

Committee Opinion
March 9, 1989

LEGAL ETHICS OPINION 1224

DISCLOSURE – REPRESENTING
CLIENT WITHIN THE BOUNDS OF THE
LAW: ATTORNEY FILING SUIT ON A
CAUSE OF ACTION WHICH HAD BEEN
DISMISSED IN A SIMILAR CASE BY
THE SAME COURT.

You advised that an attorney was suing on a cause of action which had been dismissed in a similar case by the same court and you questioned whether or not it was unethical for the attorney to assert this claim and further, whether it was improper for the attorney to fail to disclose the prior court ruling which dismissed a similar claim.

The Committee opines that DR:7-102(A)(2), (3), and (5) are the appropriate and controlling disciplinary rules in this situation. They provide that in representing a client a lawyer shall not knowingly advance a claim or a 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 the existing law. Furthermore, he shall not conceal or knowingly fail to disclose that which he is required by law to reveal or knowingly make a false statement of law or fact. Under the facts you presented, the Committee is assuming that the attorney was not specifically asked by the court about similar suits and that no false statement was made by him. The Committee further opines that under the facts you have outlined, it does not believe that the attorney was "required by law" to reveal the existence of the prior rulings by the court.

Of particular importance is the fact that the decision of the general district court was appealed to the circuit court because the appellants believed it was incorrect. The Committee opines that in light of the appeal status of this claim the attorney advancing similar claims in the general district court could certainly claim he was making a good faith argument for an extension, modification or reversal of existing law as contained in DR:7-102(A)(2).

Therefore, the Committee opines that under the fact situation you have outlined it was not improper for the attorney to sue on a cause of action previously dismissed by the same court and furthermore it was not improper for the attorney to fail to inform the court as to the previous suit when not specifically asked by the court for such information.

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