

## State Bar of South Dakota

### Ethics Opinion 98-9

October 9, 1998

- **Rule: 4.2**
- **Subject: Contact with represented persons; Municipal officials**
- **Summary: Attorney may communicate with government officials on legislative matters on behalf of a client without permission of the agency's attorney.**

#### FACTS

You are an attorney in private practice. You are retained by a board of a municipality to represent the board in attempting to get the municipality to pass an ordinance modifying the authority and power of your board client. You intend to lobby the members of the city council and mayor as well as other city entities and officials in connection with encouraging passage of the ordinance.

You ask whether you are ethically required to notify the city attorney of your intended contact with the officials. Your particular concern is Rule 4.2.

#### OPINION

SDCL 16-18 Appx, Rule 4.2 states:

In representing a client, a lawyer shall not communicate about the subject of the representation with a party 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 to do so.

Most pertinent to your inquiry is whether your lobbying of government officials in this legislative context "is authorized by law. . . ." The Comment to Rule 4.2 states, "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." The *ABA Annotated Model Rules* states, "The First Amendment right of petition brings such communications within the 'authorized by law' exception to Rule 4.2. *AMR*, Rule 4.2 at p. 402 (*citing Camden v. State of Maryland*, 910 FSupp 1115 (DMd 1996)("Insofar as a party's right to speak with government officials about a controversy is concerned, Rule 4.2 has been uniformly interpreted to be inapplicable."))

The above discussion appears to relate solely to government officials acting on a legislative question rather than in an adjudicative or negotiation capacity. Lawyers have been disciplined for communicating directly with officials involved in adjudicating whether a client violated ordinances. *See ABA/BNA Lawyers Manual on Professional Conduct* § 71:310 at p. 14.

Based upon the foregoing, the Committee is of the opinion that your lobbying efforts to obtain a legislative change in favor of your client does not require permission of the city attorney and would not violate the Rules of Professional Conduct.

Lonnie R. Braun  
Chairman, Ethics Committee  
State Bar of South Dakota