

THREATENING CRIMINAL OR
DISCIPLINARY CHARGES:
THREATENING SANCTIONS AGAINST
AN ATTORNEY FOR A PROPOSED
LAWSUIT.

You have presented a hypothetical situation in which Attorney A has expressed his intention to file a lawsuit, which is well-grounded in facts and law or a good-faith modification of the law. In response to A's [announced] intention, Attorney B has threatened sanctions. You state that Attorney B is unaware of any evidence A may have in support of A's proposed lawsuit.

You have asked the committee to opine whether, under the facts of the inquiry, it is proper for an attorney to threaten sanctions against another attorney for a proposed lawsuit without first inquiring into the facts of the proposed suit, particularly when it is known to both counsel that a circuit court case shows that A may have a valid cause of action.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:7-104, which states that a lawyer shall not present, participate in presenting, or threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

The committee has previously opined that even where the sole purpose is an intent to induce settlement of a pending case which otherwise would not be forthcoming, a threat to file a motion for sanctions, under either Rule 11, Federal Rules of Civil Procedure, or § 8.01-271.1, Code of Virginia, is not the same as a threat to institute disciplinary action as prohibited by DR:7-104. *See* LE Op. 760, LE Op. 1166. The committee therefore opines that B's threat to file for sanctions is not a violation of DR:7-104.

The committee, however, is of the opinion that B has a professional responsibility to ascertain that a claim has not been made for the purpose of harassment or malicious injury, but rather has been formed after reasonable inquiry. *See* LE Op. 1190. Similarly, the committee directs your attention to comply with the requirements of DR:7-102(A)(2) which prohibit an attorney from knowingly advancing a claim or defense that is unwarranted under existing law except under certain circumstances. If it is determined that B's threat is undertaken merely for the purpose of harassment or malicious injury, such conduct would be improper under DR:7-102(A)(1). Whether such conduct was undertaken merely for the purpose of harassment requires a factual determination which is beyond the purview of this committee. Such a determination would be made by the appropriate disciplinary authorities upon the filing of a complaint.

Committee Opinion
July 21, 1994