

ETHICS ADVISORY PANEL
Opinion #92-96, Request #319
Issued March 15, 1993

An attorney seeks Panel advice regarding whether Rule 4.2 entitled "Communications With Person Represented by Counsel" would be violated in the following matter. The inquiring attorney represented a client in a personal injury matter. The client signed a retainer agreement stating that the attorney would be entitled to a sum equal to one-third of the amount recovered. Prior to the suit being reached for trial, the client retained new counsel. Pursuant to the second attorney's request, the inquiring attorney forwarded the client's file and an attorney lien on the case to the second attorney. The second attorney never entered his appearance in the case.

Approximately one year later, the inquiring attorney received notice from a third attorney who currently represents the former client. The inquiring attorney forwarded a copy of the original lien to the third attorney. The third attorney stated by letter to the inquiring attorney that this case did not merit "that type of lien" and that only expenses would be paid to the inquiring attorney. The inquiring attorney's concern is that the third attorney may communicate in a negative fashion to the client regarding the lien. The attorney asks whether it would be ethically appropriate to: 1) communicate by letter with the former client to explain the lien; 2) explain by letter to the former client that questions regarding the lien could be answered by the attorney; and 3) send the former client copies of various correspondence between the attorneys regarding the lien.

This inquiry addresses Rule 4.2 "Communication With Person Represented by Counsel". The Rule states that:

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.

In order for Rule 4.2 to be implicated, "the lawyer must be communicating with the represented party in connection with the representation of a client or on behalf of a client." See, Annotated Model Rules of Professional Conduct, ABA, 2nd. Edition, 1992, p.p. 425, 429, 430.

The first sentence of the rule clearly limits itself to communications involving representation of a client. In this instance the inquiring attorney does not wish to communicate on behalf of a client. The inquiring attorney's communication with the former client should be confined to the subject of the attorney's liens.