

# LOS ANGELES COUNTY BAR ASSOCIATION PROFESSIONAL RESPONSIBILITY AND ETHICS COMMITTEE

**FORMAL OPINION NO. 487: February 26, 1996**

## **SUMMARY OF OPINION**

**EX PARTE CONTACT WITH REPRESENTED INDIVIDUAL** - An attorney, not representing a party in the matter, may ethically communicate with an individual represented by counsel for the sole purpose of advising that person on the competence of the present representation.<sup>[1]</sup>

## **AUTHORITIES CITED**

California Rules of Professional Conduct, rule 2-100.

California Rules of Professional Conduct, rule 1-400.

Frazier, Dame, Doherty, Parrish & Hanawalt v. Boccardo, Blum, Lull, Niland, Teerlink, & Bell, (1977) 70 Cal.App.3d 331.

Los Angeles County Bar Association Formal Opinion 311 (May 15, 1969).

State Bar Formal Opinion 1987-95

## **ISSUE AND DISCUSSION**

Attorney A learns that B, who is friend, is represented by Attorney C. A contacts B and advises that s/he believes C is not competent to represent B.

A's contact is not motivated by intent to represent B. A's sole concern is that B be adequately represented. We are asked about the ethical propriety of such communication.

California Rule of Professional Conduct 2-100(A) states that "[w]hile representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer." Since A does not represent a client, within the meaning of the rule, there is no violation of 2-100.<sup>[2]</sup>

California Rule of Professional Conduct 1-400, directed to attorney advertising and solicitation, does not apply since A's communication is not made concerning the availability of professional employment. (See Rule 1-400 subdivisions (A) and (B) (1)).

Lay persons may place great confidence and trust in unsolicited legal advice received from an attorney. Therefore, the prudent attorney should be cautious in the manner and content of advice given and must ensure that any advice or opinion offered to the represented individual is solidly grounded and based on knowledge of the surrounding facts. The member would not be wise to offer opinion based on mere conjecture.

The member would also be wise in framing the advice or opinion in terms that the lay person may use to improve the existing representation, or to make an independent evaluation of the existing representation, possibly by communicating with another attorney. (See California Rule of Professional Conduct 2-100 (C) (2)).<sup>[3]</sup>

The Committee is aware of Los Angeles County Bar Association Formal Opinion 311 (May 15, 1969) which states that in the absence of employment, a lawyer may not ethically express to another lawyer's client his

[sic] own opinion on reasonableness of fee charged by the other lawyer unless the client hires the lawyer for the purpose of evaluating the fee. That opinion is based on questionable reasoning from a canon which is no longer authority. For the reasons stated in this opinion, this committee believes that it is not ethically improper for an attorney who is not involved in the matter to comment to the client of another attorney about the reasonableness of attorney's fees. Opinions which do not reflect current legal ethics are to be disapproved. (State Bar Formal Opinion 1987-95). Therefore, Los Angeles County Bar Association Formal Opinion 311 is disapproved.

This opinion is advisory only. The Committee acts only on specific questions submitted ex parte, and the opinions are based only on the facts set forth in the questions presented.

[<sup>1</sup>] Attorneys need to be cautious in connection with interfering with an existing attorney-client relationship. (cf. Frazier, Dame, Doherty, Parrish & Hanawalt v. Boccardo, Blum, Lull, Niland, Terrlink & Bell, (1977) 70 Cal.App.3d 331, 337-339.)

[<sup>2</sup>] The predecessor rule to 2-100 (A) expressly prohibited any member from communicating with a represented client upon the "subject of the controversy" [present rule 2-100 speaks of the "subject of the representation" which may be different in scope than "subject of the controversy" under the superseded rule] whether or not representing a client. Rule 7-103 stated:

"A member of the State Bar shall not communicate directly or indirectly with a party whom he knows to be represented by counsel upon a subject of the controversy, without the express consent of such counsel. This rule shall not apply to communications with a public officer, board, committee or body."

Thus it is clear that present rule 2-100 was not intended to restrict members not representing a client in the matter.

[<sup>3</sup>] Rule 2-100 (C) (2) permits ex parte communications "initiated by a party seeking advice or representation from an independent lawyer of the party's choice".

[<sup>4</sup>] Canon 7, the canon in question, reads:

"Efforts, direct or indirect, in any way to encroach upon the professional employment of another lawyer are unworthy of those who should be brethren at the Bar; but, nevertheless, it is the right of any lawyer, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally after communication with the lawyer of whom the complaint is made."

Opinion 311, after quoting Canon 7, then reasons: "[c]ertainly it would appear to be a violation of Canon 7 for an attorney, unsolicited, to interfere in the relations between another attorney and that attorney's client and, voluntarily, to express an opinion concerning a fee charged. Certainly it would also appear to be a similar violation to discuss another attorney's fee charges when engaged in social conversation, as distinguished from professional employment."

It does not necessarily follow that the conclusion in the opinion is supported by Canon 7, even if the canon were still viable authority.