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INFORMAL OPINION 2010-08

IN THE CONTEXT OF A NEGLECT PETITION MAY COUNSEL FOR THE PARENTS SPEAK DIRECTLY WITH A DCF SOCIAL OVER THE SPECIFIC OBJECTION OF COUNSEL FOR DCF?

The committee received a request for an opinion as to whether an attorney for a parent against whom the Department of Children and Families has filed a neglect petition, violates RPC 4.2 by speaking directly to a DCF social worker for the purpose of day-to-day management of the case, when the Assistant Attorney General representing the DCF in the matter has specifically told the attorney not to do so. The Committee accepts the attorney's representation that the customary practice is that counsel for parents communicate directly with DCF social workers with regard to day-to-day management of the case until trial actually begins.

Where the AAG specifically tells the attorney not to speak directly to the social worker and there is no other legal authority for doing so, talking to the social worker violates the rules of professional conduct.

RPC 4.2 provides:

In representing a client, a lawyer shall not communicate about the subject of the representation with a party 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.

(Emphasis added). RPC 4.2.

Party. The committee assumes that the social worker is an employee of DCF and interacts with and makes judgments about the family. DCF is the "party" within the meaning of the rule. The commentary to RPC 4.2 states that "[i]n 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, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on a part of the organization"; *see* Connecticut Informal Opinion 86-1 (in litigation with government agency, lawyer representing opposing party may directly contact employees of government agency on subject matter related to litigation, provided, in pertinent part: that such communications shall occur only with those not in a position to bind the agency).

The role of a social worker employed by the DCF in the context of a neglect petition is unclear to the Committee. If we assume, however, that the social worker in such a context possesses either managerial responsibility or is a person whose acts, omissions or statements may be imputed to DCF as described in the Official Commentary to Rule 4.2, the requirements of Rule 4.2 must be followed.

Authorized by law. Under the rule, the attorney may not contact the social worker without the consent of the lawyer for the DCF unless "authorized by law."

The commentary contains the following statement: "Communications *authorized by law* include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter." (Emphasis added). The attorney asks whether reference to "the right of a party to a controversy with a government agency ..." provides the authority to speak to the social workers despite the AAG's direction not to do so. The greater weight of opinion does not support that interpretation of the commentary. Opinions by the ABA ethics committee and other commentary make it clear that the "right" referred to is the First Amendment right to petition the government for the redress of grievances.

The committee has found no opinions or cases that bring within the ambit of the First Amendment right to petition the government the controversy that exists when the DCF brings a neglect petition.

The inquiring attorney states that application of the rule to bar him from speaking to the social worker is inequitable because the social worker may speak to his client, and, indeed, the client often must speak to the social worker to fulfill obligations to cooperate with the DCF.

The purpose of this restriction [in Rule 4.2] is to preserve the integrity of the lawyer-client relationship by protecting the represented party from the superior knowledge and skill of the opposing lawyer. The rule is designed to prevent situations in which a represented party may be taken advantage of by opposing counsel.

Pinsky v. Statewide Grievance Committee, 216 Conn. 228, 236 (1990). The rule does not address communications between the opposing parties themselves and is

not concerned with whether there is parity in power between them. The rule addresses communications between a lawyer and a represented party. Although Rule 4.2 does not prohibit an attorney from being present or advising the client during any meeting between the social worker and the client, the inquiring lawyer may not address the social worker when directed not to do so by the AAG unless otherwise authorized by law.

THE COMMITTEE ON PROFESSIONAL ETHICS

By: _____
Wick R. Chambers, Chair