

Illinois Supreme Court Holds That Ethical Rule Prohibiting Communication With a Represented Party Is Limited to the Same Matter, Regardless of Whether the Matters Are Factually Related

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People v. Santiago, ___N.E.2___,2010 WL 966493 (Ill. 2010)

Brief Summary

The Illinois Supreme Court held that Rule of Professional Conduct (RPC) 4.2 (prohibiting communication with a represented party) is matter specific. Where defendant was a party to substantially related civil and criminal proceedings, but she was only represented in the civil proceeding, the court held that criminal prosecutors could communicate directly with defendant without the consent of her civil attorney.

Complete Summary

The Cook County child protection division sought temporary custody of defendant's child based on suspected child abuse. Defendant was appointed counsel in this civil proceeding. The state ultimately brought criminal charges against defendant based on the same underlying incident. During the criminal investigation, and before indictment, state prosecutors interviewed defendant with a *Miranda* waiver, but without the consent of her counsel from the child protection proceeding, and without intent to use any evidence in the child protection proceeding. In the criminal case, defendant sought to suppress the evidence from these interviews because the prosecutors allegedly violated Illinois RPC 4.2, which states:

During the course of representing a client a lawyer shall not communicate . . . on the subject of representation with a party the

lawyer knows to be represented by another lawyer in that matter unless the first lawyer has obtained the prior consent of the lawyer representing such other party . . .

134 Ill. 2d R. 4.2.

The Illinois Supreme Court held that the prosecutors did not violate RPC 4.2 because defendant was not represented in the criminal matter. The court emphasized that the rule only prohibits communication with “a party the lawyer knows to be *represented* by another lawyer *in that matter* . . .” Defendant conceded that although she was represented in the child protection matter, she was not represented in the related criminal matter.

The court noted that the result was consistent with rulings in other jurisdictions, and that the drafters of the RPCs clearly knew how make Rule 4.2 broader, had they so intended. For example, had RPC 4.2 been intended to apply to all matters arising out of a specific set of facts — as defendant argued — the drafters could have used the phrase “same or substantially related matter” which is contained in the conflict of interest rules.

Finally, because the court found no violation of RPC 4.2, it did not reach the issue of whether suppression of evidence would be an appropriate remedy for violations of the rule.

Significance of Opinion

Under this opinion, a party alleging an RPC 4.2 violation must establish that the scope of his or her legal representation encompassed the specific matter in which the violation allegedly occurred. Thus, Rule 4.2 considerations may play a role in defining the scope of representation in the context of related or parallel proceedings, including, for example, class action or other litigation when there are related government enforcement or criminal proceedings.

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