



## Committee on Professional Ethics

Opinion #358 - 9/10/74 (34-74)

Topic: Communication with potential adverse party not yet represented by attorney.

Digest: Improper for attorney to communicate, directly or indirectly, with adverse party not represented by an attorney, in a personal injury case where the communication undertakes to advise such person other than the advice to secure counsel.

Code: EC 7-18.  
DR 7-104(A)(1); 7-104(A)(2).

### QUESTION

May an attorney, representing a personal injury claimant, send a copy of a letter to a proposed defendant where the original letter is sent to such person's insurance carrier and where no attorney has appeared for them advising the carrier that a failure to settle within the policy limits would be considered in bad faith exposing both the carrier and its assured to judgment in excess of the insurance policy limits?

### OPINION

Sending of a copy of the letter to a proposed defendant unrepresented by counsel is improper as it purports to give legal advice to such person in violation of DR 7-104(A)(2) and EC 7-18. A lawyer cannot give legal advice as to a potential claim but is not prohibited from stating to such person that the claim may be in excess of policy limits. ABA Inf. 1034 (1968); N.Y. County 531 (1964); N.Y. County 543 (1965); N.Y. County 545 (1965).

DR 7-104(A)(2) provides that a lawyer during the course of representation of a client shall not:

"Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client."

Of course, if the party is represented by counsel, the lawyer should not communicate with the party at all unless he has the prior consent of the lawyer representing such other party or is authorized by law so to do. DR 7-104(A)(1).

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