

ETHICS ADVISORY PANEL  
OPINION # 94-81 REQUEST # 555  
Issued February 9, 1995

The inquiring attorney suspects that opposing counsel has not fully communicated various settlement offers proposed by the inquiring attorney to the opposing party. The inquiring attorney states that the opposing party is an institution with its own in-house legal counsel, although the institution retained outside legal counsel to represent the institution in this matter.

The inquiring attorney would like to insure that all settlement offer are being communicated to the opposing party. He/she proposes to communicate by letter directly to in-house counsel while mailing a copy to outside counsel and/or direct his/her client to send a copy of the correspondence to in-house counsel. The inquiring attorney seeks guidance with regard to Rule 4.2 in this proposed action.

Rhode Island Rule of Professional Conduct 4.2 entitled "Communication With Person Represented By Counsel" governs the inquiring attorney's responsibilities in this matter. Rule 4.2 states the following:

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 opines that Rule 4.2 prohibits the inquiring attorney from direct communication with in-house counsel for the opposing party absent the consent of opposing counsel of record. In light of the following circumstances, the proposed communication is prohibited according to Rule 4.2. The Panel directs the inquiring attorney to Ethics Advisory Opinion # 93-33 (Issued August 25, 1993).

In addition the panel opines that it would be a violation of Rule 8.4(a) for the lawyer to either delegate the above proposed conduct to a non-lawyer or to advise another to communicate in a manner that would be impermissible if the lawyer did the same.