

Committee Opinion
October 20, 1988

LEGAL ETHICS OPINION 1169

COMMUNICATION WITH ADVERSE
PARTY – PERSONAL INJURY:
PLAINTIFF’S COUNSEL NEGOTIATING
SETTLEMENT DIRECTLY WITH
DEFENDANT OR INSURANCE
ADJUSTER.

You wish to know whether it is a violation of Disciplinary Rule 7-103(A)(1) for plaintiff's counsel, who is aware that counsel has been retained for the defendant's insurance company to provide representation to the defendant, to initiate contact and communicate with an insurance adjuster or other employee of defendant's insurance carrier in an attempt to negotiate settlement of the plaintiff's case without the prior consent of the lawyer representing the defendant. The committee has previously opined in LE Op. 687 that it is improper for an attorney to represent the plaintiff in pending litigation in which the defendant is represented by counsel to contact the defendant insured directly for purpose of settlement negotiations without consent of counsel for the defendant and his insurer. (See also LE Op. 550, ABA Informal Opinion Nos. 570, August 23, 1962, and 1190, August 27, 1971.)

You also wish to know whether, in the same fact situation, it is a violation of DR:7-103(A)(1) for plaintiff's counsel, who does not initiate such communication or contact but rather is contacted by the insurance adjuster or other employee, to discuss the case or negotiate settlement without the authorization of defendant's counsel. The Committee believes that based on LE Op. 687, unless both counsel for the defendant and his insurer consent, then it would be improper for plaintiff's counsel to discuss the case or to negotiate settlement.

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