NEW YORK STATE BAR ASSOCIATION
Committee on Professional Ethics

Opinion #469 - 6/7/77 (64-77)

Topic: Pleadings; general denial

Digest: Improper for lawyer to interpose general denial knowing that his client has no valid defense

Code: Canons 1 and 7; EC 7-25; DR 2-109(A)(2), 7-102(A)(2)

QUESTION

May a lawyer interpose a general denial knowing that his client has no valid defense?

OPINION

The provisions of the Code of Professional Responsibility most germane to the present inquiry are found at DR 2-109(A)(2) and DR 7-102 (A)(2). The former provision serves to forbid a lawyer from accepting employment from one who seeks to present a "defense in litigation that is not warranted." The latter provision requires that, once a lawyer has accepted employment in connection with a litigated matter, he must not "[k]nowingly advance a defense that is unwarranted."

By way of elaboration, EC 7-25 explains in relevant part:

"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 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. As examples, a lawyer should subscribe to or verify only those pleadings that he believes are in compliance with applicable law and rules... "

The examples set forth in EC 7-25 are not intended to be exhaustive and merely serve to illustrate the nature of the conduct which is forbidden. The fact that the lawyer may not actually "subscribe to or verify" the pleadings is of no consequence to the ethical rule. Regardless of the procedural niceties applicable to any given case, whether the forum be state or federal, when a lawyer causes a pleading to be submitted to a court of law in a civil action, that pleading should carry with it the implicit representation that the lawyer believes it to be accurate, that to the best of his knowledge, information and belief there is good ground to support it and that it is not interposed for the purpose of delay. Cf., Fed. R. Civ. P. 11 with C.P.L.R. §§ 3018 (a) and 3020.

A general denial in a civil action cannot and should not be analogized to a plea in a criminal case. It is the right of every defendant accused of criminal conduct to insist upon proof of his guilt.

No similar right exists in civil actions.

While delay may work to the defendant's advantage or precipitate a favorable settlement, it is improper for his lawyer to pursue these ends by inappropriate means. The technical ability of a lawyer to gain delay through the interposition of a general denial should not be confused with a legal right of his client. It is merely a tactic or procedural device which, if inappropriately employed, frustrates the proper administration of justice.

Long before the adoption of our present Code, the Association of the Bar of the City of New York expressed the view that "whenever any of the material allegations of fact set forth in a complaint is true, the interposition of a general denial is not professionally proper." N Y City 75 (1927-28). We concur in that view.

The Code today stands as a constant reminder to lawyers of the dual nature of their professional responsibility. That responsibility encompasses both the lawyer's duty to the legal system as well as the zealous protection of his client's rights. Canons 1 and 7. Where it is apparent that the client has no legal right to advance in defense of a civil complaint, the lawyer's duty to the proper administration of justice precludes the interposition of a general denial

For the reasons stated, the question posed must be answered in the negative.