

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-95
Issued: July 1974

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: May an attorney properly send to a defendant's insurance carrier a copy of a demand letter addressed to defendant's attorney?

Answer: No.

References: DR 7-104

OPINION

An attorney representing a plaintiff in a personal injury claim proposes to send to defendant's insurance carrier a copy of a demand letter addressed to defendant's attorney. He inquires whether this would be proper.

The pertinent rule is found in DR 7-104. The material portion of this rule provides as follows:

- (A) During the course of his representation of a client a lawyer shall not:
 - (1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

Upon reflection, the Committee has concluded that the proposed conduct would offend the spirit of this rule. Obviously, the only purpose of sending a copy to the carrier would be to bypass defendant's attorney in relating directly to the company plaintiff's demand. In our view this constitutes a "communication" within the meaning of the rule.

In a related area, the ABA Standing Committee on Professional Ethics decided in Informal Opinion No. C-570 (dated August 23, 1962) that it was improper for an attorney to address a letter to the attorney for defendant's insurance carrier with copies to the insurance company's president, claims representative and the defendant. The stated reason for this letter was, among other things, to advise of a refusal by defendant's attorney to discuss a settlement within policy limits. This, said the Committee, was a communication forbidden by former Canon 9, the predecessor to DR 7-104. It was also noted that for purposes of the rule employees of the insurance company should be treated as parties.

We agree with this view. Until the contrary is shown, it must be assumed that an attorney will convey to his client all offers of settlement. If a demand has been improperly withheld from the insurance carrier, the attorney has of course been remiss in his duty and may be dealt with in the appropriate forum.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.