

Final

**Rhode Island Supreme Court Ethics Advisory Panel  
Opinion No. 2011-03 Issued  
July 14, 2011**

FACTS

The inquiring attorney represents the plaintiff in a lawsuit. The defendants are a now defunct corporation, and a physician who was the sole shareholder in the corporation. The inquiring attorney seeks to have an ex parte meeting with a former employee of the defendant corporation. The inquiring attorney has deposed the former employee, who served as a medical assistant and office manager. The employee was represented by counsel at the deposition.

ISSUE

The inquiring attorney asks whether the Rules of Professional Conduct permit him/her to have an ex parte meeting with the corporate defendant's former employee.

OPINION

Rule 4.2 requires that the inquiring attorney must obtain the consent of the lawyer who represented the former employee at his/her deposition before communicating or meeting with the former employee about matters relating to the lawsuit.

REASONING

In the instant inquiry, the former employee of the corporate defendant was represented by counsel at a deposition relating to the lawsuit. The Panel is of the opinion, therefore, that Rule 4.2 entitled "Communication with person represented by counsel," applies. Rule 4.2 states:

In representing a client, 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 the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

The Comment to Rule 4.2 explains:

This Rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

The Panel concludes that the inquiring attorney must obtain the consent of the lawyer who represented the former employee at his/her deposition before communicating or meeting with the former employee about matters relating to the lawsuit.