



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I represent a company threatened with suit. The opposing lawyer's demand letter states that in the absence of settlement, she will file a lawsuit against our client on July 1, the last day of the statute of limitations. I know that she has made a counting mistake and that the limitations period actually runs a day earlier, on June 30. Am I obligated to correct her mistake, or can I simply let the time run? As a matter of professionalism, may I correct her mistake or does my duty to our client mandate that I stay silent?

A: The focus of a lawyer's duties under the Model Rules is to the lawyer's client (diligence, competence, confidentiality), with only limited and basic duties that apply to third parties or to opposing parties or counsel (truthfulness, fairness, respect). There is no obligation under the rules to correct an opponent's mistake of fact or law, at least insofar as the mistake is not based upon an actionable misrepresentation of the lawyer or client.

Nonetheless, as an act of professionalism or courtesy in order to prevent the opposing lawyer from committing malpractice, may the lawyer correct the opponent's misunderstanding of fact? Is this a tactical decision for the lawyer to decide under Rule 1.2, or does the lawyer's duty of diligence to the client under Rule 1.3 require the lawyer to stay silent, then press the advantage? Given that it could well be a case-dispositive matter (and one to likely save the client substantial litigation expense), it would be very risky and ill-advised for the lawyer to make a unilateral decision to correct the opponent's understanding and give up the limitations defense otherwise available to the client. At most, the lawyer should consult with the client "about the means by which the client's objectives are to be accomplished," Rule 1.4(a), but abide by the client's decision concerning the objective. Rule 1.2(a).

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.