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## Ethics Advisory Opinions

### Ethics Advisory Opinion 99-14

Upon the request of a member of the South Carolina Bar, the Ethics Advisory Committee has rendered this opinion on the ethical propriety of the inquirer's contemplated conduct. This Committee has no disciplinary authority. Lawyer discipline is administered solely by the South Carolina Supreme Court through its Commission on Lawyer Conduct.

#### Full Text

##### Facts

City Solicitor represents the City and Department of Public Safety in prosecutions in Municipal Court. Typically, the prosecutor is involved in jury trials in Municipal Court; however, on occasion, the prosecutor assists Public Safety officers in bench trials as requested. City Solicitor is contemplating forbidding the Public Safety officers from discussing jury trials and other trials with criminal defense attorneys without first contacting City Solicitor or outside the presence of City Solicitor.

##### Question

There are four questions: Can City Solicitor 1) prohibit Public Safety officers from having contact with criminal defense attorneys in reference to a particular case; 2) prohibit criminal defense attorneys from contacting Public Safety officers to question them about cases the City Solicitor will prosecute; 3) prohibit criminal defense attorneys from contacting Public Safety officers in matters which will be tried as a bench trial in court and be tried by City Solicitor; and 4) prohibit criminal defense attorneys from contacting public safety officers, or vice versa, in other cases without first contacting City Solicitor?

##### Summary

In criminal matters, City Solicitor represents the city and the people, not the public safety officers per se. A lawyer normally may advise only a client or a relative, agent, or employee of a client not to cooperate by voluntarily providing relevant information to another party. Rules 3.4(a) and (f) of the Rules of Professional Conduct. Since this is a criminal matter, consideration must also be given to the constitutional and procedural rights of persons being prosecuted in Municipal Court. Further, Rule 4.2 of the Rules of Professional Conduct does not allow City Solicitor to prohibit criminal defense attorneys from contacting and discussing jury trials, bench trial matters and other cases with public safety officers, or vice versa.

## Opinion

Our criminal justice system is an adversary system that must balance the competitive positions of the contending parties. In such criminal matters, City Solicitor is representing the city and the people, not the public safety officers, per se. A lawyer normally may advise only a client or a relative, agent, or employee of a client not to cooperate by voluntarily providing relevant information to another party. Rules 3.4(a) and (f) of the Rules of Professional Conduct. Since this is a criminal matter, consideration must also be given to the constitutional and procedural rights of persons being prosecuted in Municipal Court. Fair competition in the criminal adversary system is secured by prohibitions against the destruction or concealment of evidence, improperly influencing witnesses and obstructive tactics in the discovery procedure, which would include not allowing city solicitors to prohibit contact with public safety officers. (See Comment, Rule 3.4(f).)

Further, Rule 4.2 of the Rules of Professional Conduct does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation of the entity, such as communication with a public safety officer in a matter being prosecuted in Municipal Court. Therefore, in answer to all four questions, City Solicitor cannot prohibit criminal defense attorneys from contacting and discussing jury trials, bench trial matters and other cases with Public Safety officers, or vice versa.

See also, S.C. Bar Ethics Adv. Op. #94-07 (April 1994); and Standard 3-3.1 (d), ABA Standards Relating to the Administration of Criminal Justice.

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