

You have informed the Committee that you represented a client in domestic relations litigation which was referred to a commissioner in chancery for a hearing on the issue of marital fault. You indicate that opposing counsel filed a praecipe with the circuit court clerk requesting the issuance of witness subpoenas returnable at the hearing. Finally, you allege that opposing counsel intentionally did not mail a copy of the praecipe to you resulting in the witnesses appearing at the hearing and testifying against your client without your knowledge.

You ask that the Committee consider the propriety of opposing counsel's actions.

The appropriate and controlling disciplinary rule to the circumstances you describe is DR:7-105(C)(5) which mandates that, in appearing in his professional capacity before a tribunal, a lawyer shall not intentionally or habitually violate any established rule of procedure or of evidence, where such conduct is disruptive of the proceedings. Additionally, of relevance is DR:7-102(A)(3) which prohibits a lawyer from concealing or knowingly failing to disclose that which he is required by law to reveal, in the representation of a client.

It is the opinion of the Committee that the plain language of Virginia Supreme Court Rule 1:12 does not require that a copy of a Praecipe requesting witness subpoenas be served on each counsel of record. In the absence of a local rule or pre-trial order requiring such service, the Committee therefore does not find any ethical impropriety.

Committee Opinion  
May 24, 1990