

Subject: RE: Communication with Bill Hogan & Tammy Sandoval
From: "Steve Van Goor" <vangoor@Alaskabar.org>
Date: Wed, 20 Aug 2008 13:42:02 -0800
To: "Jim Gottstein" <jim.gottstein@psychrights.org>

Jim:

Alaska's version of RPC 4.2 includes the words "party or person" to make it clear that the rule applies to any representation, not just representation in litigation. In order for the rule to apply, a lawyer must be representing a client and know that the person or party to be contacted is represented by another lawyer. Ethics Opinion 2006-1, *Propriety of a Lawyer, Acting on the Lawyer's Own Behalf Regarding a Matter Not in Litigation, Communicating Directly with Management of a Corporation or Other Institution That the Lawyer Knows or Should Know is Regularly Represented by Counsel* (available at www.alaskabar.org), deals with contacts by a lawyer representing himself or herself, but the knowledge/notice concept is the same.

In the situation you presented, you should treat Commissioner Hogan and Ms. Sandoval as represented and have the permission of the Department of Law to communicate with them directly. I wouldn't try to distinguish between communications that precede litigation and those that follow after litigation is filed if you are on notice of the AG's representation. Again, the rule doesn't require litigation, just the fact of representation by another lawyer.

The "authorized by law" exception would require a specific authorization in a statute, rule, etc. for the contact. I don't see an exception in these facts.

Finally, parties are always able to speak directly with other parties as the Comment to RPC 4.2 reflects. You may also wish to review Ethics Opinion 94-1, *Attorney Communication With the Managing Board of a Government Agency, Regarding Pending Litigation, Without the Consent of Counsel Representing the Agency*.

Please feel free to give me a call back after you've had a chance to review these opinions if you have other questions in this area.

Thanks.

Steve

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From: Jim Gottstein [<mailto:jim.gottstein@psychrights.org>]
Sent: Wednesday, August 20, 2008 9:42 AM
To: Stacie Kraly
Cc:

Bill_Hogan@health.state.ak.us; jeff_jessee@mhta.revenue.state.ak.us; talis.colberg@alaska.gov; Steve Van Goor; Jim Gottstein

Subject: Communication with Bill Hogan & Tammy Sandoval

Hi Stacie,

Last night I bumped into Bill Hogan and Tammy Sandoval on this year's Rasmuson Train Trip. He indicated he wanted me to e-mail him with some information and to set up a meeting prior to PsychRights filing its lawsuit against the state for over medicating kids with psychotropic drugs. I welcome such discussions, but said I thought he needed to get the permission of his lawyer before he could talk to me and he responded he didn't think that was required before a lawsuit is filed. I am not so sure.

Professional Rule 4.2 provides, " In representing a client, a lawyer shall not communicate about the subject of the representation with a party or person 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 associated Comment includes: " In the case of an organization, this rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization." From other authority, it appears these strictures at least generally apply to government agencies, although I don't know if the communication is "authorized by law," which would make it okay.

I have a call into Steve Van Goor to talk about this and am copying him on this e-mail. I have also copied Jeff Jessee because he should be interested. I have also copied Commissioner Hogan. I don't believe this e-mail falls within the stricture of Professional Conduct Rule 4.2 because it is not "about the subject of the representation." He is expecting an e-mail from me and I don't want him to think I don't want to talk.

However, it seems to me the best thing is for the Department of Law to consent to communications between myself and Commissioner Hogan and Ms. Sandoval. I would copy you or whoever you designate on any written communications and welcome the Department of Law's participation.

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