

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 88-011
Issued June 17, 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[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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: An attorney representing a landlord in an eviction action is not ethically obligated to contact an attorney who might be representing the tenant, even if the landlord's attorney knew the tenant was represented by that attorney for a previous eviction action, which was dismissed without prejudice just two months earlier.

OPINION: We have before us your request for an advisory opinion based upon the following hypothetical facts:

Attorney A represents Landlord seeking to evict Tenant. When Tenant receives a termination notice, Tenant consults Attorney B. Attorney B contacts Attorney A to discuss the matter, but they are unable to resolve the matter out-of-court. Attorney A files an eviction. Attorney B answers on behalf of Tenant. Recognizing deficiencies in the complaint, Attorney A voluntarily dismisses the eviction without prejudice.

Two months later, Attorney A refiles the eviction, but makes no effort to notify Attorney B, even though Attorney A is aware that Attorney B represented Tenant in the same matter just two months earlier. Tenant receives notice of the eviction, but doesn't notify Attorney B, since Tenant assumes Attorney B has been notified by Attorney A or the court. Attorney B does not learn about the eviction until Tenant calls him from court during trial. Tenant is forced to defend herself, but is incompetent to do so. Tenant is evicted.

Your specific question is whether the conduct of “Attorney A” is unethical or unprofessional in any way.

We believe that Attorney A has no ethical obligation to notify Attorney B regarding the eviction action. The attorney for the landlord must effect service of process on the tenant in accordance with Rule 4 of the Rules of Civil Procedure. It is the responsibility of the tenant to notify his or her attorney, if he or she so desires, regarding the notice of eviction.

However, as a professional courtesy, the landlord's lawyer might have tried to determine whether the tenant would be represented by the attorney who previously represented the tenant in a separate eviction action.

In conclusion, it is our opinion and you are so advised that an attorney who files an eviction is not ethically obligated to contact an attorney who represented the tenant in a similar action two months earlier. It is the responsibility of the tenant to contact his or her attorney, if he or she so desires.

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