

# ADVISORY ETHICS OPINION 97-04

## SYNOPSIS:

The requesting attorney has asked whether she may utilize the services of a professional collection agency in collecting accounts receivable from her clients.

## FACTS/QUESTION:

The attorney has asked the Committee to determine whether there are any limitations relative to her referring a former client's past due bill to an agency for collection.

## DISCUSSION:

Disciplinary Rule 4-101 (C)(4) reads as follows:

### **“DR 4-101 Preservation of Confidences and Secrets of a Client.**

- (A) “Confidence” refers to information protected by the attorney-client privilege under applicable law, and “secret” refers to other information gained in the professional relationship that the client has requested to be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.
- (B) Except when permitted under DR 4-101(C), a lawyer shall not knowingly:
  - (1) Reveal a confidence or secret of his client.
  - (2) Use a confidence or secret of his client to the disadvantage of the client.
  - (3) Use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.
- (C) A lawyer may reveal:
  - (1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.
  - (2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.
  - (3) The intention of his client to commit a crime and the information necessary to prevent the crime.
  - (4) Confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.
- (D) A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101(C) through an employee.”

Clearly, DR 4-101 (C)(4) permits disclosure of information pertaining to the representation to the extent necessary for the attorney to establish her right to the fee she claims.

## CONCLUSION:

The Committee is of the opinion that pursuant to DR 4-101 (C)(4) the attorney may utilize a collection agency to collect a former client's past due bill. Disclosure of information to the collection agency relative to the representation is authorized to the extent necessary to establish the attorney's right to the fee claimed. The Committee is also of the opinion that the attorney is legally and ethically responsible for the conduct of the agency in the collection process. The attorney must ensure that the collection agency maintains client confidences and does not use the information supplied for any other purpose.

The Ethics Committees of several states have similarly advised that it is not unethical to employ a collection agency as a means of receiving payment from delinquent clients. However, attorneys are always cautioned to try to work things out with the client before resorting to outside help. Furthermore, all have advised that there must be no disclosure of confidential information about the client or his or her legal affairs beyond that reasonably necessary for the agency to collect the debt.<sup>1</sup>

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<sup>1</sup> Georgia Ethics Opinion 49 (1985); New York State Ethics Opinion 608 (1990); Ohio Supreme Court Ethics Opinion 91-16 (1991), Opinion 96-09 of the Committee on Legal Ethics and Professional Responsibility of the Pennsylvania Bar Association.