

Office of Child Support **POLICY SHEET**

SUBJECT

Customers Represented by an Attorney

PS# 11-02

SUMMARY

This policy reviews what information can be shared with customers and parties that have a private attorney. It also reviews the steps for verifying and documenting customer representation by an attorney, and what our obligations are if we receive information from a represented customer or party.

POLICY

Rule 4.2 of the Rules of Professional Conduct prohibits all OCS staff, including case presenters and non-case presenters alike, from communicating with a party the staff member knows is represented by an attorney about the subject matter of the representation, unless the party's attorney consents to the communication or the communication is authorized by law. This prohibition applies regardless of whether the represented person initiates the communication or consents to the communication.

OCS staff may have limited transactional or ministerial communication with a represented person without first obtaining consent from the person's attorney. Examples of transactional communication include those relating to making or receiving a payment, such as communication with a non-custodial parent necessary for payment to be made, about how to make a payment, or to confirm whether a payment was received, or providing information to a custodial parent, such as a PIN number, necessary to access payment information. Examples of ministerial communication include responding to a customer's or party's request for case records, including individual documents, pursuant to OCS's policy for responding to a records request (see OCS Policy: Request for Copy of Case File and Public Records Request PS# 13-02).

Communication with a represented person beyond this limited scope is not authorized without the attorney's consent. OCS staff should obtain necessary consent in writing, such as by email, prior to engaging in non-transactional or non-ministerial communication with a represented party. Consent should be documented in OCS's case record, including by making case notes and creating "red flags" in ACCESS and by imaging correspondence with counsel in OnBase.

OCS staff should be diligent in seeking information about whether a party is represented by counsel, including by reviewing case notes and “red flags” in ACCESS and by reviewing the Vermont Judiciary Portal. If while communicating with a party, a staff member learns the party is represented by counsel, the case presenter must immediately cease any communication relating to the representation. If such a situation occurs, pursuant to Rule 5.3 of the Rules of Professional Conduct, staff should consult with the regional attorney, including about whether to inform the party’s attorney about the communication with the party.

In addition, consistent with Rule 5.3, an OCS staff member who inadvertently receives information from a represented party unrelated to the transactional or ministerial purposes described above shall consult with their supervisor and the appropriate OCS attorney prior to documenting the information in ACCESS or in OnBase. Such consultation shall determine appropriate mitigating steps, such as informing the person’s attorney of the communication and limiting documentation of the information received.

Finally, in accordance with Rule 5.3, OCS legal staff will conduct periodic training at reasonable intervals regarding compliance with Rule 4.2.

Date	Action	Description
07/06/2011	Created	
05/05/2023	Revised	Updated to align with Vermont Rule of Professional Conduct 4.2; added reference to the periodic ethics training requirement in accordance with Rule 5.3