

Committee Opinion
February 22, 1989

LEGAL ETHICS OPINION 1185

MISCONDUCT: ATTORNEY
CONVICTED OF TRESPASSING AND
DISTURBING THE PEACE FOR
PARTICIPATION IN PROTEST.

You have inquired about a situation in which an attorney willfully participates in a protest against the abortion of unborn children at a hospital, clinic, or other building at which abortions are performed. In the course of participating in the protest, the attorney willfully assists in blocking access into the building by persons seeking abortions and is subsequently convicted of charges of trespassing and disturbing the peace or is convicted of some other misdemeanor based on the set of facts.

You wish to know whether such conduct or conviction is a violation of DR:1-102 or § 54-74, replaced by § 54.1-3935, of the Code of Virginia; or, does such conduct or conviction constitute "misconduct" as that term is defined in Paragraph 13 of Part Six, § Four of the Rules of Court, where the attorney's conduct is based on his belief that abortion is tantamount to murder.

For the purposes of this opinion, the Committee will assume that the lawyer is acting outside the scope of his or her professional capacity, and that he or she has not taken representation of any member of the protest group.

The Committee believes the appropriate and controlling rule relative to your inquiry is DR:1-102(A)(3), which provides that a lawyer shall not commit a crime or other deliberate wrongful act that reflects adversely on the lawyer's fitness to practice law.

"Misconduct" is defined by the Virginia Code of Professional Responsibility as any malpractice or any unlawful or dishonest or unworthy or corrupt or unprofessional conduct as defined in § 54.1-3935(A), formerly § 54-74(6), of the Virginia Code and any violation of the Code of Professional Responsibility. Misconduct may also mean conviction of a criminal offense, other than specific crimes, which reflects upon the fitness of an attorney to practice law. The specific crimes enumerated in Paragraph 13 of the Rules of Court include: (a) any offense declared to be a felony by federal or state law; (b) any other offense, whether federal or state, involving theft, fraud, forgery, extortion, bribery or perjury; or (c) an attempted solicitation or conspiracy to commit any of the foregoing.

Under the facts of your inquiry as you have presented them, the Committee would opine that misdemeanor convictions of trespass or disturbing the peace do not rise to the level of a crime or deliberate wrongful act that would reflect adversely upon the lawyer's fitness to practice law. Similarly, the attorney's actions do not constitute "misconduct" as defined in the Code of Professional Responsibility. In the view of the Committee, the actions and subsequent misdemeanor convictions of this attorney are not demonstrative of a lack of honesty, trustworthiness or fitness as a lawyer in other respects. However, the Committee is of the view that frequent and/or continual misdemeanor convictions of this nature may result in more serious professional consequences.

Committee Opinion
February 22, 1989

In addition, § 54.1-3935(A) of the Code of Virginia provides that revocation of an attorney's license is appropriate when there is evidence that he has been convicted of a misdemeanor involving "moral turpitude." Moral turpitude has been broadly defined as:

"[A]n act of baseness, vileness or depravity in the private and social duties which man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man." /1

The determination of the "moral turpitude" aspect of a crime is a legal issue and is beyond the purview of this committee.

Further, the Committee would direct your attention to ABA Formal Opinion No. 336, dated June 3, 1974, in which the Standing Committee on Ethics and Professional Responsibility held that a lawyer must comply with the applicable rules at all times, whether or not he or she is acting in a professional capacity. The Committee believes that freedom of expression does not allow an attorney to break the law; a lawyer, especially, should not engage in conduct that would tend to lessen the public confidence and integrity of the legal profession. (See EC:1-5)

Committee Opinion
February 22, 1989

FOOTNOTES

/1 Attorney Grievance Commission v. Walman, 280 Md. 453, 459, 374 A.2d 354, 358 (1977).