

You have presented a hypothetical situation in which Lawyer X represents a client on an appeal in a criminal case from the trial court (Circuit Court) to the Virginia Court of Appeals. The client ultimately loses in the Virginia Court of Appeals, and the trial court finding is affirmed. The trial record is returned to the appropriate Circuit Court. Consequently, the Court of Appeals assesses certain costs against the client. The Attorney General subsequently communicates in writing with Lawyer X requesting that the costs be paid. Lawyer X suggests to the Attorney General that the Attorney General correspond directly with the client. The Attorney General responds that communication directly with the client from the Attorney General is barred by DR:7-103(A).

You have asked the committee to opine whether, under the facts of the inquiry, it is permissible for the Attorney General to correspond directly with the client with reference to the collection of costs assessed against the client by the Virginia Court of Appeals after the appeal has concluded and the record has been returned to the trial court.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:7-103(A)(1), which states that during 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.

The committee has previously opined that when an individual had been a party to a concurrent or prior action to the action in question, and has or had representation at that time, it would be improper for an attorney to communicate with that individual on the subject of that litigation without either the consent of the prior attorney or authorization by law. See LE Op. 1389, LE Op. 1409.

The committee recognizes that the facts you present indicate that the attorney who had earlier represented the defendant subsequently [orally] consented to the Attorney General's communication with the client. The committee believes it would be better practice for the attorney to provide written notice of this consent to both the former client and the Attorney General. Therefore, the committee opines that it is not improper for the Attorney General to contact Lawyer X's former client directly with reference to the collection costs assessed.

Committee Opinion
April 12, 1993