**Ethics in Brief 12/13/19**

**New Rule of Professional Conduct 3.10 – Threatening Criminal, Administrative or Disciplinary Charges**

The new Rule 3.10—effective as of November 1, 2018—essentially mirrors previous RPC 5-320. The new Rule states:

1. “A lawyer shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.”

The Rule goes on to define in subsection (b) what constitutes “administrative charges”, namely, lodging a complaint with some governmental body that has the power to order or recommend the loss or suspension of a license, among other things. “Civil dispute” is defined in subsection (c) as a “controversy or potential controversy over the rights of two or more persons under civil law, whether or not an action has been commenced….” It is important to understand the distinction between a threat that is in violation of the rule, and properly negotiating a possible settlement of a civil action within the bounds of a lawyer’s ethical duties.

A lawyer may believe in good faith that the conduct of an opposing lawyer or a party is in violation of criminal or other laws, and state to that opposing lawyer or party that if the conduct continues, the lawyer will report it to the proper authorities. That doesn’t violate the Rule. A problem arises under the Rule if a lawyer states or implies that the criminal conduct will not be reported as long as the opposing party agrees to settle the civil dispute. In other words, the threat of reporting ostensible criminal conduct or conduct that may be subject to administrative penalties, cannot be tied in any way to the resolution or possible filing of a civil action.

There is no problem with a lawyer telling an opposing party that a civil action will be filed unless a settlement is made. Such statements are made every day in the context of personal injury lawyers demanding payment in order to settle a civil lawsuit, or a possible future civil lawsuit. It is only in the context of using the threat in order to resolve a civil claim that such statements will get a lawyer in trouble. The threat cannot be conditioned upon the lawyer or his/her client being paid some amount in settlement, or in agreeing to drop the civil claims in exchange for not reporting the opposing party to the authorities.

Penal Code section 518, in pertinent part, defines “Extortion”—commonly referred to as “blackmail”—as “the obtaining of property from another, with his consent…induced by a wrongful use of force or fear….” “Fear” is defined in PC section 519, to include accusing an individual of any crime, exposing the individual to disgrace or crime, or exposing any secret affecting the individual, whether the conduct is criminal or not. Extortion is a felony crime in the State of California, punishable by up to four years in prison. When such a threat is made by a lawyer, it arguably could induce even more fear in a person affected, because of the ostensible power the legal profession conveys. Lawyers are not exempt from criminal prosecution, if in violation of Rule 3.10, in addition to State Bar discipline.