

ADVISORY ETHICS OPINION 2000-06

SYNOPSIS:

An attorney who represents a landlord may directly contact a tenant who is represented by an attorney solely for the purpose of the statutory termination of tenancy notice.

FACTS:

Requesting attorney represents landlords and on behalf of these clients is required to provide written termination of tenancy notices to tenants pursuant to 9 V.S.A. § 4467. On occasion, the requesting attorney knows that the tenant is represented by counsel prior to the decision to send the eviction notice by the client. Requesting attorney notes that proper written notice of termination directly to the tenant is a statutory requirement, and requests the Committee's opinion on whether the attorney may continue to send these written notices directly to a tenant even though the tenant might be represented by counsel.

QUESTION:

Does Rule 4.2 prevent counsel representing a landlord from directly contacting a tenant who is represented for purposes of sending the tenant the statutory notice of termination?

DISCUSSION:

Requesting attorney poses the question assuming, for purposes of this Committee's response, that direct written notice to the represented party is a statutory prerequisite to the eviction. The attorney on behalf of the landlord rather than the landlord is sending the notice of termination. The "anti-contact rule" embodied in Rule 4.2 provides that

"... a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless it is authorized by statute when the lawyer is acting as the agent of the landlord for the purpose of giving notice".

In this instance, although the contact is without the consent of the tenant's attorney, because it is a statutory prerequisite to the eviction action, the lawyer's direct notice on behalf of the landlord/client does not violate Rule 4.2. It is authorized by statute when the lawyer is acting as the agent of the landlord for the purpose of providing notice. The statute does not require that the landlord provide the notice. Additionally, the "communication" from the requesting attorney consists merely of serving the written notice of termination presumably setting forth the specific breach of the lease or breach of Vermont law. Although it is a communication, it does not involve discussions or investigations concerning the landlord-tenant issues. Lastly, professional courtesy and practice dictates that a copy of the notice also be mailed to the tenant's attorney.