

Committee Opinion
February 17, 1995

LEGAL ETHICS OPINION 1621

THREATENING DISCIPLINARY
CHARGES FOR CIVIL ADVANTAGE;
SUSPENSION OF PROFESSIONAL
LICENSE OF PARTY DELINQUENT IN
CHILD SUPPORT.

You have presented a hypothetical situation in which Attorney represents obligee, as set forth in Code of Virginia § 63.1-263.1, in the obligee's efforts to get the obligor to pay delinquent child support. The obligor under that statute is delinquent and holds a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued to the obligor by the Commonwealth pursuant to Title 22.1, Title 38.2, Title 46.2, or Title 54.1, or some other provision of law.

You have asked the committee to opine whether, under the facts of the inquiry, it is permissible for the lawyer representing the obligee to threaten the obligor with suspension proceedings under Code § 63.1-263.1 in order to obtain the delinquent payments for the attorney's client, the obligee.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:7-104(A), which provides 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 repeatedly and consistently interpreted DR:7-104 as applicable to attorney disciplinary proceedings. *See* LE Op. 760, LE Op. 1166, LE Op. 1214, LE Op. 1309, LE Op. 1338.

The committee understands that Va. Code § 63.1-263.1 includes a thirty day notice requirement and further that the statutory provision constitutes an administrative enforcement process. The committee is of the opinion, therefore, that the threatened use of the enforcement power available under the Code section does not constitute a threat of either criminal or disciplinary action. Thus, the committee opines that it would not be improper or violative of DR:7-104 for the lawyer representing the obligee to threaten the obligor with suspension proceedings under the relevant Code section in order to obtain the delinquent payments for the attorney's client, the obligee.