
E-89-16 Threatening to report lawyer misconduct

Question

In the course of representing a client, may a lawyer threaten or assist in threatening opposing counsel with the filing of a professional misconduct complaint with the appropriate lawyer disciplinary authority?

Opinion

No. Consistent with our opinion regarding threatening criminal action to gain an advantage in a civil matter, we believe that “simply ‘presenting the facts to the prosecutors [disciplinary authorities] for such action as [they] may deem appropriate’ should be permitted during the course of representation. . . . However, ‘threatening’ to present such charges ‘unless . . .’ would clearly be violative of SCR 20.39.” Committee on Professional Ethics Formal Opinion E-87-5, 61 Wis. B. Bull. 51-2 (March 1988). SCR 20:3.10 replaces SCR 20.39.

Regarding whether a lawyer can or must report the professional misconduct of opposing counsel, *see* Committee on Professional Ethics Formal Opinion E-89-12, 62 Wis. Law. 30-1 (July 1989); and SCR 20:8.3.