



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I represent a company in an employment suit. A vice president of the company is named as a party, along with the corporation. Knowing the company would be vicariously liable for the VP's actions anyway, with the company general counsel's approval, I entered an appearance for both parties to obtain an extension of time, and then interviewed witnesses. In his interview, the VP immediately confessed to me that he made a sexual advance on the claimant. What now? Can I continue the representation?

A: You very likely have a concurrent conflict under Model Rule 1.7, given that one of your clients has now confessed to you privately something that may well create a conflict with your corporate client, e.g., as to whether the information, likely to affect the VP's ongoing status with the employer, should and can be revealed to the employer. A better approach would have been to meet earlier with the VP, making it clear that you are serving as company counsel and that whatever the VP then told you could be shared with the company, before determining whether to represent both parties. If the VP didn't agree with that, then separate counsel could have been engaged for the VP from the outset. Alternatively, you could have implemented a carefully crafted engagement letter with the VP pre-interview making it clear that confidences could be shared with the company client, and clarifying what would happen in the event of a divergence of interests, e.g., whether you could withdraw from representing one client and continue to represent the other.

In any event, given the state of things in the scenario when this disclosure was made, you should discuss with the VP whether he now consents to your disclosure of the information to the company (assuming he is within the circle of privilege for the company so that this would not be a waiver of privilege, or a common interest privilege is otherwise viable), and then attempt to obtain informed consents that allow you to proceed (provided the facts and nature of the claims do not otherwise create a material limitation issue under Rule 1.7(a)(2)). Otherwise, you will likely have to withdraw from the representation, and obtain new counsel for both.

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.