

The logo for "Dear Ethics Lawyer" is written in a black, cursive script font. The word "Dear" is in a smaller size than "Ethics Lawyer". 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 that looks like aged paper or parchment, with some faint, illegible handwriting visible. A red diagonal banner is in the top right corner of the page.

Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

A potential client sent me an unsolicited email containing what she described as confidential information about a claim she has against an entity that turned out to be one of our firm's existing clients. Our website says that we undertake no duties of confidentiality in the absence of an agreement, and that prospective clients should not send confidential information without our agreement. May I or the firm still defend our existing client in the resulting matter? May we use the information the prospective client sent me to do so?

A: A potential client becomes a "prospective client" entitled to protection of information and certain conflict protection under Model Rule 1.18 only when the person "consults with a lawyer about the possibility of forming a client-lawyer relationship." Whether communications (oral or electronic) constitute such a "consultation" depends on the circumstances, including whether the lawyer or law firm has invited the submission of information about the representation through advertising, website reference, etc., without qualifying cautionary statements or warnings about the nature of the communications. See Rule 1.18, Cmt 2. If the advertising or other posting simply lists qualifications, experience and contact information, the unilateral communication of information to the lawyer is not a triggering "consultation," especially if as here, the material has a specific disclaimer of duties and confidentiality. In this case, the would-be client has made an uninvited unilateral submission. The lawyer and firm are free to be adverse, and to use the information that was communicated.

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.