



State of Wisconsin
Department of Industry, Labor and Human Relations

WORKER'S COMPENSATION

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MEMORANDUM

DATE: June 2, 1994
TO: Greg Krohm
FROM: Dick Smith *Dick*
RE: CONTACT WITH REPRESENTED PARTIES

Occasionally, the question has arisen regarding the extent to which staff in the Worker's Compensation Division can communicate directly with parties to a claim who are represented by an attorney. Can they communicate freely with the party or must they always go through the attorney?

The only explicit prohibition on communication with persons represented by attorneys applies to lawyers who are representing a client. I have attached Wisconsin Supreme Court Rule 20:4.2 relating to "Communication with person represented by counsel."

As I read the rule, it would not restrict me or other staff attorneys from such direct communications. The rule itself refers only to lawyers "representing a client," which is not the case with attorneys on staff. The comment indicates there is some leeway for lawyers representing a client:

"This rule does not prohibit [even lawyers representing a client from] communication with a party....concerning matters outside the representation...."

Moreover, the comment also explicitly exempts parties and other lawyers having "independent justification" from the rule:

"Also, parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so."

The question remains, assuming there is no explicit prohibition, to what extent should Division staff, as a matter of good public policy, involve themselves in direct contact with parties who are represented by counsel? In my opinion, we have probably been overly hesitant. As the comment points out, even when the controversy is with a government agency (which is not the case in worker's compensation), the rule does not preclude the party from communicating with the government agency. In short, the rule recognizes the good public policy in allowing free communication with government agency staff.