



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.2(d) and 3.1. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion No. 86-10
March 27, 1987**

Topic: Duty to Adversary System

Digest: A lawyer representing a creditor should not routinely and purposefully file consumer collections actions against debtors in a county where the lawyer knows venue does not properly lie and that no argument exists to support venue.

Ref.: Rules 7-102 and 7-106
Ethical Consideration 7-25

FACTS

A lawyer represents a trade association which provides, among other services, collection services to association members located throughout the state. Whenever litigation is required to collect a debt, the lawyer has routinely and for his convenience filed the action in the circuit court of the county in which he maintains his office, without regard to the county of residence of the debtor(s) or the county in which the transaction occurred (see §2-101 of the Illinois Code of Civil Procedure, Illinois Revised Statutes, Ch. 110, ¶2-101). The vast majority of the debtors sued have been unrepresented and have either not objected or not known to object to venue. The few times an objection has been made, the lawyer has either taken a voluntary dismissal or consented to a change of venue to the appropriate county.

QUESTION

Does this practice of routinely, purposely filing actions against debtors in a county where the lawyer knows venue does not properly lie violate the Code of Professional Responsibility?

OPINION

On the facts presented the Committee believes that intentionally filing collections actions against debtors in a county where a lawyer knows that venue is improper violates the Code of Professional Responsibility. §2-101 of the Illinois Code of Civil Procedure, Illinois Revised Statutes, Ch. 110, ¶2-101, provides:

Except as otherwise provided in this Act, every action must be commenced (1) in the county of residence of any defendant who is joined in good faith and with probable cause for the purpose of obtaining a judgment against him or her and not solely for the purpose of fixing venue in that county, or (2) in the county in which the transaction or some part thereof occurred out of which the cause of action arose.

The language "every action must be commenced" in §2-101 clearly indicated that the General Assembly intended that lawyers and litigants should file actions in the county directed by the statute.

If a lawyer files a complaint which affirmatively pleads that venue is proper in a county which the lawyer knows is not appropriate under the statute, then the lawyer is in clear violation of Rule 7-102(a)(5), which provides that in the representation of a client, a lawyer shall not "knowingly make a false statement of law or fact." Thus, a lawyer may not plead that venue is proper in a particular county when he knows that it is not.

Under Illinois law there is no requirement that venue fact must be alleged affirmatively in the complaint. See Hines v. Dresser Industries, Inc., 137 Ill.App.3d 7, 484 N.E.2d 401 (1985). Even if venue allegations are omitted, knowingly filing an action in the wrong county is contrary to the mandate of §2-101 of the Code of Civil Procedure and thus violates Rule 7-106(c)(7), which provides that a lawyer appearing before a tribunal in his professional capacity shall not "intentionally or habitually violate any established rule of procedure or of evidence." This rule is further explained by Ethical Considerations 7-25, adopted by the Assembly of the Illinois State Bar Association in November, 1980, which provides:

Rules of evidence and procedure are designed to lead to just decisions and are part of the framework of the law. Thus while a lawyer may take steps in good faith and within the framework of the law to test the validity of the rules, he is not justified in consciously violating such rules and he should be diligent in his efforts to guard against his unintentional violation of them.

This opinion is not directed at situations beyond the facts presented herein.

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