

**DELAWARE STATE BAR ASSOCIATION  
COMMITTEE ON PROFESSIONAL ETHICS**

**OPINION 1986 - 4**

We have been asked by an attorney in private practice to give an opinion on a matter which has arisen in pending civil litigation. The specific question is whether the attorney may serve and file discovery responses for a corporate client where no corporate officer, director or other authorized person can be located to provide the needed information or to verify the responses, and where the only knowledgeable person who has been located claims not to be or have been an officer, director or employee of the corporation.

**OPINION**

It is our opinion that an attorney must seek to withdraw from representation of a corporate client if communication cannot be made with any person authorized to act or speak on behalf of the corporation.

**DISCUSSION**

The attorney has been retained by an insurance carrier to represent the insured, a corporation, in an action brought against it and others by a government agency.

Discovery requests have been directed to the corporation and responses are overdue. The attorney has been unable to locate any officer or director of the corporation or anyone authorized to act on its behalf. Presumably, the insurance carrier has not identified such a person. While there is evidence in the case that a "Mr. Smith" (who is currently in prison) was at one time an officer of the corporation and held himself out as being authorized to act on its behalf, Mr. Smith denies that he was ever an officer, director, employee or shareholder of the corporation, maintaining that he was only an "independent contractor." Mr. Smith is willing to sign an affidavit concerning his knowledge of the corporation's activities, but he disclaims any ability to speak for the corporation and refuses to disclose the identity of other individuals or the existence of documents concerning the corporation. The attorney is also concerned that Mr. Smith's information may not be reliable.

Rule 1.16(a)(1) of the Delaware Lawyers' Rules of Professional Conduct requires withdrawal from the representation of a client if "the representation will result in violation of the rules of professional conduct or other law." An attorney violates Rule 1.4 if there is no communication with the client. Rule 1.4 provides:

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with

reasonable requests for information.

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

The comment to this Rule states that when the client is an organization "the lawyer should address communications to the appropriate officials of the organization." If the attorney is unable to locate such appropriate officials, then he or she will not be able to satisfy the communication requirement of Rule 1.4 and must seek to withdraw. Cf. Hancock v. Mutual of Omaha Insurance Co., 472 A.2d 867 (D.C. App. 1984) (attorney permitted to withdraw where client would not communicate with him); Schmittinger v. Grogan, 128 A.2d 114 (Pa. Super. 1956) (attorney retained by insurer permitted to withdraw where he was unable to locate the client after diligent effort).\*

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\* Even if an appropriate official of the corporation could be located, the attorney may seek to withdraw under Rule 1.13 if that official is not acting in the best interests of the corporation.