

Committee Opinion
March 17, 1987

LEGAL ETHICS OPINION 905

CORPORATIONS – COMMUNICATING
WITH EMPLOYEE OF ADVERSE PARTY.

The Eastern District of Virginia is currently revising the local rules in that district. Whereas some previously proposed rules required practitioners to comply with the ABA model rules, the change will require practitioners to comply with the Virginia Code of Professional Responsibility.

It is not improper for an attorney to communicate with the employee of an adverse corporate entity if the employee is in a managerial position, but without authority to act on behalf of the corporation or make decisions on behalf of the corporation in the particular area which is the subject matter of the litigation as long as the employee is not represented by counsel. The attorney must disclose his adversarial role to the employee.

Should the individual involved with the adversary corporation change status so that he is no longer an employee of the adversary corporate entity, it would not be improper for an attorney to contact that employee based upon the fact that the employee had no authority to speak for the corporate entity. [DR:7-103(A); LE Op. 347, LE Op. 530, LE Op. 533]

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