

## MINUTES

**COMMITTEE:** Ethics Committee

**DATE:** October 5, 2000

### **12. CHAPTER 4, RULE 1.1: WHETHER FORMER TRUSTEE OF BOARD IS A WITNESS OR A PARTY TO LITIGATION**

Lawyer A represents the defendant Board of School Trustees in an action brought by a plaintiff represented by Lawyer B. The plaintiff claims damages for negligence and breach of contract because of actions on the part of the Board some years ago when a different set of school trustees made up the Board than now.

Lawyer B takes the position that the former Board members are witnesses and that he is entitled to contact them to discuss the matters in issue with them. Lawyer A says the former Board members are parties to the litigation and that Lawyer B is not entitled to contact them. The former Board members are not named parties. Lawyer A, however, states that he believes he represents the insurer, the Board and the individual trustees holding elective office during the relevant time periods in the action. He does not act for the former trustees in their personal capacities.

Lawyer A asked the Ethics Committee for its opinion on whether Lawyer B is entitled to contact the former Board members without his permission.

It was the Committee's view that the policy objectives of Chapter 4, Rule 1.1 are to prevent improvident settlements and other compromises of legal position on the part of an uncounseled, but represented, party and to enable an organization's lawyer to maintain an effective lawyer-client relationship with those who have authority to give instructions concerning the litigation. In the absence of facts that indicate that the former trustees have authority to bind the Board in the litigation, have responsibility to implement the advice of the Board's lawyer or have their own interests at stake in the matter, there is no policy basis for regarding them as parties.

The Committee concluded that the former Trustees are witnesses and not parties and, subject to any rulings by the court, it is proper for Lawyer B to contact them in accordance with the provisions regarding contacting witnesses set out in Chapter 8 of the *Professional Conduct Handbook*.

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