

DONALD E. COVEY

Lawyer

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August 9, 1991

RE: Ethics Opinion 91-16

Dear

You relate a factual situation which I summarize as follows:

FACTS

Your clients, Mr. and Mrs. A are and were the parents of two children. Mrs. A and the children were traveling in the family automobile when a collision occurred with another automobile driven by Mr. X. Your clients had liability insurance which exceeded the statutory minimum, however, Mr. X carried only the minimum statutory liability insurance.

You settled with Mr. X's primary insurance carrier for the limits of his policy. Your clients now seek to recover the balance of their damages at least to the extent of their own underinsured motorist coverage. You have given the appropriate notice of such claim to your clients' own automobile insurance carrier which I will call Company Y, which was not the company insuring Mr. X.

Settlement negotiations on the underinsurance claim have been conducted directly with an attorney representing Company Y. Company Y's attorney has given notice to you that he represents your client, Mrs. A and that you and Mr. A are to cease and desist any and all contact with Mrs. A pending resolution of the litigation of this claim. You have advised Company Y's attorney that he must not make contact with your client, Mrs. A, without your authority or presence.

OPINION

Company Y's Attorney has a previously established attorney/client relationship with Company Y and in no manner may attempt to fashion an attorney client relationship with either of your clients, in this instance, Mrs. A.

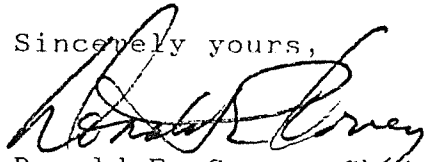
It is the opinion of the Ethics Committee of the State Bar that Co. Y's Atty. cannot contact either of your clients without your consent under Rule 4.2. That Rule states very clearly:

In representing a client, a lawyer shall not communicate about the subject of the representation with a party a lawyer knows to be represented by another lawyer in the matter, unless the lawyer has a consent of the other lawyer or is authorized by law to do so.

In this instance, there has been no consent from you and the Committee can see no legal authorization for the contact other than through the Rules of Discovery. Co. Y's Atty. represents the insurance company but not the individual insured who in this case is your client. Company Y's attorney's claim of attorney/client relationship with your client is, in the opinion of the Committee, wholly misplaced.

The Committee Chairman has been contacted by Company's Y attorney at the date of dictation of this opinion requesting that you be directed to refrain from contacting his client. This Opinion is quite the contrary, the attorney for Company Y is the one who should refrain from contacting your client.

Sincerely yours,



Donald E. Covey, Chairman