

Committee Opinion
January 14, 1991

LEGAL ETHICS OPINION 1397

REPRESENTING A CLIENT WITHIN
THE BOUNDS OF THE LAW -
MISCONDUCT: MISSTATING THE
DATE ON THE CERTIFICATE OF
SERVICE OF A PLEADING.

You have indicated that an attorney has repeatedly, on the last response filing date, miscertified a "service certificate" by dating the same on the response date, but not actually depositing the pleading or other material in the U.S. mail until a subsequent date, for delivery to other attorneys of record.

You have requested that the Committee opine as to whether miscertification of the nature described is improper and unethical under the provisions of the Virginia Code of Professional Responsibility.

The appropriate and controlling disciplinary rules to your inquiry are DRs 7-105(C)(5) [DR:7-105] and 1-102(A)(3) and (4) [DR:1-102]. The former prohibits a lawyer from intentionally or habitually violating any established rule of procedure or evidence, where such conduct is disruptive of the [trial] proceedings. DR:1-102(A)(3) and (4), in pertinent part, prohibit a lawyer from committing a deliberately wrongful act or engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation when any such activities reflect adversely on the lawyer's fitness to practice law. Further guidance may be found in Ethical Consideration 7-22 [EC:7-22] which, in pertinent part, indicates that, since "[r]ules of evidence and procedure are designed to lead to just decisions and are part of the framework of the law. ... a lawyer is not justified in consciously violating such rules and he should be diligent in his efforts to guard against his unintentional violation of them."

The Committee has earlier opined that it is improper for a lawyer who has executed answers to interrogatories, and who has represented to opposing counsel that the answers may be treated as if they were signed under oath by the attorney's client, to include in such interrogatories answers which are false. LE Op. 743; see also LE Op. 732, LE Op. 948, LE Op. 1127.

The Committee is of the opinion that an attorney's repeated misstatement of the date on which pleadings were mailed to attorneys of record, in order to attempt to demonstrate compliance with the Rule, is improper and violative of the Code's proscriptions against both deceit and habitual violation of an established rule of procedure, whether or not the misstatement is intentional. Furthermore, the Committee views even a single incident of intentional misstatement to be improper and violative of the Code of Professional Responsibility. (See *Howard v. Gulf, C. & S.F. Ry.*, 135 S.W. 707 (Tex.Civ.App. 1911).)

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