

**FLORIDA BAR ETHICS OPINION**  
**OPINION 94-5**  
**April 30, 1995**

**Advisory ethics opinions are not binding.**

Under most circumstances, it is unethical to threaten a fellow member of the bar with a grievance complaint.

**Note: When this opinion was written, there was no express prohibition against such conduct in the Rules of Professional Conduct. The Supreme Court has since adopted Rule 4-3.4(h). See *In re: Amendments to the Rules Regulating The Florida Bar*, 718 So.2d 1179 (Fla. 1998).**

**RPC:** 4-1.6, 4-3.1, 4-4.1, 4-4.4, 4-8.3, 4-8.3(a), 4-8.4(a), 4-.84(d)  
**Opinion:** 89-3  
**Case:** *The Florida Bar v. Fitzgerald*, 541 So.2d 602 (Fla. 1989)

The Committee has been asked whether an attorney may threaten to file a disciplinary complaint against opposing counsel in order to obtain advantage in a civil matter. Despite the absence of an express prohibition in the Rules of Professional Conduct (Chapter 4, Rules Regulating The Florida Bar), the Committee is of the opinion that such conduct is ethically impermissible under most circumstances.

Under the "Reporting Professional Misconduct" rule, Rule 4-8.3, an attorney is obligated to report another attorney's misconduct if the attorney has actual knowledge of a misconduct that raises a substantial question as to the offending attorney's "honesty, trustworthiness, or fitness as a lawyer in other respects." Rule 4-8.3(a). An attorney, however, may not report the violation if the information is protected by the confidentiality rule, Rule 4-1.6, unless the attorney has the consent of the client. As a result, in situations where an attorney is required to report a violation, the attorney's failure to do so would constitute misconduct under Rule 4-8.4(a). Similarly, an agreement not to file a grievance complaint would violate Rule 4-8.4(a) where the filing of a complaint would otherwise be required by Rule 4-8.3(a). See *The Florida Bar v. Fitzgerald*, 541 So.2d 602, 605 (Fla. 1989) (client's agreement not to bring attorney's unethical conduct to attention of the Bar is unenforceable). Therefore, if an attorney is obligated to report another attorney's professional misconduct, the attorney must report it rather than threaten to do so.

Even when an attorney is not required to report the professional misconduct under Rule 4-8.3, threatening a disciplinary action may violate one or more of Rules 4-8.4(b), 4-3.1, 4-4.1, 4-4.4 and 4-8.4(d). Rule 4-8.4(b) prohibits an attorney from committing "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." Therefore, an attorney is prohibited from conduct which would constitute extortion under criminal law.

Rule 4-3.1 generally prohibits an attorney from bringing a frivolous proceeding. This rule would prohibit an attorney from filing a disciplinary complaint that is not well founded in fact and in law.

Rule 4-4.1 requires an attorney to be truthful in dealing with others on a client's behalf. Therefore, an attorney who threatens to file a disciplinary complaint without any actual intent to do so would violate this rule.

Rule 4-4.4 states that in representing a client an attorney "shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person." This rule would therefore prohibit an attorney from threatening to file a disciplinary complaint if the primary purpose of doing so was to harass or embarrass the other attorney.

Rule 4-8.4(d) provides that an attorney shall not "engage in conduct that is prejudicial to the administration of justice." In our Opinion 89-3, the Committee concluded that an attorney is prohibited from threatening criminal prosecution solely to gain advantage in a civil matter. In that opinion the Committee stated, "[t]he criminal process was not intended to be used as a means of settling private disputes and is undermined when it is misused in such a manner." Likewise, the disciplinary process is not intended to be used as a means of settling private disputes.

In conclusion, if an attorney is obligated to report another attorney's professional misconduct pursuant to Rule 4-8.3, then it is ethically impermissible for the attorney to threaten the other attorney with the filing of a disciplinary complaint. Even if an attorney is not obligated to report the other attorney's misconduct, threatening to file a disciplinary complaint often will violate one or more of the Rules of Professional Conduct.