

Opinion 22
November 1949
18 Baylor L. Rev. 205 (1966)

CANDOR AND FAIRNESS - COMMUNICATIONS WITH THE COURT

An attorney may not communicate with the court without making a full disclosure to opposing counsel and according him an opportunity to be present, or to submit authorities.

Canon 19. A.B.A. Canon 22.

QUESTION

"What is proper on the trial, or in advance of the trial, of a case with respect to giving the court an outline or memorandum of your position? In other words, it is obligatory upon you with respect to each communication with the court to acquaint opposing counsel with what has taken place between you and the court? If so, there will be comparatively few times when you can in advance of the trial of the case be of any assistance to the trial judge by acquainting him with the issues and authorities pertinent to the issue.

Probably the following is an extreme example and no one would question the propriety of the course taken, but it may serve as illustrative of the problem presented by the question: Several years ago I was defending a divorce suit brought by the husband on the grounds of cruel treatment. The Austin Court of Civil Appeals had held that adultery after separating is a bar to a suit for divorce on the grounds of cruel treatment. I had some reason to believe that the plaintiff would admit having had intercourse with another woman subsequent to the separation from his wife, but I was afraid the court would not appreciate the relevance of the testimony sought to be introduced, and that if I had to take time to argue its relevancy the question might as well never be asked. I gave the court in the absence of counsel for the plaintiff the citation to the case, and noted what the case held.

If it is proper to submit a memorandum to the court what should ordinarily then be the court's position?"

OPINION

The foregoing question is controlled by Texas Canon 19, and American Bar Canon 22. The committee is of the opinion that there should be no communication with the Court without making a full disclosure to opposing counsel and according him an opportunity to be present, or to submit authorities. (8-0)