

ETHICS OPINION
#120

This opinion addresses the question of whether a member of the Idaho State Bar may properly represent a client in the execution of a small claims judgment.

It is axiomatic that members of the Bar must comply with state statutes in the conduct of their law practice. Knowing violation of a statute would be a per se ethical violation.

Idaho Code Section 1-2308 provides:

No attorney-at-law * * * shall concern himself or in any manner interfere with the prosecution or defense of such [small claim] litigation in said department * * *.

The language of that section is very broad, and has been construed so as to prohibit even peripheral involvement by a lawyer in the preparation and presentation of small claim cases.

The above prohibition notwithstanding, it is clear that a member of the Bar may represent a client in the appeal of a small claim. Frizell v. Swafford, 104 Idaho 823, 663 P.2d 1125 (1983).

An apparently unanswered question, however, is whether a lawyer may participate in the execution of a judgment acquired in small claims court. Rule 81(j) of the Idaho Rules of Civil Procedure describes the process for execution on such a judgment. Some of the language of that rule could be construed to prohibit involvement by a lawyer:

Execution upon a judgment entered in the small claims department * * * and shall be prepared by the claimant * * *; provided the clerk may assist in the preparation of the execution form when requested by the claimant * * *.

The actual practice in the magistrate courts apparently varies from jurisdiction to jurisdiction with regard to the latitude given to court clerks to assist small claimants in execution of judgment.

Once a small claim judgment becomes final, it is the opinion of the Committee that the matter is no longer a "small claim proceeding," and therefore would cause no violation of Idaho Code 1-2308. Unless and until a court interprets this statute differently, we are of the opinion that 1-2308 and IRCP 81(j) should not be read so as to make such involvement an ethical violation.