

**THIRD-PARTY COMMUNICATIONS WITH COUNCIL AND
STAFF**

JASON RAMMEL, LAW OFFICE OF JASON M. RAMMEL,
P.C., HABIB ERKAN, CITY OF BURNET, AND MICK
MCKAMIE, TAYLOR, OLSON, ADKINS, SRALLA & ELAM,
L.L.P.

[TCAA 2022 Fall Conference](#)

Texas Disciplinary Rules of Professional Conduct

Rule 4.02 Communication with One Represented by Counsel

- (a) In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.
- (b) In representing a client a lawyer shall not communicate or cause another to communicate about the subject of representation with a person or organization a lawyer knows to be employed or retained for the purpose of conferring with or advising another lawyer about the subject of the representation, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.
- (c) For the purpose of this rule, "organization or entity of government" includes: (1) those persons presently having a managerial responsibility with an organization or entity of government that relates to the subject of the representation, or (2) those persons presently employed by such organization or entity and whose act or omission in connection with the subject of representation may make the organization or entity of government vicariously liable for such act or omission.
- (d) When a person, organization, or entity of government that is represented by a lawyer in a matter seeks advice regarding that matter from another lawyer, the second lawyer is not prohibited by paragraph (a) from giving such advice without notifying or seeking consent of the first lawyer.

Comment:

1. Paragraph (a) of this Rule is directed at efforts to circumvent the lawyer-client relationship existing between other persons, organizations or entities of government and their respective counsel. It prohibits communications that in form are between a lawyer's client and another person, organization or entity of government represented by counsel where, because of the lawyer's involvement in devising and controlling their content, such communications in substance are between the lawyer and the represented person, organization or entity of government.
2. Paragraph (a) does not, however, prohibit communication between a lawyer's client and persons, organizations, or entities of government represented by counsel, as long as the lawyer does not cause or encourage the communication without the consent of the lawyer for the other party. Consent may be implied as well as expressed, as, for example, where the communication occurs in the form of a private placement memorandum or similar document that obviously is intended for multiple recipients and that normally is furnished directly to persons, even if known to be represented by counsel. Similarly, that paragraph does not impose a duty on a lawyer to affirmatively discourage communication between the lawyer's client and other represented persons, organizations or entities of government. Furthermore, it does not prohibit client

communications concerning matters outside the subject of the representation with any such person, organization, or entity of government. Finally, it does not prohibit a lawyer from furnishing a "second opinion" in a matter to one requesting such opinion, nor from discussing employment in the matter if requested to do so. But see Rules 7.01 and 8.04(a)(3).

3. Paragraph (b) of this Rule provides that unless authorized by law, experts employed or retained by a lawyer for a particular matter should not be contacted by opposing counsel regarding that matter without the consent of the lawyer who retained them. However, certain governmental agents or employees such as police may be contacted due to their obligations to the public at large.
4. In the case of an organization or entity of government, this Rule prohibits communications by a lawyer for one party concerning the subject of the representation with persons having a managerial responsibility on behalf of the organization that relates to the subject of the representation and with those persons presently employed by such organization or entity whose act or omission may make the organization or entity vicariously liable for the matter at issue, without the consent of the lawyer for the organization or entity of government involved. This Rule is based on the presumption that such persons are so closely identified with the interests of the organization or entity of government that its lawyers will represent them as well. If, however, such an agent or employee is represented in the matter by his or her own counsel that presumption is inapplicable. In such cases, the consent by that counsel to communicate will be sufficient for purposes of this Rule. Compare Rule 3.04(f). Moreover, this Rule does not prohibit a lawyer from contacting a former employee of a represented organization or entity of a government, nor from contacting a person presently employed by such an organization or entity whose conduct is not a matter at issue but who might possess knowledge concerning the matter at issue.

Texas Const. Art. 1, § 27

§ 27. Right of assembly; petition for redress of grievances

Sec. 27. The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

Editors' Notes INTERPRETIVE COMMENTARY 2007 Main Volume

The rights of the people peaceably to assemble and to petition the government for a redress of grievances can be traced back to Magna Carta, the Petition of Right, and the Bill of Rights of 1688, the latter declaring: "It is the right of the subject to petition the king; and all commitments and prosecutions for such petitioning are illegal."

One of the grievances set forth against the English king by the Declaration of Independence of the United States was that he had answered the repeated petitions for redress by the colonists only by repeated injury. It was natural that these rights, fundamental to the nature and structure of the institutions of a republican form of government, should have been included in the Constitution of the United States, Amendment One, and in similar terms in Section 27 of

the Texas Bill of Rights.

Although the First Amendment does not apply to the states, nevertheless the due process clause of the Fourteenth Amendment protects the right of assembly and of petition from state action, and the right of assembly has been held to be cognate with free speech and free press, and equally basic. *De Jonge v. Oregon*, 57 S.Ct. 45, 299 U.S. 353 (1937).

The right of assembly and petition secure the right to apply to the government for redress of grievances, and also to demand the exercise by government of its powers to further the interests of the petitioners. It guarantees the enjoyment of redress when obtained, free from penalty for having sought it. See *Connellee v. Blanton*, Civ.App., 163 S.W. 404 (1914).

The right of the people to assemble for purposes of peaceful political discussion and action is included in these guarantees, and a state statute making it a crime to hold peaceable meetings for that purpose, or to assist in their conduct, violates that right. *De Jonge v. Oregon*, supra.

Nevertheless, these rights are not absolute; they are not unlimited, but the power of the state to limit their exercise is the exception rather than the rule. These rights must not be used to incite violence or crime, and the law can protect against such. Moreover, they cannot be exercised at times and places and in circumstances in conflict with the enjoyment of other well-recognized rights of individuals and of the public. For example, the privilege to use the streets and parks for communication of views may be regulated in the interest of all. *Hague v. C.I.O.*, 59 S.Ct. 954, 307 U.S. 496, 83 L.Ed. 1423 (1939).

U.S.C.A. Const. Amend. I

Amendment I. Establishment of Religion; Free Exercise of Religion; Freedom of Speech and the Press; Peaceful Assembly; Petition for Redress of Grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

McDonald v. Smith, 472 U.S. 479, 482, 105 S. Ct. 2787, 2789, 86 L. Ed. 2d 384 (1985)

The First Amendment guarantees “the right of the people ... to petition the Government for a redress of grievances.” The right to petition is cut from the same cloth as the other guarantees of that Amendment, and is an assurance of a particular freedom of expression. In *United States v. Cruikshank*, 2 Otto 542, 92 U.S. 542, 23 L.Ed. 588 (1876), the Court declared that this right is implicit in “[t]he very idea of government, republican in form.” *Id.*, at 552. And James Madison made clear in the congressional debate on the proposed amendment that people “may communicate their will” through direct petitions to the legislature and government officials. 1 Annals of Cong. 738 (1789)

City of San Antonio City Attorney's Letter to Attorney Lobbyist*

* Graciously provided by [Camila W. Kunau](#), Assistant City Attorney



CITY OF SAN ANTONIO

Office of the City Attorney
P.O. Box 839966
San Antonio, TX 78283-3966

[Date]

VIA ELECTRONIC MAIL

[email address]

Re: *Lobbying the City of San Antonio*

Dear Lobbyist:

The City Attorney provides legal representation to all departments of the City of San Antonio including its officers, directors, officials, boards and commissions, and employees when such persons are acting within the scope of their duties or employment.

As a reminder, Texas Disciplinary Rules for Professional Conduct Rule 4.02 prohibits an attorney from communicating with an entity of government who is represented by counsel. Rule 4.02 states:

- (a) In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.
- (b) In representing a client, a lawyer shall not communicate or cause another to communicate about the subject of representation with a person or organization a lawyer knows to be employed or retained for the purpose of conferring with or advising another lawyer about the subject of the representation, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.
- (c) For the purpose of this rule, "organization or entity of government" includes: (1) those persons presently having a managerial responsibility with an organization or entity of government that relates to the subject of the representation, or (2) those persons presently employed by such organization or entity and whose act or omission in connection with the subject of representation may make the organization or entity of government vicariously liable for such act or omission.
- (d) When a person, organization, or entity of government that is represented by a lawyer in a matter seeks advice regarding that matter from another lawyer, the second lawyer is not prohibited by paragraph (a) from giving such advice without notifying or seeking consent

of the first lawyer.

Prior to requesting or agreeing to a meeting from the City of San Antonio, an attorney is responsible for notifying the City Attorney's Office and should provide:

- 1) the name of the individuals representing the City that the attorney is seeking to meet with;
- 2) the subject matter of the meeting;
- 3) the names of the non-City attorneys who will be attending the meeting including their firms and the clients they are representing; and
- 4) a statement that the attorney(s) will not be providing legal advice or input to the City representative(s) and will be acting solely as a lobbyist for their client.

The City Attorney's Office can attend as the legal advisor to the City representatives, as a professional courtesy and requirement.

You may submit the above information using firm letterhead or the attached form acknowledging that you are aware of the attorney-client relationship the City Attorney's Office has with City representatives and that you will comply with this protocol.

The City Attorney's Office appreciates your adherence to the Rules of Professional Conduct. Should you have any questions regarding this letter, you may contact the City Attorney's Office at (210) 207-8916.

Sincerely,

Andy Segovia
City Attorney



Notification of Meeting with City Representative

Please submit one per attendee.

Date: _____

Location: _____

City Representative: _____

Subject of Meeting: _____

Client Being Represented: _____

Date of Notification to City Attorney's Office: _____

By signing this document, I acknowledge that I have a duty as a licensed attorney in the State of Texas to notify the City Attorney's Office meetings scheduled with City Officials, including its officers such as the Mayor and City Council, directors, officials, boards and commissions, and other City employees, prior to the holding of the meeting. I am aware that an attorney from the City Attorney's Office may attend these meetings. I will not provide legal advice or input to the City representative(s) I am meeting with, and I will be acting solely as a lobbyist for my client.

Signature

Printed Name

State Bar No.: _____

Email address: _____

Contact number: _____