



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rule of Professional Conduct 4.2. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion No. 794
June 28, 1982**

**Topic: Communication with
Opposing Party**

Digest: A lawyer for a land owner may not without consent of opposing counsel attempt to settle an eminent domain proceeding directly with employees of the condemning authority where the condemning authority is represented by counsel.

Ref: Rule 7-104(a)(1);
EC 7-18
ISBA Ethics Opinion 675 and 192;
ABA Informal Opinions 1348, 1373 and 1377; and Ill. Rev. Stats. ch. 47, §1 et. seq. (1979).

QUESTION

An eminent domain case was tried and a final judgment order entered. After argument but before an order was entered on a post-trial motion, the lawyer for the landowner communicated directly with employees of the condemning authority in an attempt to settle the case.

May the lawyer for a landowner circumvent counsel for the condemning authority in an attempt to settle an eminent domain case directly with the condemning authority?

OPINION

A lawyer for a landowner in an eminent domain proceeding may not communicate directly with the employees of the condemning authority in an attempt to settle the case where the condemning authority is represented by counsel.

Rule 7-104(a)(1) provides that during the course of his representation of a client a lawyer shall not communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing the other party or is authorized by law to do so. See EC 7-18.

In ISBA Opinion 675, we held that it was not improper for a lawyer appealing an administrative ruling to obtain public records from the public body involved in the proceeding. As long as the lawyer's communication with the public official is for the mere purpose of obtaining public records, "and nothing more," the communication is permitted. That situation is in sharp contrast to the facts of this inquiry.

We agree with ABA Informal Opinion 1377 which held that no communication with an employee of a municipal corporation with power to commit that body in the particular situation may be made by the opposing lawyer unless he has the prior consent of the designated counsel of the municipal corporation, or unless he is authorized by law to do so. In this inquiry, the lawyer for the landowner knew that the condemning authority was represented by counsel and he should not have communicated directly with its employees.

Our opinion is not affected by the fact that the lawyer for the land owner was attempting to settle the case. In ISBA Opinion 192 we held that it was improper for a lawyer in a litigated matter to correspond directly concerning the suit, including possible settlement, with the other party who was represented by counsel. Even sending a copy of the letter to the other party's counsel did not eliminate the impropriety. ABA Informal Opinions 1373 and 1348 likewise concluded that it was improper for a lawyer to send a copy of a settlement offer to the other party, even though a copy was sent to his counsel, despite the sending lawyer's belief that the settlement offer would not be transmitted by opposing counsel to his client.

Finally, we are aware of no provision in the Illinois Eminent Domain Act (Ill. Rev. Stats. ch. 47, §1 et seq. (1979)) which would authorize the lawyer for the landowner to communicate a settlement offer directly to employees of the condemning authority once litigation has commenced and counsel is retained by the condemning authority.

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