

ADVISORY ETHICS OPINION 80-05

SYNOPSIS:

Counsel for Vermont Housing Finance Agency may have direct contact with prospective mortgagors who themselves are represented by counsel assuming that Agency counsel has been given written authority to do so by counsel for such mortgagors.

FACTS:

The Vermont Housing Finance Agency, pursuant to Chapter 25 of Title 10, finances the development of housing for low and moderate income persons. Financing of multi-family housing, a complex process, is included in this mandate.

Until the present time, a non-lawyer representative of the Agency had dealt with the developer, bringing legal questions to Agency counsel as the need had arisen. It is now discovered that this procedure is too cumbersome. Therefore, Agency counsel wishes to have ongoing direct contact with the developers, and has inquired as to the propriety of securing written "blanket" authorization from the developers' counsel permitting him to have such contact, providing it is made clear that such authorization is not a condition of securing financing.

QUESTIONS PRESENTED:

May counsel for this Agency have direct contact with prospective mortgagors who, themselves, are represented by counsel, assuming that he has been given written blanket authorization to do so by counsel for such mortgagors?

OPINION:

This question is governed by the following disciplinary rule:

Communicating With One of Adverse Interest

(A) During the course of his representation of a client, a lawyer shall not:

1. Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.
2. Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client. DR 7-104

Much of this philosophy, of course, stems from Canon 9, pertaining to "Appearance of Professional Impropriety." The aforementioned Disciplinary Rule takes Canon 9 requisites literally, as does the precedent interpreting these provisions. See Opinions 55, 66, 177, 197, ABA Opinions.

CONCLUSION:

Relying on the facts as given to this Committee, the Committee is of the opinion that Agency Counsel may properly deal directly with developers, if blanket authorizations have been given by developer's counsel. This conclusion presupposes, however, that such authorization shall be revocable at any time by the developer's counsel, at which time DR 7-104 would preclude further direct contact, without renewed consent.