

You have presented a situation in which attorney C represents the natural father, who is seeking full custody, in a child custody case in juvenile and domestic relations court. The other parties to the suit are the maternal grandparents (represented by attorney A), who presently have custody of the child per court order, and the natural mother (represented by attorney B), who seeks to either obtain custody or continue the current custody order. The court has set a hearing date and ordered home studies of all parties. Attorney C has written letters to a child psychologist, who will be a witness at the hearing, and to attorney A, with copies of the letters to the court. You indicate that the letters contain the attorney's opinion as to the merits of the case as well as his version of the facts.

You have asked the Committee to opine whether, under the facts of the inquiry, it is improper for the natural father's attorney to communicate information to the court in the child custody case.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:7-105(C)(1), (4), and (5) which require, respectively, that, in appearing in his professional capacity before a tribunal, a lawyer shall not: state or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence; assert his personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused; or intentionally or habitually violate any established rule of procedure or of evidence, where such conduct is disruptive of the proceedings. Further guidance is available in Ethical Consideration 7-32 [EC:7-32] which cautions, in pertinent part, that, "[g]enerally, a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party"; and Ethical Consideration 7-35 [EC:7-35] which similarly cautions that a lawyer should follow local customs or courtesy or practice unless he gives timely notice to opposing counsel of his intention not to do so.

If the information will not be admissible in court, will assert only personal opinions, or would violate an established rule of evidence or procedure which would be disruptive of the proceedings, the Committee opines that an attorney's practice of sending to the court copies of letters to a witness and to opposing counsel would be improper and violative of DRs 7-105(C)(1), (4), and (5) [DR:7-105]. The Committee is of the view that if the information could not be presented in court, there is no ethical justification to present that information via mail to the court. Cf DR:7-109.

Committee Opinion
June 22, 1992