The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 91-16
Issued June 14, 1991

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

[Not current-subsequent rule amendments to DR 2-101, eff. Jan. 1, 1993.]

SYLLABUS: A law firm may utilize the services of a collection agency to collect delinquent legal fees owed by clients provided that the law firm first determine that the fee is reasonable and not illegal, make personal and amicable attempts to collect the legal fee owed, and reveal only confidences and secrets necessary to establish or collect the legal fee. The law firm should not lease an employee from the collection agency and should not give blanket authorization to the collection agency to bring suit on delinquent bills. Provided that the fees sought to be collected have been fully earned, a law firm may compensate collection agencies on the basis of a percentage of amounts collected.

OPINION: We have before us a request for an advisory opinion on whether a law firm may utilize the services of a collection agency to collect delinquent legal fees owed by the client to the law firm. The specific questions raised are as follows:

1. May a law firm use a collection agency to collect delinquent client bills;

2. May a law firm use a leased employee from a collection agency to collect delinquent client bills;

3. May the leased collection employee identify him/herself to clients as the "Business Manager" or the "Collection Manager" of the law firm in connection with his/her efforts to collect past due bills from clients if the law firm gives that title to the leased employee, even though the employee is a leased emoloyee and not a regular employee of the law firm;

4. May a law firm disclose to the collection agency or leased collection employee that the client owes money to the law firm, the amount of money the client owes the law firm, and the general nature of the legal services the law firm rendered to the client;

5. May the law firm give the collection agency or leased employee copies of or access to its client bills, including narrative bills describing in detail the services rendered and detailed time records of the work for the client, to be used by the collection agency or leased collection employee in collecting the delinquent bills;

6. May the collection agency or leased collection employee attempt to collect client bills that have been written off by the law firm for internal accounting purposes but as to which the debt for such services has not been legally extinguished;

7. May the law firm give blanket authorization to the collection agency to bring suit on delinquent bills when all other collection efforts fail or must the law firm make that determination itself on a case-by-case basis after all other collection efforts have failed;

8. May the law firm's arrangement with the collection agency provide for payment to the collection agency of a percentage of the legal fees and disbursements collected?

Question 1

The disciplinary rules of the Code of Professional Responsibility (Code) contain two direct references to the collection of fees. "A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee." DR 2-106 (A). A lawyer may reveal "[c]onfidences or secrets necessary to establish or collect his fee." DR 4-101 (C) (4). The ethical considerations of the Code acknowledge that "[t]he legal profession cannot remain a viable force in fulfilling its role in our society unless its members receive adequate compensation for services rendered." EC 2-15. "A lawyer should be zealous in his efforts to avoid controversies over fees with clients and should attempt to resolve amicably any differences on the subject. He should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client." EC 2-22. These provisions of the Code acknowledge the necessity of collecting legal fees but suggest that the lawyer or law firm make amicable efforts related to collection.

The Code is silent as to the method an attorney or law firm may use to collect legal fees. Several ethics committees have expressed the opinion that collection agencies may be utilized by attorneys or law firms to collect legal fees owed by clients. Columbus Bar Ass'n, Op. 77-6 (1977); Florida Bar, Op.81-3 (M) (undated); Missouri Bar Admin, Informal Op. 4, (1982); State Bar of Georgia, Op. 49 (1985); New York State Bar Ass'n, Op. 608 (1990). The Board is aware of only one opinion reaching a contrary result. West Virginia State Bar, Op. 80-1 (1981). The West Virginia opinion supported its position by referring to New York State Bar Ass'n Op. 400 (1975) which is now overruled by New York State Bar Ass'n Op. 608 (1990).

This Board's opinion is that the Code does not prohibit an attorney or law firm from utilizing the services of a collection agency to collect delinquent legal fees owed by clients provided that the attorney or law firm first determine that the fee is reasonable and not illegal, make personal and amicable attempts to collect the legal fee owed, and reveal only confidences and secrets necessary to establish or collect the legal fee.

Question 2 and 3

No opinions can be found as to whether it is ethical for a law firm to lease an employee from a collection agency to collect delinquent client bills. However, leasing an employee from the collection agency creates an interrelationship between the law firm and the collection agency which could create the appearance of impropriety and possibly run afoul of the broad mandate of Canon 9 of the Code that "[a] lawyer should avoid even the appearance of professional impropriety." See also EC 9-6. Further, the identification of the leased collection employee as a "Business Manager" or "Collection Manager" of the law firm would be a misleading communication in violation of DR 2-101 (A) that prohibits the use of "any form of communication containing a false, fraudulent, misleading, or deceptive statement or claim." The Board suggests that in order to avoid the appearance of impropriety and to avoid misleading the public, law firms should not lease employees from a collection agency to collect delinquent client bills.

Question 4 and 5

Although DR 4-101 (C) (4) allows an attorney to reveal confidences or secrets to establish or collect his/her fee, it is only those confidences or secrets necessary to establish or collect the fee that may be revealed. Even though the Code gives an attorney's self interest in collecting legal fees priority over preserving confidences and secrets, there is an ethical concern that such disclosure might create a chilling effect on the attorney client relationship and thus disclosure must be limited to necessary information.

Several ethics committees have advised that confidences and secrets may be revealed: A lawyer instituting legal proceedings to collect a delinquent fee may disclose confidences and secrets necessary to establish and collect the fee, Alabama State Bar, Op. 81-493 (undated); A lawyer may disclose confidential communications in subsequent litigation between the attorney and client where it becomes necessary to protect the lawyer's rights, ABA, Formal Op. 250 (1943); A lawyer must not divulge information to the collection agency that is irrelevant to the debt owed, Florida Bar, Op. 81-3 (M) (undated); A lawyer may reveal only those confidences and secrets necessary to establish or collect his fee, State Bar of Georgia, Op. 49 (1985); Revelation of client confidences and secrets should be strictly limited to those necessary and attorneys should make reasonable efforts to assure that collection agents will preserve confidences and secrets except as necessary to establish or collect indebtedness, New York State Bar Ass'n, Op. 608, (1990).

This Board's opinion is that the law firm may disclose to the collection agency the client's name, billing address and the amount of money owed. However, since information regarding the nature of the legal services would not always be necessary to establish or collect the fee, it should not be revealed to the collection agency unless necessary.

Question 6

The Board declines to express an opinion on this issue because it would require analysis beyond the Board's authority.

Question 7

EC 2-22 suggests that an attorney "should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client." Further, EC 2-23 of the Code acknowledges that there are individuals who do not have the financial ability to pay reasonable fees. EC 2-24 suggests that "[t]he basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer" and encourages that "[e]very lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged."

The personal nature of the attorney-client relationship is an integral part of the practice of law and should be valued as such. Therefore, the Board is of the opinion that the law firm should not give the collection agency blanket authority to bring suit on delinquent bills. The law firm, not the collection agency, should make a case by case determination regarding whether or not to file suit against a client for delinquent legal fees. This determination might include a review of the reasonableness of the fee and the efforts made to collect the fee, as well as a personal consideration of the financial ability of the client to pay reasonable fees and any other factors that might be relevant. The law firm should not delegate this professional responsibility to a collection agency.

Question 8

The practice of law is a profession. Fees for legal services are to compensate attorneys for their professional services. DR 3-102 (A) states that "[a] lawyer or law firm shall not share legal fees with a non-lawyer." The rule does set forth certain exceptions which are not relevant to this opinion. The ethical consideration behind the prohibition on sharing fees with non-lawyers is that to do so would aid in the practice of law by non-lawyers or encourage non-lawyers to practice law. ABA Code of Professional Responsibility, DR 3-102 comment. Thus, it is this Board's opinion that in order to avoid improper division of fees, fees referred to collection agencies should be fully earned by the law firm prior to referral. See e.g., New York State Bar Ass'n, Op. 608 (1989); State Bar of Georgia, Op. 49 (1985).

As to the method of payment, ethics committees have expressed the opinion that payment to collection agencies of a percentage of amounts collected is permitted. See e.g., North Carolina State Bar Ass'n, Op. 7 (1986); District of Columbia Bar, Op. 60 (1979). This Board is in accord. The payment to the collection agency is for the agency's services. Thus, in conclusion, it is this Board's opinion that so long as the fees sought to be collected have been fully earned, a law firm may compensate collection agencies on the basis of a percentage of amounts collected.