New York State Bar Association
Committee on Professional Ethics

Opinion 1307 (10/21/2026)

TOPIC: Reporting an adverse party's immigration status

DIGEST: An attorney may not report an adverse party's immigration status to ICE solely to obtain an advantage in civil litigation. Where such a report would result in criminal charges, it would violate Rule 3.4(e). Where the report triggers the adverse party's detention or removal so that they are unavailable to testify, the report would violate Rule 3.4(a)(2) (making a person unavailable as a witness) and Rule 8.4(d) (conduct prejudicial to the administration of justice). Advising or directing the clients to report the allegedly undocumented adverse parties to ICE would therefore violate Rule 8.4(a) (violating or attempting to violate the Rules of Professional Conduct, inducing another to do so, or doing so through the acts of another).

RULES: 1.2(a), 1.4(a), 3.4(a) & (e), 4.4(a), 8.4(a) & (d)

FACTS:

1. The inquiring attorney represents two unrelated clients, in two unrelated matters. The first client is a property owner in a housing court matter, seeking to evict a tenant for non-payment of rent. The second client is a wife in a divorce proceeding. In both cases, the inquirer and his respective clients believe that the adverse parties (the tenant and the husband) are in the United States without legal immigration status.

2. The inquirer believes that the tenant's removal would impair tenant's ability to oppose the eviction proceeding, making it easier to evict the tenant.

3. Similarly, the inquirer believes the husband's removal would materially impair the husband's ability to participate in the New York divorce proceeding, which would increase the likelihood that the client wife could avoid sharing custody of their child and could avoid paying alimony to the husband.

4. The inquirer is contemplating informing U.S. Immigration and Customs Enforcement ("ICE") about the immigration status of the two adverse parties in order to gain an advantage in the pending cases.

QUESTIONS:

5. A. May the inquirer personally report the two adverse parties (tenant and husband) to ICE to gain an advantage in the pending cases?

B. May the inquirer inform his respective clients that reporting the adverse parties to ICE is an option?

C. May the inquirer recommend that the respective clients report the allegedly undocumented adverse parties to ICE anonymously?

OPINION:

6. This Committee's jurisdiction is limited to interpreting the New York Rules of Professional Conduct (the "Rules") and does not extend to any questions of law. To the extent the inquirer seeks guidance on his obligations under federal immigration law, that is beyond the scope of this Committee's jurisdiction. For purposes of this opinion, we assume there is no legal obligation to report people lacking legal immigration status to ICE.

7. Rule 1.2(a) of the Rules states that "a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued." Together Rules 1.2(a) and 1.4 contemplate the client has the right to decide the "objectives" of the representation but lawyer will consult with and discuss with the client the various "means" by which a client's objectives may be met.

8. Comment [2] to Rule 1.2 states:

> On occasion . . . a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Because of the varied nature of the matters about which a lawyer and client might disagree, and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved.

9. Several provisions in the Rules affect the lawyer's advice to the client in this situation.

Rule 3.4(a) and Rule 3.4(e)

10. Rule 3.4(e) states that a lawyer shall not "present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter**.**" On its face, this provision is limited to filing (*i.e.,* "presenting") or "threaten[ing]" to file "criminal charges." The inquiry here does not mention threats. Indeed, the third question (regarding anonymous reporting) implies that the client would not want the adverse party to know about the source of the report to ICE, which a threat would be likely to unmask. But the inquiry does involve "presenting" charges to ICE. We must therefore ask whether a complaint to ICE would constitute criminal charges. Certain immigration matters clearly are civil matters tried in immigration courts. Others, including charges of illegal entry, may be criminal matters. Such issues are legal questions that are beyond our jurisdiction. In N.Y. State 772 (2003), this Committee opined that the predecessor to Rule 3.4(e) in the Code of Professional Responsibility did not apply to filing a non-criminal complaint with an administrative agency because the language of the rule referred only to criminal charges.

11. Rule 3.4(a)(2) prohibits a lawyer from making a witness unavailable. Specifically, Rule 3.4(a)(2) provides that a lawyer shall not "cause a person to hide or leave the jurisdiction of a tribunal for the purpose of making the person unavailable as a witness." The act of reporting an adverse party to immigration authorities for the purpose of triggering their detention or removal is a direct attempt to "cause a person to ... leave the jurisdiction of a tribunal for the purpose of making the person unavailable." In both housing and divorce proceedings, the adversary is likely a primary witness. By initiating a process that physically removes that witness from the court's reach, the lawyer interferes with the tribunal's ability to adjudicate the case on its merits. In our view, reporting an adverse party to ICE for the "purpose of making the person unavailable as a witness" would violate Rule 3.4(a)(2).

Rule 4.4(a)

12. The Ethics Committee of the North Carolina State Bar has issued two opinions that are relevant to the instant inquiry – North Carolina Opinion 2005-3 (2005) (lawyer may not threaten to report opposing party or witness to immigration officials to gain an advantage in civil settlement negotiations) and North Carolina Opinion 2009-5 (2009) (lawyer may not report opposing party's immigration status to ICE unless required to do so by federal or state law). These opinions rely on both Rule 4.4(a) and Rule 8.4(d). North Carolina, like the ABA when it adopted the Model Rules, eliminated what became Rule 3.4(e) in New York.

13. Rule 4.4(a) prohibits a lawyer from using means "that have no substantial purpose other than to embarrass or harm a third person." However, we are not persuaded that Rule 4.4(a) provides valid support for this conclusion because taking action to assist the client in winning the client's matter appears to be a "substantial purpose" within the meaning of Rule 4.4(a).

14. Our view regarding the meaning of "substantial purpose" in Rule 4.4(a) is supported by N.Y. City 2017-3 (2017), which said:

> There could be circumstances where a threat to instigate a non-criminal proceeding against an adverse party is largely or entirely the result of a client's desire to embarrass, harm, harass or maliciously injure an adverse party, in which event these rules would be implicated. *In most cases, however, a substantial purpose of the threat will be to gain advantage in the underlying civil dispute* by causing the adverse party to settle or drop his claims. Where that is so, the threat would not appear to "serve[] merely to harass or maliciously injure another" or "have no substantial purpose" other than to cause embarrassment or harm. [Emphasis added.]

Rule 8.4 (d)

15. Several bar association ethics opinions have based their conclusions on Rules 8.4(d). *See* N.Y. City 2017-3 (2017), North Carolina 2009-5 and 2005-3, and ABA 92-363 (1992).

16. Rule 8.4(d) provides that a lawyer shall not "engage in conduct prejudicial to the administration of justice." Procuring the absence of a client's adversary from the jurisdiction, or impairing an adverse party's ability to participate in a court proceeding, undermines the truth-seeking process and would in our view be conduct that is prejudicial to the administration of justice. Reporting the adverse parties to ICE for being in the United States allegedly without legal authorization is reasonably likely to result in the adverse parties being detained and perhaps deported from the United States. The adverse parties' involuntary absence from the jurisdiction, orchestrated by the inquirer, would result in each adverse party being unable to participate in the litigation proceedings and to advance their interests.

17. These ethics opinions distinguish between a report that is related to the matter in which the lawyer represents a client and matters that have no such relationship, and thus the report is solely to harass or harm the adversary. *See* N.Y. City 2017-3 ("Whether [a threat to make a report to a government agency] violates Rule 8.4(d) will generally depend on whether the threat concerns matters extraneous to the parties' dispute or, conversely, would serve as an alternative means of vindicating the same alleged claim of right or of obtaining redress for the same alleged wrong"); ABA 92-363 ("[A] general prohibition on threats of prosecution . . . would be overbroad, excessively restricting a lawyer from carrying out his or her responsibility to 'zealously' assert the client's position under the adversary system. . . . Such a limitation on the lawyer's duty to the client is not justified when the . . . charges are well founded in fact and law, stem from the same matter as the civil claim, and are used to gain legitimate relief for the client"); North Carolina Opinion

2005-3 ("there is no valid basis for distinguishing between threats to report unrelated criminal conduct and threats to report immigration status to the authorities: the same exploitation of extraneous matters and abuse of the justice system may occur.")

18. N.Y. City 2017-3 explained how complaints ancillary to the main proceeding could prejudice the administration of justice:

> … [I]f the subject matter of the threatened proceeding and the underlying civil dispute are unrelated, the threat is likelier, in our view, to prejudice the administration of justice, because it will be extortionate in nature, whether or not it rises to the level of extortion under criminal law.

19. N.Y. City 2017-3 quoted ABA 92-363 (1992), which further explained why reporting an unrelated offense to authorities would prejudice the administration of justice. ABA 92-363 said:

> A relatedness requirement . . . tends to ensure that negotiations will be focused on the true value of the civil claim … and *discourages exploitation of extraneous matters that have nothing to do with evaluating that claim.* Introducing into civil negotiations an unrelated criminal issue solely to gain leverage in settling a civil claim *furthers no legitimate interest of the justice system, and tends to prejudice its administration*. [Emphasis in original.]

20. A similar rationale appears in the New York Rules prohibiting threats of reporting criminal conduct to gain an advantage in civil litigation. *See* Rule 3.4, Cmt. [5]:

> [5] The use of threats in negotiation may constitute the crime of extortion. However, not all threats are improper. For example, if a lawyer represents a client who has been criminally harmed by a third person (for example, a theft of property), the lawyer's threat to report the crime does not constitute extortion when honestly claimed in an effort to obtain restitution or indemnification for the harm done. But extortion is committed *if the threat involves conduct of the third person unrelated to the criminal harm* (for example, a threat to report tax evasion by the third person that is unrelated to the civil dispute). [emphasis supplied]

21. We agree with the other bar associations that reports to ICE that are unrelated to the main proceeding would prejudice the administration of justice.

22. Because reporting the adverse parties to ICE here would violate several of the Rules we have discussed, the inquirer may not ethically report the clients' adversaries to ICE.

Rule 8.4(a)

23. The question remains whether Rule 8.4(a) permits the inquirer to recommend that the clients do what the inquirer is prohibited from doing personally. Rule 8.4(a) states that a lawyer shall not, "violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another." In our view, in the situation at hand, Rule 8.4(a) thus prohibits the inquirer from directing or inducing the clients to report their adversaries to ICE in order to gain an advantage in the underlying divorce action and landlord tenant action, which would also involve the inquirer in violating the Rules "through the acts of another."

24. Since we believe the lawyer may not personally report the client's adversaries to ICE, and therefore may not recommend that the clients do so, we need not address the question about an anonymous report.

CONCLUSION:

25. An attorney may not report an adversary's immigration status to ICE solely to obtain an advantage in civil litigation. Where such report would result in criminal charges, it would violate Rule 3.4(e). Where the report triggers the adversary's detention or removal so that they are unavailable to testify in and otherwise participate in the proceedings, it would violate Rules 3.4(a)(2) (making the person unavailable to testify) and 8.4(d) (conduct prejudicial to the administration of justice). Advising or directing the clients to report the allegedly undocumented adverse parties to ICE would therefore violate Rule 8.4(a) (violating or attempting to violate the Rules of Professional Conduct, inducing another to do so, or doing so through the acts of another).

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