

You have presented a hypothetical situation in which a Virginia attorney ("the complaining attorney"), who practices with a firm, has filed or is considering filing an ethical grievance against another Virginia attorney ("the subject"), who practices with another firm. The complaining attorney consults with other attorneys participating in the matter out of which the grievance arose but does not seek advice or permission from his firm before filing the grievance. The complaining attorney believes that, ethically and legally, such grievances should be kept confidential and that they are the individual responsibility of each attorney.

After the grievance is filed, the subject of the grievance, or another attorney in his firm, communicates with the complaining attorney's firm. The intent of this communication may be disputed. Afterwards, however, the complaining attorney's firm requests or implies that the attorney consider withdrawing the complaint because of possible ramifications to the firm's business (e.g., referrals from the subject attorney's firm). The firm also instructs all firm attorneys to consult with firm management before filing any future grievances. You state that firm management's role in this process is not clear, however, you are concerned that this incident suggests that firm management would consider potential impact on firm business to be a consideration before filing a grievance.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:1-103(A), which provides that a lawyer having information indicating that another lawyer has committed a violation of the Disciplinary Rules that raises a substantial question as to that lawyer's fitness to practice law in other respects, shall report such information to the appropriate professional authority, except as provided in DR:4-101; and DR:1-102(A)(2), (3) and (4) which respectively prohibit a lawyer from circumventing a Disciplinary Rule through the actions of another, from committing a crime or other deliberately wrongful act, and from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation when any of those activities reflect adversely on a lawyer's fitness to practice law.

The Committee responds to your inquiries relative to the facts you have presented as follows:

1. With regard to whether an attorney may consult with other attorneys of his firm before deciding whether to file an ethical complaint with the Bar, the Committee directs your attention to EC:4-2. Ethical Consideration 4-2 provides that unless the client otherwise directs, a lawyer may disclose the affairs of his client to partners or associates of his firm. Thus, the Committee is of the opinion that an attorney may consult with other attorneys in his firm before making the decision whether to file an ethical complaint.

Committee Opinion

March 23, 1992

2. With regard to whether an attorney may be required to consult with firm members before filing an ethical complaint, the Committee is of the opinion that such requirement would be in violation of DR:1-103(A) in that the employer/firm may be perceived as pressure on the lawyer to refrain from reporting misconduct in derogation of his obligation to do so. Since such a requirement may have a chilling effect on the attorney's responsibility to report misconduct, the Committee is of the opinion that the law firm may not require such consultation, but recognizes that reasonable policies which encourage it do not violate DR:1-103(A).

3. As to the obligations of an attorney who believes another attorney has committed an ethical violation but who has been requested or instructed by his firm not to pursue an ethical complaint, the Committee believes that DR:1-103(A) is controlling. The Committee directs your attention to EC:1-4 which advises that the integrity of the legal profession can be maintained only if conduct of lawyers in violation of the Disciplinary Rules is brought to the attention of the proper officials. The Committee has also previously opined that an attorney has an obligation to report violations of the Disciplinary Rules even when the attorney believes or has cause to believe that some other party has reported the misconduct. See LE Op. 838. In the facts you present, therefore, the Committee opines that an attorney who believes that another attorney has committed a disciplinary violation that raises a substantial question as to that lawyer's fitness to practice law in other respects has an obligation to report the misconduct, regardless of whether his firm has requested or instructed him not to do so.

4. In response to your inquiry as to the factors to be considered by an attorney before making an ethical complaint, the Committee refers you to prior LE Op. 1004 which articulates the two-prong test to be satisfied under DR:1-103(A) before the obligation to report misconduct arises: (1) the lawyer must have information indicating that another lawyer's conduct has violated one of the Disciplinary Rules and (2) that violation must raise a substantial question as to that lawyer's fitness to practice law in other respects.

5. With regard to whether it is appropriate for the attorney to consider the potential economic or business impact upon his firm in deciding whether to make an ethical complaint, the Committee believes that the attorney's obligation towards maintaining the integrity of the profession clearly should override such considerations. Thus, the Committee is of the opinion that potential economic or business impact is not an appropriate factor to consider in deciding whether to make a complaint.

6. As to whether it is appropriate for the reported attorney to contact the reporting attorney or his firm about the grievance, the Committee is unaware of any Disciplinary Rules which would prohibit such communication. The Committee is of the view that if the reported attorney asserts or implies that the reporting attorney or his firm will be economically impacted unless the complaint is withdrawn, the reported attorney may be violating DR:1-102(A) (2, 3, or 4).

7. Finally, with regard to whether it is appropriate for an attorney to request withdrawal of an ethical complaint at the request of other firm members, the Committee is of the

Committee Opinion

March 23, 1992

opinion that the decision to make or request the withdrawal of an ethical complaint rests with the individual attorney, and that it is improper for the attorney's firm to direct that decision. Moreover, the Committee cautions that any request by the reporting attorney to withdraw a complaint may not be controlling. See Virginia State Bar Council Rules of Disciplinary Procedure, Rule V(E). The Committee also opines that since economic or business reasons are not appropriate considerations in deciding whether to make a complaint, they are likewise not appropriate concerns in deciding whether to withdraw one.