



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I am counsel in a case involving a web of corporate parties on each side. I now have information that our judge's adult children own a substantial interest in a two of the parties. I do not know whether the judge or counsel for the opposing parties is aware of this. I like this judge and am not anxious to secure his recusal, but do I have an obligation to disclose my knowledge of this to anyone?

A: This subject is the topic of ABA Formal Op. 522 (April 8, 2026), which opines that Model Rule 8.4(d), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice, requires a lawyer, as an officer of the court, to disclose information that the lawyer knows is reasonably likely to give rise to a judicial disqualification obligation. Ordinarily, the disclosure should be made to the tribunal, but in certain limited circumstances, disclosure could be required to be made to a Chief Judge or higher authority if it appears that relevant judge is ignoring their obligation to consider the matter. The opinion describes several hypothetical situations that might require action, in the nature of "familial and significant personal relationships with parties or lawyers in an action, economic interests implicated by the action, and extrajudicial knowledge of or involvement in the events underlying the action.

Any disclosure obligation of the lawyer in this situation, as in many contexts, is subject to the lawyer's obligation of confidentiality to the lawyer's client under Rule 1.6. If the lawyer learned the facts that would otherwise give rise to a disclosure obligation only from a client, or another context relating to the relationship that would make the information subject to Rule 1.6 protection, then notwithstanding Model Rule 8.4(d), the lawyer may not make the disclosure without consent of the client. However, this limitation itself is subject to exceptions when the lawyer reasonably believes that disclosure is necessary "to comply with other law" (see Rule 1.6(b)(6)), or as part of Rule 3.3(b)'s requirement for candor to the tribunal when that rule requires "reasonable remedial measures, including, if necessary, disclosure to the tribunal." Formal Op. 522 at 6.

While the opinion arguably deals with a relatively narrow subject, it does also contain a useful discussion of other circumstances in which a lawyer has an obligation to make a disclosure to the court to ensure procedural fairness and avoid conduct prejudicial to the administration of justice. For example, the opinion addresses the lawyer's disclosure obligation when a party has died or when facts have arisen or become known that render the jurisdiction of the court defective. In other circumstances, the lawyer has no comparable obligation. For example, the lawyer has no duty to disclose the passing of a statute of limitations that an opposing party must raise as an

affirmative defense, or to present relevant contrary evidence that an opposing party simply did not exercise diligence to gather (other than in an *ex parte* proceeding). *Id.* at 5-6. The lawyer's "officer of the court" role, somewhat in tension with the lawyer's client advocacy role, is limited to matters that affect the overall integrity and fairness of the judicial process in which advocates operate.

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 134 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.