

**STATE BAR OF NEVADA  
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY**

**Formal Opinion No. 8  
February 18, 1987**

**QUESTION** - May a lawyer who is personally involved in a dispute with nonlawyers communicate directly with the nonlawyers about the dispute after having been asked to communicate only through counsel?

**ANSWER** - No. Having been asked to do so, the lawyer-party should refrain from contacting the adversaries directly. Even if there is no express request, the lawyer should refrain from contacting personal adversaries known to be represented in the specific matter by another lawyer, without the other lawyer's consent. The adversaries' lawyer should not withhold consent unreasonably.

**AUTHORITIES RELIED ON**

Nevada Rules of Professional Conduct  
(Supreme Court Rules) 171(1), 182, 184, 203(1) (1968)

**DISCUSSION**

Communications with adverse parties are governed by Nevada Supreme Court Rule 182 (1986) [hereinafter SCR]: "In representing a client, a lawyer shall not communicate about the subject of the representation with a party 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." Cf. Model Rules of Professional Conduct Rule 4.1 (1983) (identical to SCR 182). The rule against direct communication applies whether or not the parties are in litigation. Model Rules of Professional Conduct Rule 4.2 comment (1983).

The purpose of the Rule is "to preserve the integrity of the client-lawyer relationship by protecting the represented party from the superior knowledge and skill of the opposing lawyer." ABA/BNA Lawyers' Manual on Professional Conduct 71:303 (1984); see also *United States v. Jamil*, 546 F. Supp. 646, 652, 654 (E.D.N.Y. 1982) (the rule "protects an adverse party from the imbalance of skill and knowledge between laymen and lawyers," and "from squandering a possible claim or defense"; it also "[e]nsure[s] against disclosure of privileged information").

The rule's applicability is clear where a lawyer representing a party communicates with the party's adversary, bypassing the adversary's lawyer. It is not so clear where the communications are between two parties, one of whom just happens to be a lawyer. The rule allows "parties to a matter [to] communicate directly with each other." Model Rules of Professional Conduct Rule 4.2 comment (1983); see also *Kleiner v. First National Bank of Atlanta*, 102 F.R.D. 754, 769 (N.D. Ga. 1983). Thus, it could be argued that lawyers acting in their capacities as parties may communicate directly with other parties. Cf. *United States v. Dennis*, 645 F.2d 517, 523 (5th Cir. 1981) (it is not an ethics violation for an FBI agent who is a law school graduate but not a member of any bar to interview a criminal defendant who is represented by counsel, because "the agent is not acting as an attorney"). It could be further argued that otherwise laudable efforts to resolve personal disputes privately should not be prevented simply because one of the disputants happens to be a lawyer. The generalization that a lawyer always has the advantage over lay adversaries could be dismissed as conceit.

Nevertheless, in the only opinion we have found directly addressing this question, a state bar ethics committee held that a lawyer must not communicate with represented parties even though the lawyer is acting as a party to the matter. South Carolina Bar Ethics Advisory Comm., Op. 86-10 (June 16, 1986) (decided under comparable provision - DR 7-104(A) (1) -of the Model Code of Professional Responsibility). The South Carolina Bar committee stated that "a lawyer must comply at all times with all applicable disciplinary rules of the Code of Professional Responsibility whether or not he is acting in his

professional capacity." *Id.* (quoting ABA Comm. on Ethics and Professional Responsibility, Formal Op. 336 (June 3, 1974)).

The inquiry before the Committee does not require such a sweeping interpretation of SCR 182. The crucial point here is the hypothesis that the lawyer has been asked to communicate with the adversaries only through their counsel, which suggests that direct communications are a burden to them. The lawyer has an obligation not to burden others through conduct serving no other substantial purpose. SCR 184. We cannot see how dealing through counsel would prejudice the lawyer. Therefore, the lawyer should honor the request and refrain from dealing with his adversaries except through their counsel.

The Committee also believes that under SCR 182 a lawyer-party should not communicate directly with represented adversaries even where no express request has been made. In this context, the meaning of "represented" is restricted. SCR 182 prohibits communications with persons a lawyer knows to be represented "in the matter" by another lawyer. We interpret "in the matter" as limiting the prohibition against direct communication to situations where a lawyer learns during the course of a specific controversy that his or his clients' adversaries are represented by another lawyer with respect to the subject matter under discussion or at issue. Thus, if a lawyer or the lawyer's client has a dispute with (for example) a landlord or a creditor or a neighbor, the lawyer can talk to the landlord, creditor, or neighbor about the dispute, even though the lawyer knows that the person is or has been represented by counsel on other matters. But if the lawyer learns that the adversary has referred the matter in question to counsel, the lawyer's communications with the adversary should cease. By referring the dispute, the adversary signals his decision to have it handled by counsel. The lawyer should respect that decision, even if he is personally a party to the dispute, by obtaining the other lawyer's consent before communicating directly with the adversary. When considering requests for consent, the other lawyer should keep in mind the duty to "make reasonable efforts to expedite litigation consistent with the interests of the client." SCR 171(1). Accordingly, the other lawyer should freely consent to direct communications where they will facilitate a resolution without jeopardizing the client's interests.

## **CONCLUSION**

A lawyer personally involved in a dispute should not communicate directly with adversaries who are represented by another lawyer in connection with the specific dispute, unless the other lawyer consents. The other lawyer should not withhold consent unreasonably.

*This opinion is issued by the Standing Committee on Ethics and Professional Responsibility of the State Bar of Nevada, pursuant to SCR 225. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, its Board of Governors, any persons or tribunals charged with the regulatory responsibilities, or any member of the State Bar.*