

Committee Opinion
May 11, 1993

LEGAL ETHICS OPINION 1525

COMMUNICATION WITH ADVERSE
PARTY: EMERGENCY
COMMUNICATION WITH ADVERSE
PARTY WHEN OPPOSING COUNSEL
HAS NOT RETURNED TELEPHONE
CALL.

You have presented a hypothetical situation in which Attorney is retained to defend a client in a criminal matter brought by the client's landlord. Client informs Attorney that he has also been served a notice to quit by his landlord. Client requests that Attorney intervene in the landlord-tenant matter in an attempt to foster a satisfaction of the criminal matter.

You indicate that Attorney contacts counsel for landlord, OC, and speaks with him regarding possible settlement. OC indicates that he will speak to his client, landlord, and get back to Attorney within the next few days.

A few hours later, Attorney receives a telephone call from Client, who states that the parking permit on his car will be expiring after midnight, as the present day is the final day pursuant to the notice to quit. Client informs Attorney that he is hesitant about contacting landlord regarding an extension of his parking privileges as the landlord is the complainant in his criminal matter. Client further informs Attorney that the close of business is drawing near and requests that he act quickly.

Attorney then attempts to contact OC but OC's secretary states that OC is not in the office and that she is unsure whether he will be back. Attorney explains the circumstances and asks that OC return his call immediately.

You further advise that OC does not return Attorney's call. Attorney then calls the landlord's Towing Company approximately forty-five minutes before the close of business and requests that Client's car not be towed as there is a current dispute as to when the tenant is required to leave. Towing Company tells Attorney that only the landlord or OC can make such a request. Attorney waits, and approximately thirty minutes before the close of business, Attorney telephones the landlord and leaves the following message under the emergency section of the landlord's voice mail:

This is Attorney for Client. I understand that Client has been served with a notice to quit and is required to leave by the following day. However, we have spoken to OC and kindly ask that you extend Client's parking privileges as we are attempting a tentative settlement. Please call me at 123-4567 should there be any problems.

You have asked the committee to opine whether, under the facts of the inquiry, Attorney's actions violate DR:7-103(A).

As you have noted, the appropriate and controlling Disciplinary Rule related to your inquiry is DR:7-103(A)(1), which provides that a lawyer shall not communicate or cause

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another to communicate on the subject of the representation with a party 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 is of the opinion that, under the plain language of DR:7-103(A)(1), it is improper for Attorney to contact the landlord directly concerning his dispute with Client/tenant since Attorney has neither the prior consent of OC nor authorization granted by law. The committee recognizes the difficult position in which Attorney has been placed by Client. The committee believes, however, that since Attorney has not met either exception within the Disciplinary Rule, he may not contact the landlord/party directly on the subject of the representation. See LE Op. 1323, LE Op. 521.