

You advise that you represent a client who has been harassed and embarrassed by another individual. Your client has suffered mental anguish as a result of this other individual's public accusations and threats. This individual has repeatedly trespassed on your client's private property after being forbidden to do so both orally and in writing by your client. You have drafted a letter on behalf of your client to be sent to this individual threatening the individual with criminal prosecution should this individual continue to trespass on your client's property and to defame your client's character.

You wish to know whether or not this letter violates DR:7-104 of the Code of Professional Responsibility.

DR:7-104 states that "a lawyer shall not present, participate in presenting, or threaten to present criminal or disciplinary charges solely to obtain advantage in a civil matter."

You assure the Committee that there is no lawsuit pending, nor is the client (or the attorney on behalf of the client) seeking monetary payment by way of damages or settlement. However, you state in the letter you drafted to the individual harassing your client that "I represent X who has retained me to take action against you for defamation of character, intentional infliction of emotional stress and violation of the criminal statutes of the Commonwealth of Virginia." The letter goes on to say that "... the purpose of this letter is to put you on notice of the nature and extent of your outrageous conduct toward him"

The letter contains a list of criminal code sections which have allegedly been violated, including citations to the maximum penalties for each. You advise in the letter that you have directed your client to secure a warrant for the individual's arrest should the individual violate any of the criminal prohibitions. You also state that "if you fail to respect these prohibitions, then in addition to such criminal penalties as the law may impose, I will commence an action against you for compensatory and punitive damages."

Based upon your statements, the Committee opines that you are threatening criminal prosecution in the civil matter. However, the Committee, based upon your assertions, believes that you did not write the letter to gain an advantage in a civil matter, but to stop the harassing actions. When it appears that a letter was sent to stop a certain action rather than to gain an advantage in a civil matter, there is no violation of DR:7-104. The Committee bases its opinion on the facts of your letter. Should the letter be sent to gain an advantage in the civil matter, there would be a violation of DR:7-104.

Committee Opinion
May 23, 1988