



Committee on Professional Ethics

Opinion #245 - 4/28/72 (22-72) Topic: Interviewing adverse witness

Digest: It is not improper for defense counsel in a criminal case to interview a witness for the prosecution over the objection of the District Attorney.

Code*: EC 6-4; DR 6-101(A); DR 7-102;
DR 7-104.

QUESTION

May the attorney for a defendant in a criminal case interview a witness for the prosecution without the knowledge of, or over the objection of, the District Attorney?

OPINION

It is not improper for an attorney or defendant in a criminal case to interview a witness for the prosecution without the knowledge, or over the objection of, the District Attorney. Failure to thoroughly investigate and marshal the facts by defense counsel could be considered a dereliction of duty. EC 6-4; DR 6-101(A). A lawyer may properly interview any witness or prospective witness for the opposing side in any civil or criminal action without the consent of the opposing counsel or party, as a witness does not "belong" to any party. This does not, of course, sanction any suggestion calculated to induce any witness to suppress evidence or to deviate from the truth. DR 7-102. See also, American College of Trial Lawyers, Code of Trial Conduct Section 15.

As prosecution witnesses are not parties nor clients of the prosecution, ABA 101 (1933), the provisions of DR 7-104, prohibiting conversations by a lawyer with a party represented by a lawyer unless he has the prior consent of the lawyer representing such party, are not applicable.
