

Ethical Considerations Regarding Attorney Contacts with State Agency

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Ethical Considerations Regarding Attorney Contacts with State Agency

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Rule 4.02-The Basics

(a) In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

Rule 4.02-The Basics Note 1

Paragraph (a) of this Rule is directed at efforts to circumvent the lawyer-client relationship existing between other persons, organizations or entities of government and their respective counsel. It prohibits communications that in form are between a lawyer's client and another person, organization or entity of government represented by counsel where, because of the lawyer's involvement in devising and controlling their content, such communication in substance are between the lawyer and the represented person, organization or entity of government.

Rule 4.02-The Basics

Note 2

Paragraph (a) does not, however, prohibit communication between a lawyer's client and persons, organizations, or entities of government represented by counsel, as long as the lawyer does not cause or encourage the communication without the consent of the lawyer for the other party. Consent may be implied as well as express, as, for example, where the communication occurs in the form of a private placement memorandum or similar document that obviously is intended for multiple recipients and that normally is furnished directly to persons, even if known to be represented by counsel. . . .

Rule 4.02-The Basics

Note 2 (cont.)

. . . Similarly, that paragraph [(a)] does not impose a duty on a lawyer to affirmatively discourage communication between the lawyer's client and other represented persons, organizations or entities of government. Furthermore, it does not prohibit client communications concerning matters outside the subject of the representation with any such person, organization, or entity of government. . . .

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