

You have inquired as to whether misconduct under the Virginia Code of Professional Responsibility addresses one attorney's negative characterizations of an opposing attorney's competence and integrity while engaged in negotiations and not while involved in any judicial process. The circumstances you describe also include the attorney's threat of civil action against the opposing attorney and client, and the indication that all characterizations, accusations and threats were made in a loud, angry and offensive manner.

The Committee is of the view that the appropriate and controlling rule in this situation is DR:7-102, which addresses the lawyer's representation of a client within the bounds of the law. In particular, DR:7-102(A)(1) prohibits a lawyer from a filing a suit, initiating criminal charges, asserting a position, conducting a defense, delaying a trial, or taking 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. Thus, if the opposing attorney's impugning of the first attorney's integrity and competence is undertaken merely for the purpose of harassment or malicious injury, such conduct would be improper. Whether such conduct was undertaken merely for the purpose of harassment is a question for the Disciplinary Committee upon the filing of a complaint. Your obligation to file a complaint is governed by DR:1-103.

Furthermore, while aspirational in nature and not mandatory, the Committee strongly urges a lawyer's adherence to Ethical Considerations 7-10 [EC:7-10] and 7-34 [EC:7-34]. Ethical Consideration 7-10 suggests that:

The duty of a lawyer to represent his client with zeal does not militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm."

In addition, EC:7-34 is instructive in its indication that:

"[While] [i]n adversary proceeding, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer in his conduct, attitude, and demeanor towards opposing lawyers. A lawyer should not make unfair or derogatory personal reference to opposing counsel. *Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.* " (emphasis added)

Although the usual prohibition against a lawyer's use of derogatory remarks is related to his or her conduct in a judicial forum, the Committee believes that, in any situation, the lawyer is required to balance his zealous representation of his client with the decorum necessary to maintain the integrity of the profession. (See *In re Goude*, S.C. Sup. Ct. No. 22920, 11-14-88; *Columbus Bar Association v. Reibel*, 69 Ohio St. 2d 290, 432 N.E.2d 165 (1982); Maru, *Digest of Bar Association Ethics Opinions*, 4724 (West Virginia Bar Association Opinion 201, undated))

Finally, it is the opinion of the Committee that while the filing of suit in derogation of DR:7-102(A)(1) would be violative of the Virginia Code of Professional Responsibility, the threat of filing such a suit does not violate DR:7-104, since the matter does not involve a threat to present criminal or disciplinary charges solely to obtain an advantage in a civil matter. (See LE Op. 760)

Committee Opinion
March 10, 1989