

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-236
Issued: July 1980

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org/237>), before relying on this opinion.

Question: May an attorney knowingly file a law suit in a court of which the lawyer knows lacks jurisdiction to hear the case?

Answer: No.

References: EC 74; DR 7-102(A)(1)(2); ABA Informal Opinion 557, 694, 1011; Drinker, Legal Ethics, p. 156.

OPINION

In ABA Informal Opinion 557 the Ethics Committee of the American Bar Association stated that it is improper for a lawyer to file a motion for a change of venue which contains any untrue statements. In ABA Informal Opinion 1011, the American Bar Association was faced with a request from an attorney who did a great deal of collection work and routinely filed suit in the county of the plaintiff's residence. The American Bar Association Committee concluded that the plaintiff's action of filing suit in a county other than the defendant's residence is intentional and to serve the purpose of the plaintiff in obtaining default judgments as a matter of convenience to the plaintiff. The Committee cited Drinker, Legal Ethics, page 156, "He may not bring suit in a distant county merely in order to harass the debtor." (Citing New York City Opinion 72). The American Bar Association concluded that this practice is unethical if done to harass the defendant or take advantage of the absence of the opposite party in such county and would be true if the suit was filed in a county where neither the plaintiff nor the defendant resides, in absence of statute permitting such filing.

The question which we have before us is one of "knowledge" in filing a law suit where there is no jurisdiction. EC 74 in part states "a lawyer is not justified in asserting a position in litigation that is frivolous." DR-102 provides as follows:

- (A) In his representation of a client, a lawyer shall not:
- (1) File a suit... when he knows or when it is obvious that such action is being done merely to harass or maliciously injure another.
 - (2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

This Committee is not authorized to issue answers to questions of law. Although it can be certainly said that “jurisdiction” and “venue” are sometimes confusing and obscure legal principles. But the fact is that a judgment procured without jurisdiction is VOID. It is the Committee’s feeling that it is unethical for a lawyer to knowingly file a suit in a court which lacks jurisdiction to hear the suit. We are mindful that a lawyer may file a suit in a court when the suit may be barred by the Statute of Limitations. However, the Statute of Limitations is an affirmative defense which must be effectively pled and there are many situations in which a defendant may wish not to take advantage of this defense. (ABA Informal Opinion 694). However, it is our feeling that if you knowingly file a law suit in a court which lacks jurisdiction it violates DR 7-102(A)(1) and (2).

A lawyer is an officer of the court. As such he has the duty not to knowingly file a suit in which a judge has no jurisdiction to decide the matter. In doing this, the lawyer misleads the judge.

The Ethics Committee’s opinion is not directed to a case in which a lawyer makes a mistake as to jurisdiction but is directed to the attorney who knowingly files a suit in a court which lacks jurisdiction.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.