

OPINIONS OF THE LEGAL ETHICS COMMITTEE

LEGAL ETHICS INQUIRY 85-3
(April 27, 1985)

The Committee on Legal Ethics deems it desirable to issue an advisory opinion proscribing an attorney from interfering with or causing delay in service of civil process.

It has come to the Committee's attention that in certain small counties of this State lawyers commonly exert their influence over personnel in the local sheriff's departments to interfere with and delay service of civil process in various types of legal proceedings.

The West Virginia Supreme Court of Appeals recognized in In re Damron, 45 S.E.2d 741 (W. Va. 1947), that following the custom and practice of bar members in a given locality is no substitute for adherence to standards set forth in the ethics code. The Court in Damron condemned the conduct of the respondent attorney, both as a lawyer and as a notary public, in swearing his divorce client to the form of verification before the divorce complaint was completed and its actual contents known to the client, and in using it subsequently to verify the completed complaint. The Court disapproved such conduct, even though it had theretofore existed for some time among reputable practitioners of the law in the respondent's section of the State.

When an attorney interferes with or causes delay in service of civil process, he violates DR 1-102(A)(5) of the West Virginia Code of Professional Responsibility. That disciplinary rule

proscribes a lawyer from engaging in conduct that is prejudicial to the administration of justice. In a given case, such interference with service of civil process could also violate DR 7-102(A)(1), which provides: "In his representation of a client, a lawyer shall not: (1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another." Therefore, the Committee on Legal Ethics specifically disapproves of any interference by an attorney with service of civil process.