Marc J. Keane, Presenter
Bogart, Keane, Ryan & Hamill, L.L.C.
P.O. Box 6900; 660 Newark Avenue, Suite 200
Jersey City, New Jersey 07306
(201) 798-2400

DISTRICT VI ETHICS COMMITTEE	:	
	:	DOCKET NO: VI-02-022E
Complainant,	:	VI-02-029E
	:	
vs.	:	DISCIPLINARY ACTION
	:	
CHARLES T. HUTCHINS, ESQ.	:	COMPLAINT
	:	
Respondent,	:	

District VI Ethics Committee by way of complaint against respondent, says:

GENERAL ALLEGATIONS

1. Charles T. Hutchins (hereinafter "Respondent") was admitted to the Bar of this State in 1998.

2. Respondent maintains law offices at National Check Control, 55 Hartz Way, Suite 202, Secaucus, New Jersey 07094.

FIRST COUNT
(Alexis K. Vorhaus)

1. Respondent represents National Check Control who was attempting to collect funds due from Alexis K. Vorhaus in the alleged amount of $165.57.

2. The amount claimed due from Alexis K. Vorhaus by National Check Control is disputed by the parties.

3. In an effort to collect the funds due from Alexis K. Vorhaus, Respondent sent grievant correspondence dated January 15, 2002.

4. The January 15, 2002, correspondence threatened criminal charges.

5. The purpose of threatening criminal charges was to obtain an improper advantage in a civil matter.

6. Respondent's conduct and the statements made in the January 15, 2002, correspondence violate RPC 3.4(g).

SECOND COUNT
(Ross Kuha)

1. Respondent represents National Check Control who was attempting to collect funds due from Ross Kuha in the alleged amount of $494.11.

2. The amount claimed due from Ross Kuha by National Check Control is disputed by the parties.

3. In an effort to collect the funds due from Ross Kuha, Respondent sent grievant correspondence dated April 13, 2002.

4. The April 13, 2002, correspondence threatened criminal charges.

5. The purpose of threatening criminal charges was to obtain an improper advantage in a civil matter.

6. Respondent's conduct and the statements made in the April 13, 2002, correspondence violate RPC 3.4(g).

WHEREFORE, Respondent should be disciplined.

DISTRICT VI ETHICS COMMITTEE

DATED:09/20/02 /s/ Marc Keane, Esq.

Charles T. Hutchins, Esq.
55 Hartz Way, Suite 202
Secaucus, New Jersey 07094
(20) 867-6700 x 221

DISTRICT VI ETHICS COMMITTEE	:	
	:	DOCKET NO: VI-02-022E
Complainant,	:	VI-02-029E
	:	
vs.	:	DISCIPLINARY ACTION
	:	
CHARLES T. HUTCHINS, ESQ.	:	ANSWER TO DISCIPLINARY
	:	ACTION COMPLAINT FOR
Respondent,	:	STANDARD MISCONDUCT

Respondent Charles T. Hutchins, Esq., by way of answer to the Complaint states:

GENERAL ALLEGATIONS

1. Respondent admits the allegations in Paragraph 1 and 2 of the General Allegations.

FIRST COUNT
(Alexis K. Vorhaus)

1. Respondent admits be sent a demand letter to Alexis K. Vorhaus ("Ms. Vorhaus") on January 15, 2002.

2. Respondent admits that be was seeking restitution from Ms. Vorhaus for a NSF check (#125) she wrote to Disc Jockey on July 26, 2000.

3. Respondent denies that Ms. Vorhaus, or anyone else on her behalf, disputed the amount owed to National Check Control or to Respondent.

4. Respondent denies the language of the demand letter contained an impermissible threat of criminal charges.

5. Respondent denies the purpose of the language of the demand letter was constructed to gain an improper advantage in a civil matter.

6. Respondent denies the January 15, 2002 demand letter language violates RPC 3.4(g).

SECOND COUNT
(Ross Kuha)

1. Respondent admits he sent a demand letter to Ross Kuha ("Mr. Kuha") on April 13, 2002.

2. Respondent admits that he was seeking restitution from Mr. Kuha for a NSF check (# 1007) he wrote to Tires Plus Columbia Heights ("Tires Plus") on May 21, 1999.

3. Respondent admits that Mr. Kuha claims he made restitution for this check to Tires Plus directly in 1997. However, the check for which National Check Control sought restitution was not written until May 21, 1999.

4. Respondent denies the language of the demand letter contained an impermissible threat of criminal charges.

5. Respondent denies the purpose of the language of the demand letter was constructed to gain an improper advantage in a civil matter.

6. Respondent denies the April 13, 2002 demand letter language violates RPC 3.4(g).

ARGUMENT

The Complaint suggests that Respondent's conduct, specifically the language used in his demand letters sent to Ms. Vorhaus and Mr. Kuha, violates RPC 3.4(g). The demand letter language at issue is presented in its entirety below:

> *"I have been retained by the above—referenced client to assess the possibility of taking legal action against you. This matter involves the issuance of fraudulent checks. Issuance of fraudulent checks is a violation of criminal state statute. The law provides my client with certain legal remedies to enforce their claim. They may file a criminal complaint with local authorities seeking criminal charges against you. If you are prosecuted and convicted, you may have a permanent criminal record. If my client decides to sue civilly you may receive a summons at home or work that may require a court appearance. Losing the lawsuit may allow the court to order garnishments of your wages, attachment of bank accounts and seizure of property.*
>
> *This matter was previously placed with a collection agency that made numerous unsuccessful efforts at a resolution. This is a serious matter involving possible violation of state law and will be your last opportunity for amicable resolution. THE CHOICE IS YOURS. You can avoid the possibility of the aforementioned criminal and/or civil action only by paying the total amount due within 10 days."*

RPG 3.4(g) provides that "a lawyer shall not present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter." The Complaint contends that "merely making reference to the criminal sanctions is a violation of RPC 3.4(g)." However, in Advisory Comm. Op. 626 (April 20, 1989), the

committee examined two questions: First, "Is reference to a possible conviction of a criminal offense an improper coercive means of securing a benefit for one's client, RPC 1.2(d); prejudicial to the administration of justice, RPC 8.4(d); or the use of a false statement or failure to disclose a material fact to a third person, RPC 4.l(a)(1) and (2)?" Second, "Does such a letter constitute a means to embarrass or burden a third person in violation of RPC 4.4 or to obtain an improper advantage for one's client in a civil matter?"

The committee considered "the propriety of an attorney sending a letter on behalf of a client inviting the recipient to subscribe to the client's cable television service into which the recipient has tapped without contract or payment. The letter in question would advise the recipient that the acquisition or use of said service without payment may subject the individual to a conviction under N.J.S.A. 2C:20-8(e), which is punishable by up to six months in jail and a fine of up to $1,000.00." The committee concluded that:

> "Where a "claim letter" of this nature states facts accurately, there cannot be a violation of RPC 4.1(a) or RPC 8.4(c) or (d). Assuming the facts have been stated accurately, no "improper" advantage is being sought. The client asks only for his proper due under quantum meruit principles of ancient respect. Consequently, there is also no impropriety under RPC 1.2(d).
>
> We are mindful of the need to protect the public from unreasonable and oppressive conduct in the pursuit of lawful claims. We also reiterate that the principles applied in our Opinion 347, 99 N.J.L.J. 715 (1976) and Opinion 551, supra., remain viable.

> When a "claim letter" makes the observation that the conduct of the third party may result in a criminal conviction, and there is no threat to disclose the alleged crime to the public authority, the communication does not go far enough to constitute an effort to embarrass. See Opinion 551, supra."

The instant Complaint does not indicate that Respondent's letter contained any misstatements of fact. Both Ms. Vorhaus and Mr. Kuha wrote NSF checks. After more than 18 months, both individuals had failed to make restitution. Both Colorado[1] and Minnesota[2] state statutes define this conduct as the crime of check fraud, and provide for the penalties of incarceration and fines.

The Respondent's letter did not falsely indicate that he had filed a criminal complaint against either Ms. Vorhaus or Mr. Kuha. The letter did not indicate that he had participated in the presentation of a criminal complaint against either bad check writer. Additionally, the statement in the letter - "*They may file a criminal complaint with local authorities seeking criminal charges against you*" — does not constitute a threat to file a criminal charge. Rather, it discusses one of the legal options available to Respondent's clients. Additional legal options were also presented.

In Advisory Comm. Op. 347 (August 12, 1976), the committee examined the question of the propriety of an attorney assisting in the

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[1] Section 18-5-512 of the Colorado Criminal Code provides that nonpayment of a check is prima facie evidence of intent to commit check fraud, and is punishable as a Class 3 misdemeanor, with three to twelve months in jail, and/or a fine of $250 to $1000.

[2] Section 609.535 of the Minnesota Criminal Code provides that the issuance of a check that is dishonored (and restitution not made) may be sentenced up to 90 days in prison and up to $700 in fines.

bringing of criminal charges for his client against an adversary that allegedly owed his client money - at least until ***a civil matter that was before the court*** was completed. (emphasis added). The committee, cited to Drinker, Legal Ethics, 153 (1953), which held that a lawyer "may not threaten a criminal action or disciplinary proceedings in order to effect a ***civil settlement***...." (emphasis added).

Also, in Advisory Comm. Op. 347, the committee cited to In re Cohn, 46 N.J. 202 (1966), where an attorney represented a tavern owner. A patron fell in front of the tavern, injured herself and, with her husband, ***sued the tavern***. (emphasis added). When it was learned that Plaintiffs' marriage was invalid, the tavern owner's attorney assisted, cooperated and participated in filing of criminal charges so as to obtain an advantage in the civil suit, - to persuade the injured woman to discontinue her suit. The court suspended the attorney for one year.

The committee also cited to In re Krieger, 48 N.J. 186 (1966), where an attorney that ***represented a plaintiff in civil litigation*** - initiated criminal prosecution against a witness to achieve favorable result in the civil action. (emphasis added). The Court held his conduct unethical and suspended him for three months. The committee added "there is no question but that it has ***always been unethical for a lawyer to threaten or to prosecute criminal action in order to effect a civil settlement***," and that "***he must not, during the pendency of the civil action***, threaten criminal action or participate in the

filing of criminal proceedings ***to force a settlement of the civil suit***. Such conduct would clearly violate DR 7-105.” (DR 7-105 being the predecessor to RPC 3.4(g)) (emphasis added).

The common thread in each of these fact situations - in Advisory Comm. Op. 347, in Drinker, Legal Ethics, In re Cohn, and In re Krieger is that each related to the filing of a criminal complaint where the complaint was used to gain leverage (the improper advantage) in a pre-existing civil case. No civil case has been brought against either Ms. Vorhaus or Mr. Kuha, so there is no “civil matter” wherein an improper advantage is being sought. Respondent is unaware of any civil complaints that have been filed by his clients in the last 33 months. seeking civil judgments against individuals that write bad checks is a waste of time and money — as these individuals are frequently judgment proof.

CONCLUSION

The clear intent of RPC 3.4(g) is to prohibit the filing or threat of filing a criminal complaint against an adversary to gain an improper advantage in an existing civil suit. The discussion of legal remedies available to Respondent’s clients, (1) where no criminal complaint has been filed by Respondent, (2) where Respondent has not participated in presenting a criminal complaint, (3) where no threat was made by Respondent to file a criminal complaint, (4) where no civil action has been initiated, and (5) where the facts have been accurately presented, does not implicate any ethical issues. The

language of Respondent's letters to Ms. Vorhaus and to Mr. Kuha does not violate RPC 3.4(g). There is no basis for disciplinary action against the Respondent, and this matter should be dismissed.

Dated this 15th day of October 2002.

/s/ CHARLES T. HUTCHINS, ESQ.
Respondent, Appearing Pro Se

VERIFICATION OF ANSWER TO COMPLAINT & REQUEST FOR HEARING ON CHARGES

I, Charles T. Hutchins, hereby certify and verify that the statements and representations contained in the attached Answer to Vorhaus/Kuha Complaint are true and correct to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

I hereby request a hearing on the charges contained in the above-referenced Complaint.

Dated this 15th day of October 2002.

/s/ CHARLES T. HUTCHINS, ESQ.
Respondent, Appearing Pro Se

DISTRICT VI ETHICS COMMITTEE	:	
	:	DOCKET NO: VI-03-013E
	:	VI-03-014E
Complainant,	:	VI-03-015E
	:	VI-03-019E
	:	VI-03-020E
	:	VI-03-021E
vs.	:	VI-03-022E
	:	VI-03-023E
	:	VI-03-039E
CHARLES T. HUTCHINS, ESQ.	:	VI-03-040E
	:	VI-02-022E
Respondent,	:	VI-02-029E
	:	VI-02-030E
	:	VI-02-031E
	:	VI-02-032E
	:	DRB-04-228
	:	
	:	DISCIPLINARY ACTION
	:	
	:	HEARING REPORT RECOMMENDING
	:	REPRIMANT
	:	

TO THE HONORABLE CHAIR AND THE MEMBERS OF THE DISCIPLINARY REVIEW BOARD:

The District VI Ethics Committee Hearing Panel respectfully shows:

I. PROCEDURAL HISTORY

1. Respondent was admitted to the Bar of the State of New Jersey in 1998 and is engaged in the practice of law at 165 Louis Street, Secaucus, Hudson County, New Jersey.

2. Formal ethics complaints were filed with the District VI Ethics Committee and were served upon respondent. (Exhibit C1 and C3).

3. Respondent’s answers thereto have been marked as Exhibit C2, C4 and C7.

4. On April 16, 2004, a formal hearing was held on the foregoing charges before this hearing panel consisting of Lawrence Sindoni, Esq., Chair, James P. Flynn, Esq., Attorney member, and Rene R. Escobar, Public member. Respondent appeared pro se and the matter was presented by Jeffrey R. Jablonski, Esq. The parties executed a stipulation of facts, attached hereto as Exhibit C8. The parties also agreed to dismiss the matter of VI-03-040E (Daniel Drigot), the Tenth Count of the complaint (Exhibit C1). All Exhibits have been included herewith.

II. SYNOPSIS OF ALLEGATIONS

5. The formal complaints filed in this matter charged respondent with ethical misconduct in violation of R.P.C. 3.4(g). This canon provides that:

> A lawyer shall not present, participate in presenting or threaten to present criminal charges to obtain an improper advantage in a civil matter.

III. FINDINGS OF FACT AND CONCLUSIONS

6. As a result of reviewing the testimony and exhibits, the hearing panel makes the following ‘factual findings and conclusions: The relevant facts in this matter were stipulated to by the parties. (Exhibit C8). Respondent acknowledges that he mailed to each of the grievants letters which read as follows:

> Dear (Name of Individual Grievant):
>
> I have been retained to assess the possibility of taking legal action against you. This mater involves the issuance of fraudulent checks. Issuance of fraudulent checks is violation of criminal state statute. The law provides certain legal remedies to enforce these claims. A criminal complaint may be filed with local authorities seeking criminal charges against you. If you are prosecuted and convicted, you may have a permanent criminal record. If it is decided to sue civilly, you may receive a summons at home or work that may require a court appearance. Losing the lawsuit may allow the court to order garnishment of your wages, attachment of bank accounts and seizure of property.
>
> This matter was previously placed with a collection agency that made numerous unsuccessful efforts at a resolution. THE CHOICE IS YOURS. You can avoid the possibility of the aforementioned criminal and/or civil action only by paying the total amount due within 10 days.
>
> Please be guided accordingly.
>
> Sincerely,
> Charles T. Hutchins
> (201)867-6700 EXT. 200

At issue in this matter is whether respondent has committed ethical misconduct by "threaten[ing] to present criminal charges to obtain an improper advantage in a civil matter." R.P.C. 3.4(g). This panel concludes that ethical misconduct has occurred.

Respondent's letter makes clear that he has "been retained to assess the possibility of taking legal action against {each grievant]." While informing the grievants of the civil remedies available to his client, Respondent also informs each grievant that the remedies available to his client include the filing of a "criminal

complaint. . . with local authorities seeking criminal charge against you." In an effort to prompt the grievants to pay the balance sought by his client, respondent then states that they "can avoid the possibility of the aforementioned criminal and/or civil action only by paying the total amount due within 10 days."

A reasonable person in receipt of such a letter would be led to believe that it was a threat to file a criminal complaint against them if payment was not made within the ten day period. However, a lawyer is prohibited from using "coercive tactics of threatening a criminal action in order to effect a civil settlement." In re Dworkin, 16 N.J. 455, 456 (1954). See also In re Barrett, 88 N.J. 450, 453 (1982) (Attorney's letter informing that "we are also pursuing the possibility of criminal action..." constituted a threat to present criminal charges to obtain an improper advantage in a civil matter.)

Respondent claimed that no ethical misconduct occurred, raising several defenses, all of which are rejected by the panel. Each defense is discussed below.

Respondent argued, citing and relying on ACPE Opinion 626 (Revelation of Possible Criminal Violation In Solicitation of Business For Client, 4/20/89) that his conduct did not rise to the level of a violation of R.P.C. 3.4(g). Opinion 626 discussed "the propriety of an attorney sending a letter on behalf of a client inviting the recipient to subscribe to the client's cable television service into which the recipient has tapped without contract or payment." The letter would

advise that "the acquisition or use of said service without payment may subject the individual to a conviction under N.J.S.A. 2c:20-8(e), which is punishable by up to six months in jail and a fine of up to $1,000.00." The Committee reasoned that no impropriety would occur assuming the letter had stated the facts accurately; the letter only sought recovery under a theory of quantum meruit. That Ethics Opinion did not cite or discuss the RPC, or the forerunner of the RPC, at issue here.

In the present matters, respondent claims he only sought a recovery through quantum meruit for his client. However, it is doubtful that such a theory is applicable. Quantum meruit is "[a]n equitable doctrine, based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby..." Blacks Law Dic., 5th Ed. Unlike the cable company referred to in Opinion 626, respondent's client is not the provider of goods or services. According to respondent's testimony, his client engages in the purchase of unpaid checks at a discount and then seeks to collect the balance due from the debtors. In addition, the letter discussed in Opinion 626 only advised the recipient that the conduct constituted a criminal violation. Respondent's letter goes well beyond merely stating what the law is. It contains the threat of criminal proceedings in ten days if the balance claimed due is not paid.

Respondent also seeks to draw a distinction between his conduct and the language of R.P.C. 3.4(g), arguing that his conduct fails to rise to the level of a violation. To address his argument, the language of the rule is re-stated:

> A lawyer shall not present, participate in presenting or threaten to present criminal charges to obtain an improper advantage in a civil matter.

First respondent argues that the rule does not prohibit the threat of the use of criminal charges in all cases, rather, only in those where an "improper" advantage is sought. Respondent's position thus seems to imply that there are circumstances in which the threat of criminal charges may be used to obtain a "proper" advantage. However, this panel is unaware of any cases drawing such a distinction. Instead, this panel believes that the relevant judicial authority and ethics opinion stand for the proposition that there are no circumstances where the use of a threat of criminal proceedings can be viewed as "proper". Indeed, the very act of threatening criminal charges to obtain an advantage in a civil matter constitutes an improper advantage, and that is how the rule has been interpreted.

Second, respondent argues that he did not violate the rule because there was never any civil litigation pending against the grievants when he forwarded the letters to them. Accordingly, respondent interprets the prohibition on gaining an improper advantage in a civil matter as requiring a threat to be made after a civil complaint has been filed. Respondent cites ACPE Opinion 347

(Threatening Criminal Prosecution To Aid Civil Action, 8/12/76), arguing that it defines the boundaries of R.P.C. 3.4(g), somehow limiting the scope of the rule to circumstances where a civil action has been filed.

This panel disagrees with the distinction and finds that neither the cited opinion, nor the plain language of R.P.C. 3.4(g) limit applicability to circumstances involving civil litigation. First, the cited opinion focuses solely on one inquiry made by an attorney in a case where there happened to be civil litigation present. The Committee's conclusion demonstrates the opinion was narrowly focused on answering the question presented. The Committee states that "[i]n the present inquiry, the lawyer owes a duty to his client and the court to take steps to correct the situation as soon as possible." Nothing in the opinion gives any indication that a limitation is being imposed on the phrase "civil matter" appearing in R.P.C. 3.4(g).

In addition, respondent's position is undercut by the very authority relied on by the Committee issuing the opinion. The Committee cites, in re Dworkin, supra, to support its conclusion. An ethical violation occurred in Dworkin notwithstanding the fact that there was no civil litigation pending. 16 N.J at 456.

Finally Respondent's position is troubling in that, if one accepts his claim that litigation is required before there can be a violation of R.P.C. 3.4(g), attorneys engaged in collection practice would never be subject to the rule, so long as they don't file a civil

complaint. Indeed, under respondent's interpretation, an attorney who threatens to bring criminal charges against a person that is considering suing the lawyer's client would be absolved from ethical punishment because no complaint was filed-the very result that the threat was intended to bring about. Moreover, under respondent's interpretation, it would be a rule applicable only in the litigation context, and this rule surely was meant to prevent attorneys from using such threats as leverage in contract negotiations and other non-litigated "civil matters."

This panel having found that ethical misconduct has occurred, recommends that respondent be disciplined consistent with the Order entered by the Supreme Court on September 16, 2003. Respondent should thus be reprimanded. This panel does not recommend any harsher discipline since it was established at the hearing that respondent stopped using the letter at issue once he received the Supreme Court Order.

IV. DETERMINATION

The panel has carefully considered and reviewed the testimony and evidence and has concluded that respondent's conduct constituted ethical misconduct in violation of R.P.C. 3.4(g). For the reasons set forth above, the panel recommends that respondent be reprimanded.

Panelists recommending reprimand:
Lawrence Sindoni, Esq., Chair
James P. Flynn, Esq., Attorney member, and
Rene R. Escobar, Public member.

Respectfully submitted,

DISTRICT VI ETHICS COMMITTEE

/s/ Lawrence Sindoni, Esq.
Hearing Panel Chair