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**E-82-4      Communication with an adverse party  
represented by counsel**

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**Question**

An opinion has been requested to the State Bar Professional Ethics Committee concerning the propriety of an attorney for a government agency providing an opposing attorney's client with copies of correspondence sent to the opposing attorney in the following situations:

1. The attorney is involved in a "run-of-the-mill" case, but the client undoubtedly has a vital interest in and concern about the government agency's activities;
2. There are no precedents supporting the attorney's position, and it is suspected the attorney's clients are not apprised of numerous precedents that are consistently adverse to their interests.

**Opinion**

The American Bar Association Committee on Ethics and Professional Responsibility addressed the question of providing another attorney's clients with copies of correspondence addressed to their attorneys in Informal Opinion 1348, issued Aug. 19, 1975.

The specific question addressed in this opinion was the propriety of a lawyer sending copies of settlement offers to his opponent's client when he believed the opponent had not been relaying the settlement offers to the client. The committee stated it was not permissible for Lawyer A to send a copy of his/her settlement offer to Lawyer B's client under DR 7-104, but that Lawyer A could send a similar communication to the court. The Wisconsin Supreme Court has codified DR 7-104 as SCR 20.34.

The Committee on Professional Ethics of the State Bar, in a Memorandum Opinion 5/69, held that it was improper for an attorney representing a state agency to correspond directly with the opposing attorney's client with a copy being sent to the attorney in an administrative law matter where the attorney for the state agency is on notice that the client is represented by counsel.

The California Supreme Court has also upheld the ban on correspondence with an adverse party who is represented by counsel. In *Abeles v. State Bar*, 9 Cal. 3d 603, 108 Cal. Rptr. 359, 510 P.2d 719, 723 (1973), the court stated, “The rule was designed to permit an attorney to function adequately in his proper role and to prevent the opposing attorney from impeding his performance in such role.”

The attorney for a government agency would violate SCR 20.38 if he or she sends an attorney’s client copies of correspondence addressed to that attorney. To deal with an uncooperative or dilatory attorney, the attorney for the government agency is permitted to send copies of such correspondence to the court.

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The second situation presented by the attorney for a government agency is covered, in part, by SCR 20.34(2), which states:

The advocate may urge any permissible construction of the law favorable to his or her client, without regard to his/her professional opinion as to the likelihood that the construction will ultimately prevail. His or her conduct is permissible if the position taken is supported by law or is supportable by a good faith argument for extension, modification, or reversal of the law. However, a lawyer is not justified in asserting a position in litigation that is frivolous.

In light of the ban on correspondence with an opposing attorney’s client codified in SCR 20.38 and the duties of an attorney to his or her client as outlined in SCR 20.34(2), it would be improper for the attorney for a government agency to send the opposing attorney’s client copies of correspondence addressed to the attorney even though there are no precedents supporting the opposing attorney’s position and there are numerous precedents adverse to the client’s interest.