

1975 WL 29371 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 7, 1975

***1 Re: State v. Edgar E. Huff, Jr. Jury Trial 12/13/74**

Honorable Clyde Borders
Magistrate
Blacksburg, South Carolina

Dear Judge Borders:

Mr. J. C. Coleman of this Office has asked that I respond to an inquiry concerning the conduct of the defense attorney in the above action. The use of substitute defendants in criminal trials has in some cases been condoned. However, these cases have been times when identification is a substantive issue in the trial.

In all cases, it is the duty of the defense attorney, if he deems it necessary to substitute defendants, that he inform the court of his intention prior to the trial. The American Bar Association's Standing Committee on Professional Ethics has taken a very dim view of such trickery by an attorney; this is not to say that there is not a situation which would allow substituted defendants. In Informal Opinion No. 914 (1966), the Standing Committee found that a lawyer who participated in the substitution of defendants would be guilty of unethical conduct. The committee pointed out that the attorney's oath specifically provides that an attorney will never seek to mislead the judge or jury by any artifice.

I refrain from forming any opinion as to whether or not the attorneys in this case were guilty of professional misconduct. I merely point out that whether or not the use of substitute defendants is ethical rests on whether or not the attorney is attempting to mislead the court and the jury or whether the attorney is honestly trying to show an identification issue.

Sincerely,

A. Camden Lewis
Assistant Attorney General

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