

You have advised that plaintiff's counsel has written defendant's counsel and demanded settlement in a specified amount. The same communication stated that a motion for sanctions would be brought if settlement was not reached promptly.

You wish to know whether filing a motion for sanctions for noncompliance with counsel's request constitutes an abuse of the provisions for sanctions or is in violation of DR:7-104 of the Virginia Code of Professional Responsibility, which provides as follows:

A lawyer shall not present, participate in presenting, or threaten to present criminal or disciplinary charges solely to obtain an advantage of a civil matter.

Under the limited facts presented in your inquiry, the Committee believes that the threat to file a motion for sanctions under Rule 11, Federal Rules of Civil Procedure or § 8.01-271.1, Code of Virginia, is not an abuse of the provisions for sanctions, assuming that there is a basis for said action, nor is it in violation of DR:7-104.

In the Committee's view, LE Op. 760 is dispositive of your inquiry.

Committee Opinion
October 28, 1988