

## **The Military Services' Rules of Professional Conduct Concerning Communications with Represented Persons**

Rule for Courts-Martial 109 provides that “[e]ach Judge Advocate General is responsible for the professional supervision and discipline of military trial and appellate military judges, judge advocates, and other lawyers who practice in proceedings governed by the code and [the Manual for Courts-Martial].” Rule for Courts-Martial 109(a), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2012 ed.). The rule further authorizes the Judge Advocates General to “prescribe rules of professional conduct.” Each of the Judge Advocates General has done so and each has adopted a rule based on the American Bar Association’s Model Rule of Professional Conduct 4.2 addressing communications with represented persons.

Army Rule of Professional Conduct 4.2 is titled, “Communication with Person Represented by Counsel.” U.S. DEP’T OF ARMY, REG. 27-26, RULES OF PROFESSIONAL CONDUCT FOR LAWYERS (1 May 1992). The rule provides: “In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.” *Id.* The comment to the Army Rule includes: “The Rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question.” *Id.*

Rule 4.2 of the Department of the Navy’s Rules of Professional Conduct (which apply to both Navy and Marine Corps judge advocates as well as civilian lawyers litigating both Navy and Marine Corps military justice cases) is substantively the same and is supported by a comment substantively identical to that of Army Rule 4.2 quoted above. U.S. DEP’T OF NAVY, JAGINST 5803.1D, PROFESSIONAL CONDUCT OF ATTORNEYS PRACTICING UNDER THE COGNIZANCE AND SUPERVISION OF THE JUDGE ADVOCATE GENERAL (May 1, 2012).

Air Force Rule of Professional Conduct 4.2 has the same title as Army and Navy Rules 4.2. U.S. DEP’T OF AIR FORCE, AFI 51-110, Atch 2, PROFESSIONAL RESPONSIBILITY PROGRAM (5 Aug. 2014). In language almost identical to the ABA Model Rule, it provides: “In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or court order.” Additionally, the Air Force’s Special Victims’ Counsel Rules of Practice and Procedure provide that trial counsel and the accused’s military defense counsel “need to obtain consent from SVC prior to communicating with represented victims under AF Rule of Professional Conduct 4.2.” U.S. DEP’T OF AIR FORCE, SPECIAL VICTIMS’ COUNSEL RULES OF PRACTICE AND PROCEDURE 13 (24 Jan. 2013).

The Coast Guard’s version of Rule 4.2 is similar to that of the Air Force. *See* U.S. COAST GUARD, COMMANDANT INSTR. M5800.1, COAST GUARD LEGAL PROFESSIONAL RESPONSIBILITY PROGRAM (June 1, 2005). Titled “Communications with Persons Represented by Counsel,” the text of Coast Guard Legal Rule of Professional Conduct 4.2 is identical to that of the ABA Model Rule: “In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.” *Id.*