



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rule of Professional Conduct 8.4(g). This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion No. 87-7
January 29, 1988**

Topic: Duty to Adversary System

Digest: A lawyer should not threaten disciplinary action against a party who is a lawyer to obtain an advantage in a civil matter.

Ref: Rules 1-103, 7-102, 7-105
EC 7-21

FACTS

A lawyer files a civil action for damages against a former client. The former client's new lawyer threatens to file a complaint with respect to the prior representation with the disciplinary commission if the civil action is not settled favorably to the former client.

QUESTION

Is it ethically proper to coerce a settlement of a civil action by threatening disciplinary action against a party who is a lawyer?

OPINION

Rule 7-105 of the Illinois Code of Professional Responsibility expressly prohibits threatening to

present criminal charges, in contrast to administrative or disciplinary charges, to obtain an advantage in a civil matter. The rationale for this rule is explained in ISBA Ethical Consideration 7-21, which states:

The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole. Threatening to use, or using, the criminal process to coerce adjustment of private civil claims or controversies is a subversion of that process; further, the person against whom the criminal process is so mis-used may be deterred from asserting his legal rights and thus the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system.

The Committee believes that the same reasoning should apply to threats of administrative or disciplinary action. The Attorney Registration and Disciplinary Commission was created to license and discipline lawyers. It is not intended to settle disputes between private parties. Threatening to use the lawyer disciplinary process to coerce adjustment of private claims would subvert that process as well as deter the target lawyer from asserting his or her legal rights in the civil action. Thus, the use of threats of disciplinary action to influence civil litigation would compromise both the disciplinary system and the civil adjudicative process.

The Committee also believes that threatening disciplinary action to influence civil litigation would violate Rule 7-102(a) (1). That rule provides that in representation of a client, a lawyer shall not "file a suit, assert a position...or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another."

While the Committee believes that threatening to initiate disciplinary proceedings to influence a civil action is improper, the Committee notes that Rule 1-103 may require a lawyer possessing unprivileged knowledge of certain ethical violations to report such knowledge to the appropriate authority.

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