

## **ETHICS ADVISORY OPINION**

### **11-01**

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.

#### **Factual Background:**

Plaintiffs, who are husband and wife, sued a local country club. Husband is a licensed attorney.

The insurance company has retained an attorney to represent the Club.

#### **Questions Presented:**

1. Can husband contact the insurance company directly to discuss case?
2. Can wife (non-attorney) contact the insurance company directly to discuss the case?
3. Can husband contact the Club management directly to discuss the case?
4. Can wife (non-attorney) contact Club management directly to discuss the case?

#### **Opinion:**

At the outset, it is important for the inquirer to understand that the Ethics Advisory Committee cannot offer an opinion as to the activities of a non lawyer. Therefore, questions 2 and 4 are not within the purview of the Committee.

Further, Husband must remain mindful of Rule 8.4(a). He may not through the acts of his wife pursue a course of conduct which would violate the Rules if done directly by him. Husband may advise wife as to the rights of a non-lawyer party to contact the other party directly as contemplated in comment 4 to Rule 4.2, discussed below, but cannot do so in a manner that circumvents the rule by directing or monitoring the wife's contacts or counseling her as to the substantive content of such conversations.

The Committee believes Rule 4.2 applies to a lawyer representing himself pro se in a lawsuit.

Rule 4.2 governs communications with persons represented by counsel. The Club, in this matter, is being represented by counsel. It is unclear from the facts as they were submitted whether the insurance company is represented by counsel. If the insurance company is represented by counsel, the appropriate course of action would be for the husband to contact the counsel, not the insurance company, unless permission is given to contact the insurance company directly. If the insurance company is not represented by counsel, the husband may contact the insurance company to discuss the case.

Wife, as a pro se litigant, is not subject to the Rules of Professional Conduct and the Committee may not offer an opinion as to the activities of a non lawyer.

Rule 4.2 also applies to the second part of the husband's inquiry, as do comments 4 and 7. While comment 4 to Rule 4.2 indicates that parties to a matter may communicate with each other, the comment seems to contemplate a situation in which the parties are non lawyers.

Comment 7 indicates that, in the case of an organization that is represented, Rule 4.2 prohibits communications with any current members of the organization concerning the matter if the member either has the authority to bind the organization with respect to the matter, if the member's actions may be imputed to the company, or if the member supervises, directs or regularly consults with the organization's lawyer with respect to the matter. The facts do not indicate whether the "Club management" fits any of these categories, but the requester should use caution in his interactions with employees of the club, given the provisions of Comment 7.