

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-213
Issued: March 1979

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

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Question 1: May a lawyer who has a suit pending against a corporation or governmental entity contact the President, General Manager, or other employee having access to confidential matters without prior consent of the other lawyer?

Answer 1: No.

Question 2: May a lawyer who is presently suing a corporation or governmental entity contact employees who are not managing agents and hourly wage earners that have no access to privileged or confidential information?

Answer 2: Yes.

References: Opinion KBA 65; DR 7-104

OPINION

The general proposition of communicating with one of adverse interest is set out in DR 7-104(A)(1), which simply states that an attorney shall not communicate on the subject of the representation with the party he knows to be represented by a lawyer unless he has prior consent of the lawyer representing the other party. The general application of DR 7-104 is set out in Opinion KBA E-65.

The question before us today is to what extent this restrictive communication applies to employees of a corporation. Beyond a doubt, the restriction would apply to any corporate officer, member of the Board of Directors or any management employee with access to any privileged or confidential information of the corporation. If any attorney can independently determine that a management employee or hourly wage earner does not have any access to privileged or confidential information, they may be contacted by an adversary attorney.

If an opposing attorney cannot truly find out the relationship of any employee with the employer corporation and whether or not the employee has any access to privileged or confidential information, it will be necessary to inquire through the proper officials of the

corporation. Since the proper officials of the corporation are represented by an attorney, the proper individual to contact before questioning any doubtful employee would be the opposing attorney for the corporation or governmental agency.

To paraphrase Canon 7 of the Code, even though a lawyer has a duty to represent his client zealously, it must be within the bounds of the law. The Rules of Civil Procedure provide for discovery of relevant information from any employees of any corporation. Therefore, if there is any question concerning the relationship of an employee to the corporation or governmental entity, it is necessary to contact the attorney of the corporation before taking any statements from the employee or from questioning any employee of the adversary corporation.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.