

## Practice Guideline No. 3

# Communicating with another Practitioner's Client

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### Non-Contentious Matters

A practitioner who is acting on behalf of a party in any non-contentious matter must not communicate directly with any other party for whom, to the practitioner's knowledge, another practitioner is currently acting, unless:

1. (a) notice of the practitioner's intention to communicate with the other party, in default of a reply from the other practitioner, has been given to that practitioner, who has failed, after a reasonable time, to reply;  
  
(b) the communication is made for the sole purpose of informing the other party that the practitioner has been unable to obtain a reply from that party's practitioner and requests that party to contact the practitioner; and  
  
(c) the practitioner, thereafter, notifies the other practitioner of the communication; or
2. the other practitioner consents; or
3. (a) the circumstances are so urgent as to require the practitioner to do so; and  
  
(b) the communication would not be unfair to the other party.
4. A practitioner who receives notice from another practitioner that the practitioner's client has instructed or retained that practitioner may, after notifying the other practitioner, communicate with the client for the purpose of confirming the client's instructions and arranging for the orderly transfer of the client's matters to the other practitioner.

### Contentious Matters

1. A practitioner must not deal directly with the opponent's client in relation to the case for which the opponent is instructed unless:
  - (a) the opponent has previously consented;
  - (b) the practitioner believes on reasonable grounds that:
    - (i) the circumstances are so urgent as to require the practitioner to do so; and
    - (ii) the dealing would not be unfair to the opponent's client; or

- (c) the substance of the dealing is solely to enquire whether the person is represented and, if so, by whom.
2. A practitioner must not confer or deal directly with the party opposed to the practitioner's client in relation to the case for which the practitioner is instructed, where that party is not represented by a practitioner for the case, unless:
- (a) the party is not being indemnified by an insurance company which is actively engaged in contesting the proceedings; or
  - (b) the party is being indemnified by an insurance company which is actively engaged in contesting the proceedings and the practitioner:
    - (i) has no reasonable grounds to believe that any statements made by the party to the practitioner may harm the party's interests under the insurance policy; or
    - (ii) has reasonable grounds for the belief referred to in (i) but has clearly informed the party beforehand of that possibility; or
  - (c) the party, being indemnified by an insurance company which is actively engaged in contesting the proceedings, is personally represented but not in the case and the practitioner:
    - (i) has notified the party's representative of the practitioner's intention to do so; and
    - (ii) has allowed enough time for the party to be advised by the party's representative.

[For the purposes of this Practice Guideline, "party" or "client" includes clients of the Legal Aid Commission of Tasmania]

These Guidelines are taken from The Law Council of Australia's Model Conduct Rule Nos. 18 and 25

Approved by the Council on 23 July 2011