

ADVISORY ETHICS OPINION 94-07

SYNOPSIS:

An attorney must seek to further the lawful objective of his client by all reasonable means so long as his client's sole objective is not to harass or maliciously injure another.

FACTS:

Attorney A represented a tenant in an auction brought by husband and wife landlords. The tenant counterclaimed and prevailed. The judgment entered against the landlords included attorney's fees.

The landlords refused to pay the judgment despite the tenant's offer to accept monthly payments. This resulted in post judgment collection efforts and an award of additional attorney's fees.

At this point, some of the judgment amount has been collected as a result of the post judgment collection activities by the attachment of the landlords' bank accounts, but several thousand dollars of the judgment remains uncollected. The landlord/husband is now unemployed. The landlord/wife is employed. They have at least one child and own their own home. The rental property has been sold to avoid foreclosure. Attorney A seeks our opinion as to whether he may zealously continue his efforts to collect the balance of the judgment from the landlords against their only remaining assets, the landlord/wife's wages and their home.

DR 7-101(A)(1) provides that a lawyer shall not intentionally fail to seek the lawful objective of his client through reasonably available means permitted by law.

DR 7-102(A)(1) provides that an attorney shall not take a position or action on his client's behalf when he knows or it is obvious that such action will merely serve to harass or maliciously injure another. In the instant case, Attorney A has advised us that he believes his client simply wishes to collect the monies to which he is entitled under the judgment and that he is not motivated solely by the desire to harass or maliciously injure the landlords. Accordingly, Attorney A has an obligation to pursue his client's collection efforts by all reasonable means.

If Attorney A believes that he may be able to obtain trustee process against the earnings of the landlord/wife, he must pursue that course, if directed to do so by his client. We presume for purposes of this opinion that Attorney A has already recorded a certified copy of the judgment order in the land records of the town in which the landlords' home is located, establishing a lien against that property for a period of eight years. If Attorney A believes that the foreclosure of that lien can reasonably be expected to further his client's collection efforts, he must pursue that course if directed to do so.