

FORMAL OPINION NO. 54

You have requested an opinion as to the propriety of a practicing attorney, who is also a deputy prosecuting attorney, requesting in writing to a former tenant of property owned by him to return or repair certain items of furniture and appliances with the qualification "without waiving any rights that we may have to prosecute you criminally or in a civil action."

We have no hesitation in condemning such conduct as violation of DR 7-105, Code of Professional Responsibility, which reads:

"DR 7-105 THREATENING CRIMINAL PROSECUTION.
(A) A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter."

The fact that the attorney is also a deputy prosecuting attorney compounds the gravity of the violation. It would clearly be unethical for a private attorney to threaten prosecution to attain satisfaction of a civil claim or indebtedness, but under the facts presented in your query, the public office of the prosecuting attorney is impliedly behind the suggestion of criminal prosecution, improperly lending it the authority of the office.

Traditionally, the bar has censured conduct which directly or indirectly involves the threat or suggestion of criminal prosecution to induce the settlement of civil claims or disputes.

Further, we might suggest that under the criminal code of this state, the obtaining of property from another with his consent, induced by fear or color of official right is unlawful. We do not state that the conduct suggested in your question in fact constitutes a crime, but we refer to this law merely to emphasize the necessity for scrupulously avoiding the use of color of office as leverage, directly or by implication, to obtain civil redress.

DATED November, 1971.