

THE COMMITTEE ON LEGAL ETHICS OF  
THE WEST VIRGINIA STATE BAR

L.E.I. 94-01

COLLECTION OF OVERDUE ACCOUNTS

The Committee on Legal Ethics (hereinafter Committee) has been asked to render an opinion on the following issue: Whether an attorney can refer a delinquent account to a collection agency to recover money owed for legal services. For the reasons stated below, the Committee approves the use of collection agencies under certain prescribed guidelines.

This decision overrules L.E.I. 80-1, Propriety of Law Firm Referral of Its Overdue Client Accounts to Collection Agency, in which the Committee held that a lawyer cannot refer overdue client accounts to a collection agency. The decision was written at a time when there were few restrictions on collection agencies and was prompted by concern that the usage of such eroded the attorney-client relationship by causing a lawyer to place his personal financial interests over his duties of loyalty and zealous representation on behalf of a client.

However, as is often the case, change has come with the passage of time.

The conditions involving the use of collection agents have changed substantially since [1975]. The collection process has been subjected to increasing public scrutiny and government regulation over the years (e.g. the Fair Debt Collection Act, 15 U.S.C. § 1692 et seq.) and the use of collection agents no longer appears to us to be inconsistent with the dignity and honor of legal professionals, provided that all other reasonable efforts short of litigation have first been exhausted, and provided also that appropriate measures to assure the collection agent's strict adherence to law and

regulations and to the highest ethical standards in the process of collection are taken by the attorneys retaining them.

New York State Ethics Opinion 608 (1990).<sup>1</sup> Today, this view is espoused by a majority of states<sup>2</sup> that have addressed the issue. However, all of these states have placed restrictions on a lawyer's use of collection agencies in order to fall within the framework of the Rules of Professional Conduct or Code of Professional Responsibility.

In adopting the majority view that a lawyer may refer an overdue client account to a collection agency, the Committee on Legal Ethics of the West Virginia State Bar likewise employs the following guidelines:

1. The fee must be legally and ethically valid;
2. The lawyer did not believe when the fee agreement was made that the client would not be able to afford it;
3. The lawyer is no longer responsible for the client's case;
4. There is no genuine dispute over the debt;

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<sup>1</sup> Interestingly, the Committee in originally rejecting the use of collection agencies in L.E.I. 80-1 relied on New York State Ethics Opinion 400 (1975). That decision has been overruled by New York State Ethics Opinion 608 (1990).

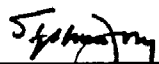
<sup>2</sup> See Arizona Ethics Opinion 82-2 (1982); Colorado Ethics Opinion 548 (1961); District of Columbia Ethics Opinion 60; Florida Ethics Opinion 90-2 (1991); Georgia Ethics Opinion 49 (1985); Illinois Ethics Opinion 632 (1978); Iowa Ethics Opinion 83-21 (1983); Maryland Ethics Opinion 82-24 (1981); Massachusetts Ethics Opinion 89-3 (1989); Missouri Informal Ethics Opinion 4 (1982); New Mexico Ethics Opinion 1988-7; North Carolina Ethics Opinion 7 (1986); Ohio Supreme Court Ethics Opinion 91-16 (1991); Oregon Ethics Opinion 225 (1972); Utah Ethics Opinion (unnumbered); and Virginia Ethics Opinion 946 (1987).

5. The lawyer has exhausted all other reasonable efforts short of litigation in attempting to collect the debt;
6. The lawyer has first informed the client in writing that he plans to refer the matter to a collection agency;
7. The lawyer must also exercise caution in his selection of a collection agency:
  - a. The lawyer should not use a collection agency that he knows or has reason to believe is and/or has acted illegally.
  - b. The lawyer must not employ an agency that engages in the unauthorized practice of law;
8. The lawyer may provide the collection agency with information regarding former clients, such as names, addresses and fee. However, the lawyer shall not disclose any confidential information that is unrelated to the collection of the debt; and

Without the implementation of these guidelines, a lawyer places himself in jeopardy of violating Rules 1.5, 1.6, 1.7, 1.8(b), 5.5(b), and/or 8.4(a) through (d) of the Rules of Professional Conduct.

To the extent that this opinion is inconsistent with L.E.I. 80-1, it is overruled.

Dated:

  
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STEPHEN JORY, CHAIRMAN,  
Committee on Legal Ethics of  
The West Virginia State Bar