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communications to make sure they do not say something prejudicial to them in the pending matter. If, on the other hand, the point is to use the communication from a different business transaction to somehow develop evidence to be used in the pending matter against the opposing party then it would seem to cross over into the realm of “overreaching.”

These are worthy topics of discussion. With Formal Opinion 11-461, the ABA has placed its stamp of approval on a broad range of conduct allowing lawyers to advise clients on direct contact with another represented party.

There are considerations outlined in the Opinion that justify the ABA's approach. While there is scant authority on the friction between Rules 4.2 and 8.4(a), there are several jurisdictions that have been explicit in placing limitations on a lawyer's conduct that are far more restrictive than what the ABA would allow.

How far you can go in advising a client regarding communications with a represented party will turn on the interpretation of these rules in the governing jurisdiction.

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