued representation of multiple parties (or any of them, in certain circumstances) is ethically permissible in view of obligations under Rules 1.8(g) and 1.7.

As has been discussed in this column in the context of other issues, lawyers who represent multiple clients in a matter (whether plaintiffs, defendants or parties to a transaction) should always consider and discuss with their clients at the outset any potential current and future issues that may cause conflicts to arise. Disparity in the interests or characteristics of the clients may create different and conflicting positions on decisions to be made. In most cases it will be necessary to address whether information relating to one or more clients may be shared with other clients; best practice suggests this should be agreed to in advance and called out in an engagement letter. It is also best practice to determine ahead of time and include in the engagement letter what happens in the event of conflict between multiple clients during the matter, *i.e.*, may the lawyer continue to represent any of the clients or must the lawyer withdraw from representing all of them? There may also be some circumstances in which the interests or characteristics of the potential clients are so divergent from the beginning that there is a high potential for a "material limitation" conflict under Rule 1.7(a)(2) and the lawyer simply should not undertake the representation of one or more of them. The best time to consider these issues is at the lawyer-client engagement stage of the matter.

## ***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](mailto: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.