

Alabama Rules of Professional Conduct

Transactions with Persons Other Than Clients

Rule 4.2.

Communication With Person Represented by Counsel.

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

(b) A person to whom limited-scope representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this rule unless the opposing lawyer has been provided with a written notice of the limited-scope representation. If such notice is provided, the opposing lawyer shall not communicate with the person regarding matters designated in the notice of limited-scope representation without consent or authorization as provided by Rule 4.2(a).

[Amended eff. 3-26-2012; Amended 7-16-2012, eff. 1-1-2013.]

Comment

This Rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so. 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.

In 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 the part of the organization. If an agent or employee of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(d).

This rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question.

Comparison with Former Alabama Code of Professional Responsibility

This Rule is substantially identical to DR 7-104(A)(1).

Note from the reporter of decisions: The order amending Rule 1.1, Rule 1.2(c), Rule 4.2, and Rule 4.3, Alabama Rules of Professional Conduct, and amending Rule 11, Alabama Rules of Civil Procedure, and adopting Rule 87, Alabama Rules of Civil Procedure, is published in that volume of *Alabama Reporter* that contains Alabama cases from __ So. 3d.

Note from the reporter of decisions: The order amending Rule 1.15 and the Comment thereto and Rule 4.2, Alabama Rules of Professional Conduct, is published in that volume of *Alabama Reporter* that contains Alabama cases from __ So. 3d.