



## Committee on Professional Ethics

Opinion #456 - 1/5/77 (112-76)

Topic: Suit against former client;  
defamation action by lawyer  
based on complaint filed  
with grievance committee.

Digest: Improper to sue former client  
for defamation where lawyer  
has reason to believe that  
defamatory statements would be  
protected by an absolute  
privilege.

Code: Canon 1  
EC 1-4  
DR 4-101(C)(4)

### QUESTION

May a lawyer sue his former client for defamation on the basis of a complaint filed by that client with a grievance committee of his local bar association?

### OPINION

While lawyers are not generally prohibited from suing their former clients, the ethics of our profession require that lawyers examine carefully the validity of their position and resort to litigation in upholding their personal rights only to prevent manifest injustice. See, N.Y. State 87 (1968); cf., DR 4-101(C)(4).

Lawyers also have a duty to support the institutions of the bar which are intended to maintain public confidence in the profession and to consider the effect of their individual conduct in the light of the ends which such institutions are intended to promote. See, Canon 1 and EC 1-4.

Few institutions of the bar are as intimately involved with the maintenance of public confidence as are its grievance committees. These committees stand ready to hear grievances of all kinds from every quarter, including dissatisfied clients, adverse parties, other lawyers and members of the general public. Upon examination, many of the grievances alleged are revealed to be without merit. Those which are found to be valid can lead to censure, suspension or disbarment. But, whether the grievances are real or imagined, meritorious or otherwise, it is important to the proper functioning of these committees that nothing interfere with the informants' willingness to come forward and impart their grievances.

Whether the alleged grievances warrant further action is a matter left to the determination of these committees and where they have determined that no action is warranted, their investigation casts no disapprobation on the lawyer whose conduct has been questioned. Their files and proceedings are veiled in secrecy and all communications had with them are held in strictest confidence.

Recognizing the important function served by these committees and consonant with the secrecy attendant upon their proceedings, the law of this State extends an absolute privilege to all relevant communications had with them. See, Wiener v. Weintraub, 22 N.Y.2d 330 (1968); Bein v. Lewis, 47 App. Div. 2d 538 (2nd Dept 1975).

Where the lawyer has reason to believe that the statements made by his former client to a grievance committee would be protected by an absolute privilege, the institution of a defamation action against his former client could not be justified as a vindication of his personal rights and would only serve to inhibit or otherwise interfere with the proper functioning of the grievance mechanism. As explained by the Court in Wiener v. Weintraub, supra (at p. 332):

"Assuredly, it is in the public interest to encourage those who have knowledge of dishonest or unethical conduct on the part of lawyers to impart that knowledge to a Grievance Committee or some other designated body for investigation. If a complainant were to be subject to a libel action by the accused attorney, the effect in many instances might well be to deter the filing of legitimate charges. We may assume that on occasion false and malicious complaints will be made. But, whatever the hardship on a particular attorney, the necessity of maintaining the high standards of our bar - indeed, the proper administration of justice - requires that there be a forum in which clients or other persons, unlearned in the law, may state their complaints, have them examined and, if necessary, judicially determined. A lawyer against whom an unwarranted complaint has been lodged will surely not suffer injury to his reputation among the members of the Grievance Committee since it is their function to determine whether or not the charges are supportable. Any other risk of prejudice is eliminated by the provision of the Judiciary Law (§90, subd. 10) which declares that 'all papers \* \* \* upon any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney \* \* \* shall \* \* \* be deemed private and confidential'."

Accordingly, unless the inquiring lawyer is satisfied that the statements made by his former client to the grievance committee are not material and pertinent to their proceedings or otherwise protected by an absolute privilege, it would be improper for him to cause suit to be instituted against his former client in connection therewith.

The foregoing considerations, however, have no application to statements made de hors the committee. The gravamen of our ethical rule lies in the privileged nature of the communication and the secrecy which attends it. By going outside the appropriate grievance mechanism and publicizing his grievance, the former client acts at his peril and invites whatever sanctions the law may provide.

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