

Opinion 18
May 1949
18 Baylor L. Rev. 201 (1966)

CONFLICTING INTERESTS - DISCLOSURE

An attorney, retained by an employer having workmen's compensation insurance, upon being questioned by the claimant as to the advisability of prosecuting his claim in the courts, should disclose his position with respect to the claim. He must represent his client with undivided fidelity and not divulge the client's secrets or confidences.

CANDOR AND FAIRNESS

If the claimant makes known his dissatisfaction with the insurance company's representative, the employer's attorney should advise him as a matter of courtesy, to seek the advice of counsel. If the claimant inquires the name of an attorney in another town, the name should be divulged, if known. The attorney may state whether or not the named attorney is a good compensation attorney.

Canons 6, 19.

QUESTIONS

1. Is an attorney who is retained by an employer having workmen's compensation insurance ethically precluded, upon being questioned by the claimant from advising the claimant to prosecute his claim in the courts by an appeal from the award of the Industrial Accident Board where the claimant is dissatisfied with the views and statement of the insurance company's representatives?
2. May the attorney so retained by the firm identify by name an attorney about whom the injured party has inquired by asking the retained attorney, "What is the name of that good compensation lawyer in the City of _____?"

OPINION

1. Canon 6 requires the attorney to disclose all of the circumstances of his relations with the employer to the claimant. The attorney is obliged to represent his client with undivided fidelity and not to divulge the client's secrets or confidences. Under Canon 15 he is required to treat adverse witnesses and suitors with fairness and due consideration. Under Canon 19 the attorney is required to deal candidly with the facts in taking statements of witnesses, in drawing affidavits and other documents as well as in the presentation of the case. While the attorney under the stated circumstances is not required to volunteer advice, yet if the claimant makes known his dissatisfaction and requests information as to the procedure to follow, it seems that candor and fairness would require that the attorney at least state that the claimant has the right to appeal from the award of the board, and that he is not required to abide by the statements and attitude of the adjusters for the insurer. The attorney involved in the question should disclose his position with respect to the claim, and as a matter of courtesy advise the claimant that if he is dissatisfied, to seek the advice of counsel. (7-0)

2. Equally, if the claimant inquires the name of an attorney in another town, it would seem that ordinary courtesy would require that the name be divulged, if known. This could of course be properly qualified with the statement that the informant does not know whether or not the named attorney is a "Good compensation lawyer," or the contrary, if that be the fact. (7-0)