

COMMUNICATION WITH ONE OF
ADVERSE INTEREST –
LANDLORD/TENANT DISPUTES:
ATTORNEY FORWARDING A
DEFAULT NOTICE DIRECTLY TO
LESSEE WHEN LEASE AGREEMENT
PERMITS SUCH NOTICE.

You have indicated that Client X, represented by Attorney A, has stopped making payments under a lease with Y, represented by Attorney B, which X wishes to rescind. The lease provides specifically that "[all] required notices will be considered to have been given if sent by registered or certified mail or overnight courier service to the addressee [sic] at its address stated in the lease, or at such other place as such addressee may have designated in writing." You advise that X is the lessee, his address is stated in the lease, and he has not designated in writing any other address. Finally, you indicate that Y/lessor may not be able to hold X/lessee in default and assert a claim for rent against X unless Y sends a default notice to X as required by the terms of the lease.

You have asked the Committee to opine as to the propriety of Attorney B drafting a default notice for Y/lessor to send [directly] to X/lessee with a copy to Attorney A.

The appropriate and controlling disciplinary rule relevant to the issue you raise is DR:7-103(A)(1) which mandates that,

[d]uring the course of his representation of a client, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

Since the parties were each represented by counsel during the drafting of the original lease agreement, the pertinent provision of which permits the required notices to be sent directly to the parties, the Committee is of the opinion that Attorney A's implied consent to Y's or Attorney B's direct communications with X eliminates any potential impropriety. The Committee is of the further opinion that the provision of legal notices does not constitute the communication envisioned by the proscriptions of DR:7-103. (See ABA Informal Opinion 985 (August 26, 1967) citing ABA Informal Decision 426 (July 26, 1961).) The Committee thus opines that it is not improper for Attorney B to draft a default notice for Y/lessor to send directly to X/lessee. Furthermore, although not required, the Committee believes that the provision of a courtesy copy of the notice to Attorney B would be appropriate.

Committee Opinion
October 1, 1990