

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-139
Issued: March 1976

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: A complaint is filed against a lawyer pursuant to RAP 3.160 and is considered and dismissed by the inquiry tribunal. If the lawyer then sues the complainant for damages for filing the complaint may he attach the disciplinary complaint as an exhibit to the complaint for damages?

Answer: No.

References: DR 1-103(A), 7-102(A)(1); RAP 3.150, 3.160; Massengale v. Lester, 403 S.W.2d 701 (Ky. 1966)

OPINION

A lawyer may not file an action on behalf of a client merely to harass or maliciously injure another, DR 7-102(A)(I); and he may not knowingly advance a claim unwarranted under existing law unless he can support it by a good-faith argument for the extension, modification, or reversal of existing law, DR 7-102(A)(2). We believe these rules apply to the claims of lawyers themselves.

If the disciplinary complainant was a member of the Kentucky Bar Association, he is absolutely immune from liability in the action the lawyer has filed here under RAP 3.160(b). The policy behind the grant of immunity in this rule is obvious and is set out in DR 1-103(A). No lawyer could in good faith expect a Kentucky court to disregard this rule. Accordingly, if the disciplinary complainant was a member of the Association, the action for damages was merely frivolous and vexatious and it was improper to file it.

We reach the same conclusion if the disciplinary complainant was not a member of the Association. RAP 3.150 provides that “[n]othing connected with a disciplinary case shall be made public unless ordered by the Court.” The application for this opinion is based on the tacit assumption that when the lawyer filed his action, the disciplinary complaint thereby became a matter of public record. We believe this assumption is correct and that the lawyer has clearly violated RAP 3.150 by filing his action.

We realize that such an application of RAP 3.150 in effect bars any action such as the one the lawyer has filed. This result should not startle anyone, because most such actions would be barred by settled law outside RAP 3.150 anyway. Statements in pleadings filed in judicial

proceedings, if material, relevant, or pertinent to the issues involved, are absolutely privileged, even if made maliciously, Massengale v. Lester, 403 S.W.2d 701 (Ky. 1966). We have no doubt that a disciplinary complaint filed pursuant to RAP 3.160 falls within this rule.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.