

## Utah Ethics Opinions

1974.

### 18. USB EAOC Opinion No. 18

Ethics Advisory Opinion No. 18

Approved February 23, 1974

**Summary:** An attorney may not send a copy of a letter, which was sent to opposing counsel, to the client of opposing counsel in regard to the need for answers to interrogatories.

**Facts:** You have inquired concerning the view of the Utah State Bar Ethics Committee as to DR 7-101(A)(1) which relates to communications with persons represented by counsel. Your specific inquiry is whether or not you may send a copy of your letter to opposing counsel to his client, which will advise opposing counsel that unless responses to interrogatories are received, it will be necessary for you to apply to the court to obtain a court order directing his client to respond to the interrogatories. You indicate that counsel has been cooperative but that his client has not been cooperative.

**Opinion:** Former Canon 9 of the Canons of Professional Responsibility provided, "A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel \* \* \*." Under that canon, several ABA Ethics Opinions were issued rendering it clear that this canon was to be taken literally. We refer you specifically to Formal Opinion 187 of the American Bar Association Committee on Professional Ethics, which states, "[i]t is clear from earlier opinions of this Committee that Canon 9 is to be construed literally and does not allow a communication with an opposing party, without the consent of his counsel, though the purpose merely be to investigate the facts."

Present Canon 7, which has been adopted by the Utah State Bar, and particularly DR 7-104(A)(1), appears to us to make no exception to the rule as announced formerly in Canon 9 and is interpreted by the ethics opinions referred to. It provides:

"(A) During the course of his representation of a client a lawyer shall not:

(1) Communicate or cause another to communicate on the in 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."

The footnote appearing in connection with DR 7-104(A)(1) refers the reader to former Canon 9, and the opinions cited heretofore.

We see nothing in the situation which you have posed which would justify communication with the client of opposing counsel in this matter regardless of the fact that the client appears to be recalcitrant in responding to the interrogatories, and despite the fact that his counsel apparently is unable to control him.

The remedy which is afforded by the Rules of Civil Procedure is adequate and certainly avoids any ethical implications.

**Reference:** ABA Informal Opinion 1362.