



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I am an associate working with a partner on a substantial matter. The client has asked for advice concerning the potential exposure and whether it should be estimated and disclosed as a material matter to audit personnel working on the company's financial statements. The partner believes strongly that the matter is sufficiently speculative that it need not be disclosed. However, I believe that, although arguable, the partner is wrong and that a failure to disclose the matter would cause the client to misstate its contingent liabilities. The partner considered my position, but rejected it and has determined to advise the client based on his position. What may or must I do under the ethics rules?

A: You are in an awkward position requiring some careful analysis—welcome to the practice of law! Model Rule 5.2(a) makes it clear that the Rules of Professional Conduct apply to you, even if you are acting at the direction of another, but subsection (b) gives you some meaningful protection as a "subordinate lawyer," acting at the direction of the partner as a "supervisory lawyer." You do not violate the Rules when acting per the partner's instructions if the partner's instruction is a "reasonable resolution of an arguable question of professional duty."

You describe the partner's resolution as "arguable." Please consider whether the partner's resolution is "reasonable" under the standard set forth in Rule 5.2. I would advise you also to consult with firm counsel or otherwise with firm or practice leadership, or even to obtain outside counsel on the issue. You should not lightly go against the partner's instructions, but your law license and reputation are your career. Use the resources available to you to help resolve this issue.

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.