

**Opinion 235**  
**May 1961**  
**18 Baylor L. Rev. 315 (1966)**

**NEGOTIATIONS WITH OPPOSITE PARTY - DEMANDING PHYSICAL EXAMINATIONS**

Defense counsel does not violate Canon 9 by writing a letter to plaintiff with a copy to plaintiff's attorney, when the letter deals only with defendant's request that plaintiff submit to a physical examination by a doctor of defendant's choice.

Canon 9.

**QUESTION**

During the course of taking plaintiff's deposition, defense counsel inquired if plaintiff would consent to examination by a doctor chosen by defendant. Plaintiff replied, "I have to leave that up with the lawyer." Plaintiff's lawyer then stated in the deposition that consent would neither be given nor be denied. The plaintiff thereafter affirmed in the deposition that the decision rested with the plaintiff's lawyer.

Subsequently and prior to trial, but without further attempt to secure permission, defense counsel wrote a letter to plaintiff with copy to plaintiff's counsel. The letter summarized this discussion about permission and said "We hereby again request . . . a physical examination by a medical doctor" selected by defendant, and requested an immediate reply.

Did defense counsel violate Texas Canon 9?

**OPINION**

This question is substantially the same as that answered by Opinion 139, and is controlled by that opinion. The described conduct of defense counsel is not unethical. Opinion 139 seems to be based upon decisions such as *Texas and N. O. Ry. vs. Rooks*, 292 S. W. 536 (Comm=n. App., 1937).

Some committee members, while agreeing that the question is controlled by Opinion 139, feel that this exception to the broad language of Canon 9 is not wise and that the better standard and practice is to conduct all communications through counsel and not directly with the opposing party. (9-0.)