

The logo for "Dear Ethics Lawyer" is written in a black, cursive script font. The letters "Dear" and "Lawyer" are in a larger size than "Ethics". A small "TM" trademark symbol is located to the right of the word "Lawyer". The background of the logo is a light-colored, textured surface with some faint, illegible handwriting in the background.

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

A former law school classmate newly-appointed as a corporate GC asked me to represent his company to file a pre-emptive suit in a favorable forum against a competitor. He told me that based on internal documents they believe the suit probably only has a 40% to 60% chance of success, but by getting to the favorable forum, they hope to press for an early settlement. I ran a conflict check and discovered that the firm represents the opposing party in a small unrelated real estate matter. What can I do to be able to proceed? This could be a really big ongoing client.

A: At first read, this is a straightforward Model Rule 1.7 conflict concerning unrelated matters that could be ameliorated by an appropriate waiver request to each client. The twist here is that the company that wishes to hire you is trying to beat the competitor to the courthouse. They would have to consent to you asking their competitor for a waiver, disclosing enough information about the matter to make a waiver effective, which could well cause the competitor to race to file first in a forum of their choosing.

You also have another issue. By getting confidential information from the prospective client concerning their strategy before running a conflict check, you have already placed yourself and the firm in a dilemma with the existing real estate client – do you have an obligation to inform them of the conversation? Rule 1.18(a)(b) provides that a lawyer who learns information from a prospective client must not reveal or use that information, except as Rule 1.9 would permit with information of a former client (not applicable here). Your firm should take steps to screen you from any of the real estate client's matters and ensure that you do not disclose what you have learned.

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.