

ADVISORY ETHICS OPINION 96-06

SYNOPSIS:

An attorney, acting on behalf of a client, may write letters to the mayor, members of the city council and the city manager concerning such matters as handicapped access to city council chambers, information concerning the expenditure of city funds, and other matters, not involved in direct disputes or negotiations between the attorney's client and the city, despite the fact the city retains a private attorney to represent the city generally.

FACTS:

The requesting attorney has on several occasions written letters, at the request of a Clint, to various city officials concerning such matters as the need for handicapped access to the city council chambers, a request for information concerning the expenditure of city funds related to various permit and enforcement proceedings, a request that legal counsel for the city be in attendance at city council meetings, and a request for information concerning the city's errors and omissions insurance coverage.

The requesting attorney is not involved in any litigation between the client and the municipality. The client is involved in litigation with the city but is represented in that action by a different attorney. The requests for information and other communication do not relate to the pending litigation between the city and the requesting attorney's client.

QUESTION:

The requesting attorney has requested the Committee's advisory opinion as to whether or not he may continue sending correspondence directly to city officials.

DISCUSSION:

The pertinent Disciplinary Rule relating to this inquiry is DR 7-104 (A)(I). It reads as follows:

“DR 7-104 Communicating with one of adverse interest.

(A) During the course of 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. (emphasis added)”

Rule 4.2 of the Model Rules under consideration by the Supreme Court is substantially identical to DR 70104 (A)(I). It reads as follows:

“In representing a client, a lawyer shall not communicate about the subject of a representation with a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized by law to do so. (emphasis added)”

The Disciplinary Rule does not preclude the attorney from communicating directly with city officials on matters of public or private interest as to which the city has not sought representations from the city's attorney. On the contrary, the Rule is meant to dissuade an attorney from communication with a party to litigation. In the matter at hand, there is no litigation and the persons receiving the correspondence are not represented by counsel in the matter discussed in the correspondence. The fact that the municipality has a city attorney is not material here.

CONCLUSION:

DR 7-104 is designed to protect a party represented by an attorney from direct contact with an adverse party's attorney regarding the subject of the representation. However, the Rule contemplates an exemption for contacts authorized by law. Communications directed to city officials concerning matters that are not under litigation are clearly “authorized by law.”