pringing pro se case with spouse lawyer must be careful when

By FRED HORLBECK, Senior Staff Writer fred.horlbeck@sc.lawyersweekly.com

In the scenario, an insur-

If you're an attorney and

ning afoul of ethics file a lawsuit pro se, you may have to take communicating with tions to avoid runsome extra precauyou and your spouse when it comes to opposing parties. especially

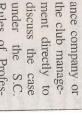
Bar's Ethic Advisory So said the S.C.

sponse to an inquiry based on a against a country club. sented themselves in a suit and his non-lawyer wife reprefact pattern in which a lawyer Committee in re-

Up for debate was whether eiance company retained a lawyer to represent the club. ther plaintiff could contact the insurunder the Rules of Profes-

case he could contact the comcompany had none, in which insurer's counsel, unless the could contact the swer was that he the lawyer, the an-

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Crystal

sional Conduct.

With regard to

South Carolina Lawyers Weekly



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management, the panel said. to do so. Also, he should exercise pany as long as he had permission caution in contacting the club's

ing non-lawyers were beyond its declined to comment on her, say-As for the wife, the committee

happen often in real life. tioner said such situations don't A law professor and a practi-

representing himself and/or his or "Situations in which a lawyer is

Ballard

Lawyers Weekly in an e-mail. Nathan Crystal of the Charleston School of Law told her spouse do arise but are not that frequent," Professor

on professional ethics, agreed. Desa Ballard, a West Columbia practitioner who focuses

> selves up in this situation," Ballard said. stances that they're going to be stumbling into if they set them-"I think most lawyers are aware enough of the circum-

would be imputed to him "even without actual evidence of awkward" for a lawyer because any action by the spouse his actual knowledge of it." But when it does happen, Ballard said, it can be "very

in, in my opinion," she said. is doing. So this is a very bad position for him to put himself anyway, that he is aware of or participating in whatever she "There's going to be some presumption, or implication.

spouse do anything that the lawyer would be forbidden to do under the rules. The committee said the lawyer should avoid having his

of conduct which would violate the rules if done directly by him," the committee said, citing Rule 8.4(a). "He may not through the acts of his wife pursue a course

on contacting opposing parties, the committee said, citing Also, a lawyer should be cautious when advising a spouse

manner that circumvents the rule by directing or monitorplated in comment 4 to Rule 4.2, but cannot do so in a lawyer party to contact the other party directly as conteming the wife's contacts or counseling her as to the sub-"Husband may advise wife as to the rights of a non-

stantive content of such conversations," the committee

to violate them, or to break the rules through another's con Rule 8.4(a), it is misconduct for a lawyer to violate or try to is being represented by a lawyer in the same matter. Under about the subject of a representation with anyone he knows violate ethics rules, to knowingly help or induce anyone else Rule 4.2 generally bars a lawyer from communicating

directed or regularly consulted the club's lawyer on the would prohibit contact with anyone who had authority to to be careful in contacting club managers because Rule 4.2 of its own. As a result, the panel said the lawyer would have bind the club with respect to the case or who supervised The fact pattern didn't say whether the club had counsel

Crystal said the opinion was straightforward

bound by the rules even if they are acting in a personal ca application of the general principle that lawyers are sional conduct whether they are engaged in representation of clients or not. This opinion seems to be ar "Generally lawyers are bound by the rules of profes-

viewed on the S.C. Bar's website. Ethics Advisory Opinion 11-01, issued Feb. 21, may be