

**SUPREME COURT OF ARIZONA
ETHICS ADVISORY COMMITTEE
ETHICS OPINION FILE NO. EO-20-0010**

This opinion was originally issued by the State Bar of Arizona’s Rules of Professional Conduct Committee in 2007. The Arizona Supreme Court’s Ethics Advisory Committee (“EAC”) has updated the opinion, but its conclusions remain unchanged.

This opinion reviews the lawyer’s ethical duty to communicate with a client’s friends or family and the ethical restraints on that communication. This opinion concludes that the Arizona Rules of Professional Conduct, under the facts presented, do not impose a per se duty on a lawyer to provide information about a client’s case or upcoming trial to the client’s family or friends. The lawyer may provide this information if the client gives informed consent or consent is impliedly authorized to carry out the representation. In some circumstances, the lawyer’s ethical duty to provide competent representation may require such contact. This opinion assumes the client is a competent adult.¹

FACTS:

The court has appointed the lawyer to represent an indigent client in a criminal case. The client’s family and friends contact the lawyer for information concerning the client’s upcoming trial. The client has given the lawyer permission to convey information to the family and friends. The lawyer wants to devote his or her time preparing for trial rather than responding to the numerous requests for information.

QUESTION PRESENTED:

What duty, if any, does counsel owe to the client’s family or friends to communicate information to them relating to the client’s case or trial?

RELEVANT ETHICAL RULES:

ER 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation

¹ In representing a client with diminished capacity, the lawyer should consult ER 1.14 which may allow or require the lawyer to communicate with others to protect the client’s interests.

reasonably necessary for the representation.

ER 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ER 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

ER 1.4 Communication

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in ER 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) In a criminal case, a lawyer shall promptly inform a client of all proffered plea agreements.

...

ER 1.6 Confidentiality

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent², the disclosure is impliedly

² Informed Consent "denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to

authorized in order to carry out the representation or the disclosure is permitted or required by paragraphs (b), (c), or (d), or ER 3.3(a)(3).

ER 1.8 Conflict of Interest: Current Clients: Specific Rules

...

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

...

(3) information relating to representation of a client is protected as required by ER 1.6.

RELEVANT ARIZONA ETHICS OPINIONS:

State Bar of Ariz. Ethics Op. Nos.: 86-2 and 07-01

OPINION:

If a client does not authorize the lawyer to speak with family or friends, the lawyer may not disclose information about the case unless the disclosure is impliedly authorized to carry out the representation. ER 1.6 sets forth a lawyer's duties regarding revealing information relating to the representation of a client. Except for the listed exceptions to the rule, which generally refer to preventing future criminal conduct and mitigating the effect of criminal conduct committed with the use of the lawyer's services, a lawyer may not disclose such information unless the client gives informed consent, or the disclosure is impliedly authorized in order to carry out the representation. ER 1.8 makes clear that even in circumstances where a friend or family member is paying the lawyer, the lawyer may not provide the payor information about the representation that is prohibited by ER 1.6. In the fact pattern presented, ER 1.6 does not prohibit the lawyer from communicating with the client's family as the client has consented to such release of information.

Even with client consent, a lawyer does not have a *per se* ethical duty to respond to requests for information from a client's family and friends. ER 1.4(a) sets forth a lawyer's duties regarding communication. Subsections (a)(3) and (a)(4) are most relevant to this issue. Subsection (a)(3) requires the lawyer to keep the client reasonably informed of the status of the case. It is limited, by its terms, to communications with the client.

the proposed course of conduct." ER 1.0(e).

Subsection (a)(4) of this rule, however, is not limited by its express terms to communication with the client. It provides that the “lawyer shall . . . (4) promptly comply with reasonable requests for information.” ER 1.4(a)(4). Comment [4] to ER 1.4 discusses this subsection and states that “when a *client* makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request... A lawyer should promptly respond to or acknowledge *client* communications.” (Emphasis added.) This supporting language implies that subsection (a)(4) also is limited to communication with a client. Nothing in ER 1.4 imposes a duty to communicate with a client’s family or friends.

Even when the client tells the lawyer to communicate certain information to family and friends, the lawyer is not necessarily obligated to comply with the request. ER 1.2 provides that a lawyer shall abide by the client’s decisions concerning the objectives of the representation. It is the lawyer, however, who determines the means by which these objectives shall be accomplished. Thus, if a lawyer believes that a client’s request to the lawyer to communicate information to others does not further the client’s objective, the communication need not be made. If the communication would harm the client, the lawyer should not comply with the request.

In Ariz. Ethics Op. 86-2, the committee addressed a court-appointed criminal defense lawyer’s duty to communicate with a juvenile defendant’s parents. In that case, the court found that the parents’ interests were adverse to or in conflict with the juvenile’s interests and appointed independent counsel for the juvenile. Similarly to this fact pattern, the defendant had asked his lawyer to communicate with his parents. That opinion found that the lawyer had no duty to communicate with the juvenile defendant’s parents. Moreover, any disclosure to the parents should be limited, presumably because of the adverse relationship between the juvenile and his parents.

A lawyer, however, has a duty to competently represent a client. ER 1.1. In certain circumstances, this duty of competent representation may require contact with the client’s family and friends. For example, communication with a client’s family, at the request of the client, may enhance the lawyer-client relationship, and thus improve the equality of representation provided to the defendant. In a criminal case, if a defendant is convicted, the defense lawyer has an obligation to explore and present relevant mitigating factors at sentencing, including helpful evidence about “the history and characteristics of the defendant.” See 18 U.S.C. § 3553(a). Family members and friends can often provide a wealth of information about these mitigating factors. Alienating a family early on in a case may hamper a lawyer’s

later efforts to effectively represent the client at sentencing. It is a balancing test. If the client wants the lawyer to inform his family about a hearing or trial, the lawyer should consider the request, weighing the benefits to the communication against any interference, or harm, caused by the communication.

CONCLUSION:

A lawyer has a duty to communicate with his/her client and to promptly respond to requests for information. That duty, however, does not automatically extend to a client's family members or friends. In some circumstances, such communication may be required to competently represent the client, and the lawyer should balance the benefits to be gained by the communication against any detriments. With the client's informed consent, a lawyer may communicate this information to the client's family or friends. A lawyer may also communicate information to a client's family and friends if the lawyer determines that he/she is impliedly authorized to release this information in order to carry out the representation.

