

Answering Some Common Questions About SCR 20:4.2

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Scenario #1

**Lawyer represents client in a criminal case.
Lawyer asks investigator to interview a
witness who may have helpful information for
the client.**

**During interview, witness tells investigator
that he's represented by a lawyer.**

What should investigator do?

Scenario #2

Private bar lawyer is contacted by a client who is currently represented by an SPD staff lawyer. Client tells private bar lawyer that she is dissatisfied with her public defender and would like to meet with private bar lawyer to consider retaining counsel.

Can private bar lawyer meet with client?

Does private bar lawyer owe any duties to the public defender currently representing client?

Scenario #3

Client is arrested on drug charges and taken into custody. Client is appointed counsel and makes first appearance. While in jail, client writes directly to prosecutor and offers to cooperate and assist the police in making controlled drug buys. Prosecutor meets with client several times and works out a cooperation agreement in return for consideration in sentencing.

Client does not copy his own lawyer nor does he wish to have lawyer present during meetings with prosecutor.

Prosecutor eventually informs defense counsel of the agreement.

Has client waived the protections of SCR 20:4.2?

Scenario #4

Two co-defendants are charged. One co-defendant is appointed an SPD staff lawyer. The other co-defendant is still waiting for a private bar lawyer to be appointed for her case.

While waiting for a private bar lawyer to be appointed on her case, co-defendant reaches out to prosecutor to negotiate a deal.

What are the implications here?

Other scenarios with prosecutors and represented clients.

Prosecutor tries to negotiate with client at or after initial appearance where client appeared with an SPD attorney

Husband and wife are charged as co-defendants. Each has their own attorney. At husband's prelim, prosecutor sees wife sitting in the courtroom and calls wife to testify.

Prosecutor listens to conversation between detective and represented client.

Scenario #5

Lawyer is representing dad in a CHIPs case and related criminal charges stemming from allegations of child abuse. GAL is appointed to represent best interests of child, who is temporarily placed with grandparents. Lawyer sends paralegal to grandparents house, who then permit paralegal to interview child.

Did lawyer need consent of GAL for paralegal to speak with the child?

Scenario #6

Lawyer is representing client who is out on bond. Co-defendant, who is also represented, and client are friends. Client tells lawyer, that based on conversations with co-defendant, Client believes that co-defendant would sign a statement that would be exculpatory for client and asks lawyer to draft up statement.

Client is quite specific and states that he will take the statement to co-defendant and obtain the signature

May lawyer draft the statement?

Questions?