



ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in May 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 Number 88-10
March 15, 1989**

Topic: Communication with One of Adverse Interest

Digest: It is improper for a State's Attorney to communicate with a person he knows to be represented by counsel, who has admitted allegations of charges and has been placed under court supervision, where the communication is regarding other parties to the same incident without the prior consent of the lawyer representing A.

Ref: Rule 7-104(a)(1)
ISBA Opinion No. 320

FACTS

Lawyer represents client A, a minor, charged with illegal consumption of alcohol as a minor in juvenile court. A admits the allegation and is placed under court supervision under provisions of the Juvenile Court Act. Other defendants were arrested with the client during the same incident. The State's Attorney calls A and is told by her mother that A is represented by counsel. The State's Attorney again calls A and speaks to her regarding the incident and to elicit her testimony in regard to other defendants arrested with her. The State's Attorney has not secured prior consent to speak to A from her lawyer.

QUESTION

May a State's Attorney communicate with a person, known by him to be represented by counsel after the person has admitted the allegations and is under court supervision where the communication relates to the same incident and is in an effort to elicit the person's testimony regarding other defendants.

OPINION

Rule 7-104(a)(1) provides that:

During the course of his representation of a client a lawyer shall not communicate or cause another to 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 such other party or is authorized by law to do so,..."

The facts as provided indicate that the person has admitted allegations precipitating her arrest and is presently under court supervision under the Juvenile Court Act. The status of the matter is not concluded, as a violation of the conditions of court supervision would subject her to further court action. Thus, during this time, the matter must be considered pending.

Argument might also be made that the "matter" which is the subject of the current communication is that of the charge against the other persons participating in the incident and thus communicating with A is not controlled by Rule 7-104(a)(1).

ISBA Advisory Opinion No. 320 states:

Members of the State's Attorney's Office may not ethically communicate with a criminal defendant represented by counsel outside the presence of and without the consent of that counsel.

That opinion refers to Drinker, Legal Ethics (New York: Columbia University Press, 1953), at page 202 in which he states:

When three persons are accused of related thefts, the prosecutor may not, in proceedings against one of them, interview another who is represented by counsel, except in the latter's presence.

The facts as presented to the Committee in this inquiry are clearly similar to that addressed in ISBA Opinion 320 and the opinion as expressed therein is reaffirmed.