



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I am a three-year lawyer who recently went in-house after being an associate at a law firm. I now have some issues. I work with and for a more senior lawyer who is the Deputy General Counsel for our employer, the number two in our law department. Under his direction, I have been constructing a privileged log for a large matter we're involved in. He told me to claim privilege as to any email or document that has a lawyer's name on it or in it, whether or not it was seeking or providing legal advice, but then describe the document on the log as involving communication with the lawyer about legal advice. He said this is how it's done all the time and it's perfectly appropriate. I don't think this is true, but can I rely on his direction to do this? I need the job and he won't be there forever.

A: Many lawyers of your experience level have really good mentors in their firms or law departments. It sounds like you do not. Let's take this in steps. First, your DGC's instruction to claim privilege on documents you know not to be privileged (they don't involve legal advice), and then to create a false privilege log would cause you to violate various ethics rules, including Model Rules 8.4(c)(engaging in conduct involving dishonesty or misrepresentation) and 3.4(a)(obstructing another party's access to evidence). While as a subordinate lawyer, you would be entitled to act in accordance with a supervisory lawyer's "reasonable resolution of an arguable question of professional duty," Model Rule 5.2(b); the blatant instruction to falsify a privilege log would not fall into that category. It also may trigger a duty by you to your client to report the matter up the corporate ladder if the DGC is engaging in this conduct regularly, as it could come back to cause substantial injury to the organization in the context addressed by Rule 1.13(b).

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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.