



Committee on Professional Ethics

Opinion #293 - 5/23/73 (21-73)

Topic: Claim letters: threatening
suit

Digest: Improper for lawyer to
threaten suit if client's
claim not paid where lawyer
knows that suit will not be
instituted

Code: DR 1-102(A) (4); 7-102(A) (5)
EC 9-1; 9-6

QUESTION

Does an attorney's letter which states that suit will be commenced if a debtor fails to make payment constitute a violation of the Code if there is in fact no intention to commence suit either because it is not economically feasible due to the smallness of the claim or for any other reason?

OPINION

The Code is explicit in condemning conduct involving fraud, deceit, or misrepresentation. DR 1-102(A) (4) provides that "A lawyer shall not ... Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." DR 7-102(A) (5) provides that "In his representation of a client, a lawyer shall not ... Knowingly make a false statement of law or fact." EC 9-1 provides in part that "A lawyer should promote public confidence in our system and in the legal profession." EC 9-6 provides in part that "Every lawyer owes a solemn duty to uphold the integrity and honor of his profession....."

Disregard of these mandates and principles cannot be justified on the ground of zeal for the promotion of a client's interest, or by the economic factors which may affect a client's decision whether or not to engage in litigation.

If in a particular situation a lawyer knows that a suit will not be instituted, a letter representing that such suit will be commenced would constitute a violation of the Code and would be improper.
