

FORMAL OPINION NO. 14*

The Committee's opinion has been asked on these questions: Does an attorney violate the Canons of Professional Ethics if he makes a false statement to a client? For example:

- (1) That an action has been filed when that is not the fact;
- (2) That the lawyer filed a petition to perfect an appeal in January or March, whereas, in fact, such petition was not filed until October.

Paraphrasing the letter and summarizing the spirit of the applicable Canon results in these guides:

No lawyer should render any service involving disloyalty to the law or corruption of private trust or deception or betrayal of the public.

". . . . He advances the honor of his profession and the best interests of his client when he renders a service . . . undertaking exact compliance with the strictest principles of moral law . . . but above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen." (Canon 32.)

A deliberate and intentional misstatement is ethically and morally damnable. If done to a Court or official body, it would be criminally punishable. The duty of candor with one's client should not be substantially less than to the Courts, simply for want of an oath.

If the lawyer makes an honest mistake, there is no ethical problem.

If the mistake arises from negligence there may well be a legal responsibility.

A calculated misrepresentation resulting in damage to the client carries both legal and ethical implications.

If there was a false statement, but the client was not damaged (i.e., *damnum absque injuria*) the reputation of the practitioner in particular and his profession in general would have been tarnished.

We feel the public's confidence and practitioners' circumspection would be understandably multiplied by appropriate action to determine whether there has in fact been a breach of trust and the spirit of the Canons.

DATED this 24th day of March, 1959.

*See, DR 1-102(A)(4), (5), (6) and DR 7-102(A)(5), Idaho Code of Professional Responsibility.