



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

As 2023 begins, I've reflected on the fact that I've represented some bizarre people and dysfunctional companies over the years, and I've got some great stories. If I wrote a book about some of these stories (juicing them up just a bit) I'd be able to pay for my retirement and enhance my reputation as a really successful lawyer.

I know I shouldn't breach client confidences, but the longest statute of limitation and the statute of repose in my state are both ten years, and some of my stories are about people who are now dead or who are no longer with their corporate clients. What if I only use stories that (a) are from over ten years ago; (b) involve dead people who probably no longer care, (c) involve people who are no longer with a corporate client; or (d) are total fabrications?

A: Happy New Year. You should weigh the value of continuing to practice law v. what you will obtain from your publishing career under this risky plan. In general, although they may apply to civil actions by affected clients for damages as a result of your disclosure of confidences, statutes of limitation and repose do not apply to disciplinary proceedings under the Model Rules. See, e.g., ABA Model Rules for Lawyer Disciplinary Enforcement Rule 32 ("Statutes of limitations are wholly inappropriate in lawyer disciplinary proceedings"). In addition, for most purposes attorney-client privilege survives the client's death. *Swidler & Berlin v. United States*, 524 U.S. 399 (1998). Similarly, a number of state ethics opinions have held that Rule 1.6 protection of confidences also survives client death. Concerning stories about "people who are no longer with a corporate client," if those stories involve privilege or client confidences, that information belongs to the client(s) and is still protected and may not be disclosed without consent. So (a), (b) and (c) are out as options. Interestingly, because "total fabrications" would not implicate these considerations, then (d), fiction-writing, remains as a viable option. But you could violate Rule 8.4 (c)'s prohibition on engaging in "conduct involving dishonesty, fraud, deceit or misrepresentation" if you pass off the fabrications as true.

On a Personal Note

As we usher in 2023, I wish all readers of this column a terrific new year. Please remember not only to follow the letter of the ethics rules, but also to be grateful and kind to others.

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.