

DIGEST OF ETHICS ADVISORY PANEL OPINION  
#89-18, Request #64  
Issued July 20, 1989

An attorney seeks Panel advice concerning what steps she should take to contact opposing counsel under the circumstances she describes. The attorney advises the Panel that after she filed suit on behalf of the client, Attorney X entered his appearance on behalf of the defendant. The inquiring attorney states that when she attempted to reach Attorney X by phone several weeks later, her calls were not returned and that Attorney X failed to respond either to calls or letters during the next few months. The attorney states that letters sent to Attorney X at the address furnished by the Rhode Island Bar Association were returned as undeliverable. The attorney adds that certified mail sent to this address was returned unclaimed. The inquiring attorney states that she contacted Attorney X's office and was informed that Attorney X was no longer a partner, had taken all his cases with him and had left no forwarding address. The inquiring attorney states that the defendant told her "Attorney X said it was alright for me to talk to you."

Rule 4.2, "Communication with Person Represented by Counsel" provides:

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.

The Panel takes the position that the proper course of action is for the inquiring attorney to continue to mail documents to both the defendant and to Attorney X at Attorney X's last known address. This approach is proper until such time as the defendant advises the inquiring attorney that he has discharged Attorney X and retained new counsel or until Attorney X himself provides the inquiring attorney with a new address. The Panel finds that this is one circumstance which properly falls within the exception to the prohibition against communication with a person represented by counsel, set out in the final line of Rule 4.2 quoted above.

In rendering this opinion the Panel first notes with approval the inquiring attorney's diligent, ongoing and varied attempts to contact opposing counsel. The Panel notes that the defendant knew for a period of at least six weeks that the inquiring attorney was unable to contact his attorney, and could have discharged Attorney X and retained new counsel had he chosen. To require the inquiring attorney to take any further steps in her search for Attorney X or to refrain from taking any further steps in pursuit of her client's rights would be inconsistent with the purpose of the Rules of Professional Conduct. The Rhode Island Supreme Court has stated that the Rules of Professional Conduct are rules of reason, designed to further the efficient and equitable administration of justice. See Preamble and Scope, Rules of Professional Conduct, Sup. Ct. R. 47.

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.