

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 88-33**

Issued December 20, 1988

*[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]*

**SYLLABUS:** It is not a violation of the Code of Professional Responsibility for a criminal defense lawyer to file a “blanket” motion to suppress on behalf of his or her client. However, no lawyer, in appearing in his or her professional capacity before a tribunal, shall state or allude to any matter that he or she knows to be false. Given the time constraints of some criminal cases, a criminal defense lawyer cannot be required to always conduct a complete investigation of a client’s case prior to filing a motion to suppress.

**OPINION:** We have before us your request for an advisory opinion on whether it is a violation of the disciplinary rules for a criminal defense lawyer to file a “blanket” motion to suppress in an OMVI case. In your particular situation, you filed a motion to suppress on behalf of a client, which contained specific reasons for the suppression including an allegation that the calibrating officer who checked the calibration of the Intoxilyzer machine was not qualified to do the calibration. According to your request, the motion to suppress was eventually granted, based upon the fact that the State failed to establish as a foundation for admission of the Intoxilyzer results that the instrument had been calibrated by a senior operator.

After final disposition of the case, the prosecutor wrote you a letter claiming that you violated DR 7-106(C)(1) which states,

[i]n appearing in his professional capacity before a tribunal, a lawyer shall not...state or allude to any matter...that will not be supported by admissible evidence.

The prosecutor’s position is that, most likely, there was no question in your mind that the officer did possess a senior operator’s permit when he checked the calibrations of the machine and that, at a minimum, you should have made an inquiry regarding this matter prior to filing the motion to suppress. In your request letter you admit that you knew that the officer was a qualified senior operator.

Anderson’s Ohio Criminal Practice and Procedure, section T23.5, states that a motion to suppress should be specific enough to allow the prosecutor to prepare for the evidentiary hearing. Furthermore, Anderson’s submits that

defense counsel seems well advised to make his motion to suppress as specific as possible. While the shot-gun approach in a motion to suppress is not uncommon, a more persuasive motion to suppress is normally the one that focuses directly on the specific issue or issues that the defendant intends to raise.

We agree with this discussion but do not believe that a blanket motion to suppress or the shot-gun approach rises to the level of a disciplinary violation. It would be impractical to prohibit criminal defense lawyers from stating or alluding to any matter which they know may not be supported by admissible evidence. Moreover, the criminal defense lawyer is required to file any motion to suppress prior to trial. Rule of Crim. Proc. 12(B)(3). Failure to raise any motion to suppress evidence prior to trial would constitute waiver thereof. Rule of Crim. Proc. 12(G). In addition, failure to raise those issues in a motion to suppress, which the criminal defense lawyer is unsure of, threatens interference with a defendant's rights or could lead to an ineffective assistance of counsel claim.

Therefore, it is our opinion that the criminal defense lawyer should not be prohibited from filing a blanket motion to suppress. However, we do not purport to advise that a lawyer is ever permitted to state or allude to any court a fact which he or she knows to be untrue. Clearly, all lawyers are prohibited from ever deceiving any court of law.

In regard to making an investigation prior to filing a motion to suppress, we believe that a criminal defense attorney should make some investigation.

In conclusion, it is our opinion and you are so advised that a criminal defense lawyer may file a "blanket" motion to suppress on behalf of his or her client. However no lawyer, in appearing in his or her professional capacity before a tribunal, shall state or allude to any matter that he or she knows to be false. A criminal defense lawyer is not required under the Code of Professional Responsibility to conduct a complete investigation of a client's case prior to filing a motion to suppress.

**This is an informal, non-binding advisory opinion based upon the facts as presented and limited to questions arising under the Code of Professional Responsibility.**