

MISCONDUCT — THREATENING
CRIMINAL OR DISCIPLINARY
CHARGES: ATTORNEY DEMAND
LETTER STATING CIVIL AND
CRIMINAL PENALTIES FOR FAILURE
TO SETTLE BREACH OF CONTRACT
CLAIM.

Attorney A was employed as general counsel for a corporation while a member of the bar of another jurisdiction. After Attorney A's employment with the corporation was terminated, the corporation felt it had fully compensated Attorney A, who believed he was due additional compensation. Attorney A subsequently became admitted to the Virginia State Bar and became associated with a District of Columbia law firm which maintains an office in the Commonwealth of Virginia.

Attorney B, affiliated with A's new firm, sent a letter to the corporation indicating that it represented Attorney A and demanding that the corporation pay both back salary and severance pay to Attorney A. The letter did not reveal that Attorney A was associated with the firm, but the letter stated:

If you would like to avoid litigation in this matter, I suggest you call me immediately. Please understand that your failure to pay Attorney A is not only a breach of contract, but also a violation of Virginia law which could subject you to civil and *criminal* penalties. Attorney A has every right to report you to the Virginia Department of Labor and Industry. However, we would like to resolve this matter amicably.
[emphasis added]

The Committee has been asked to opine whether, under the facts of the inquiry, the demand letter is violative of DR:7-104(A) as to (1) Attorney A, (2) the law firm with whom Attorney A is associated and/or (3) Attorney B (who is not a member of the Virginia State Bar).

The Committee opined that, if Attorney A authorized the use of the language quoted above, Attorney A's conduct, in authorizing Attorney B to refer to possible criminal penalties for failure to pay back pay, was improper under the dictates of DR:7-104(A) and DR:1-102(A)(1).

The Committee found that, since the attorney-client relationship is a personal one, the law firm entity cannot be found to have committed ethical violations as to the letter.

The Committee directed attention to DR:1-103(A), which mandates reporting to the appropriate authority when an attorney has knowledge of another attorney's misconduct which raises a substantial question as to that lawyer's fitness to practice law in other respects. Whether an attorney's conduct is such that it raises a "substantial question as to that lawyer's fitness to practice law in other respects" requires a case-by-case determination which should be made after consideration of the facts and analysis of the impact on the offending lawyer's fitness to practice law.

The Committee opined that Attorney B is not subject to the Virginia Disciplinary Rules since he has not been admitted to practice in this jurisdiction. The Committee suggested, however, that his conduct may be of interest to the disciplinary body of the jurisdiction in which he is licensed to practice. [DR:1-102(A)(1), DR:1-103(A), DR:7-104(A); LE Op. 715, LE Op. 716, LE Op. 776, LE Op. 1233, LE Op. 1308; *In re Himmel*, 125 Ill.2d 531, 533 N.E.2d 790 (1988).]

October 21, 1991

Editor's Note. – Overruled in part by L E Op. No. 1528. See footnote 1 of the opinion for scope.