

Committee Opinion
February 15, 1988

LEGAL ETHICS OPINION 1036

ATTORNEY – THREATENING
CRIMINAL CHARGES.

You advise that you represented a contractor, and Attorney B represented the owner of three buildings. The owner had brought two suits against your client and your client brought one counterclaim against the owner. The owner had given a deed of trust on one of his buildings, securing one of the notes on which the contractor had sued. You advised your client to institute foreclosure on the deed of trust after being faced with numerous continuances while waiting to get to trial on your client's counterclaim. Your client decided to foreclose.

After sending the certified notice, you received a letter from counsel for the owner. In this letter, counsel for the owner informed you that in addition to the contractor, the owner would hold you "personally liable for any damage to their business or business' reputation by the publication of the notice of the trustee's sale."

You wish to know whether or not the owner's attorney violated the Virginia Code of Professional Responsibility by sending you this letter.

Disciplinary Rule 7-104 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." Assuming that there is a basis for an action it does not appear that the letter the owner's attorney sent you violates DR:7-104. However, should no basis for the threatened action exist, there may then be a violation of DR:7-102(A)(1). DR:7-102(A)(1) states that a lawyer shall not "file a suit, initiate criminal charges, assert a position, conduct a defense, delay a trial or take other action on behalf of his client when he knows or when it is obvious that such action would merely serve to harass or maliciously injure another."

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