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INFORMAL OPINION 2011-5

**May a Lawyer Consulted For a Second Opinion Contact
Counsel of Record without the Client’s Informed Consent?**

We have been asked whether a divorce lawyer who has been consulted for a second opinion about the handling of a pending divorce may, may without the informed consent of the party seeking the second opinion, contact the counsel of record. Based on Rule 1.6 our answer is no.

Rule 1.6 provides that “(a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized to carry out the representation, or the disclosure is permitted by subsection (b), (c), or (d).” Because we have been asked to assume that the client was not asked to give her consent, the question is one of implied authorization. Specifically, does a divorce litigant who seeks a second opinion about the handling of her case impliedly authorize the lawyer from whom she has

sought a second opinion to contact the lawyer whose handling of the case is the subject of the second opinion?

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Common sense suggests that a person who seeks a second opinion about her lawyer's handling of her divorce has doubts about her lawyer. Common sense also suggests that she would not necessarily want her counsel of record to know about her doubts because (a) she realizes her doubts might be unreasonable, (b) she wouldn't want to alienate her lawyer unnecessarily and (c) she couldn't be certain what would happen if her lawyer found out that she was questioning either the cost or quality of her lawyer's work. Where there is an obvious reason to question whether a client would want information relating to representation revealed without her informed consent, her lawyer should not reveal it. This is especially true where the lawyer consulted for a second opinion is contemplating contacting the counsel of record without knowing in advance that the client has authorized her counsel of record to discuss the case with the "second-opinion" lawyer. In the absence of the client's informed consent, Rule 1.6 prevents counsel of record from discussing the case with the "second-opinion" lawyer. The fact that counsel of record and the "second-opinion" lawyer know each other well does not create implied authorization.

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THE COMMITTEE ON PROFESSIONAL ETHICS

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By _____
Wick R. Chambers, Chair

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