
E-84-10 Providing non-party with copy of settlement

Facts

Party A's husband died in an accident. Presently, Party A is contemplating a wrongful death action against the estate (Party B) of another person who died in the accident. Counsel for both parties have been engaged in settlement negotiations and as of yet, no legal claims have been filed.

Party A's father-in-law has expressed a continuing personal interest in the case and settlement discussions of counsel. On one occasion, the father-in-law met for three hours with counsel for both parties to review the accident facts in detail. The father-in-law is not represented by either attorney and appears to have no separate counsel. The father-in-law is not, nor is he reasonably expected to become, an interested or adverse party in any litigation that may develop.

Party B has written a 30-page settlement discussion letter summarizing its position on liability and damage issues.

Question

Would it be ethically permissible for Party B to provide a copy of the settlement discussion letter to the father-in-law or advise the father-in-law that the document exists? If Party B may do either of the above, are there any pre-conditions to pursuing such a course of action?

Opinion

Generally a lawyer may communicate with a person unrepresented by counsel in any civil or criminal action without prior consent of opposing counsel unless such person is a party. Formal Op. E-82-10, Wis. Bar Bull. December 1982, at 35; ABA Informal Op. 1410 (Feb. 14, 1978); *cf.* SCR 20.38 (communicating with one of adverse interest). Accordingly, with the client's (Party B) consent, counsel for Party B may provide a copy of the settlement discussion letter to the father-in-law or advise the father-in-law that the document exists.

It should be noted that a competing interest in this situation is the fact that counsel for Party B may not discuss the settlement letter directly with the widow (Party A) unless Party A's counsel consents to such. *See* SCR 20.34(2)(o); SCR 20.38(1). Assuming Party A's counsel would not consent to such discussions, Party B's counsel cannot make use of the father-in-law to accomplish what it cannot do, i.e., communicate with the widow about the settlement letter. ABA Informal Op. 663 (n.d.); ABA/BNA, *Lawyers' Manual on Professional Conduct*, p. 71:301.