

ADVISORY ETHICS OPINION 82-10

SYNOPSIS:

A lawyer may not threaten in a collection letter to present criminal charges, either directly or indirectly.

OPINION:

Our opinion is requested on the ethics of including the following sentence in a lawyer's collection letter involving checks returned for insufficient funds:

“. . . You should be aware that it is illegal under the law of the State of Vermont to write a check knowing you have insufficient funds to cover the same.”¹

ABA Informal Opinion 1427, “Threatening Criminal Action in Collection Letter to Client’s Debtor,” August 15, 1978, cited EC 7-21 and found the following language to violate DR 7-105 of the Code:

“. . . [the client] may well have to consider resort to criminal process.”

While it can be argued that the language considered in the ABA Opinion is more direct in threatening presentment of criminal charges than the language about which we are asked to opine, we do not believe the debtor would recognize the distinction. Certainly there is no distinction between the desired effects of including one or the other in a collection letter on a lawyer’s letterhead.

We find that indirect threat of the language presented to be equally violative of DR 7-105.

¹ The accuracy of the sentence is assumed for the purposes of this Opinion.