

Overruled  
by  
L.E.I.  
94-01

**LEGAL ETHICS INQUIRY 80-1**

(January 16, 1981)

**PROPRIETY OF LAW FIRM REFERRAL OF ITS  
OVERDUE CLIENT ACCOUNTS TO COLLECTION AGENCY**

The Committee has received the following inquiry from a West Virginia lawyer: "May my law firm refer overdue client accounts to a collection agency under the following conditions: (a) the agency would have no authority to bring legal action on the accounts; (b) the only information revealed to the agency is the client's name, address and the amount owed; (c) the law firm has good reason to believe that the particular agency will deal courteously with the debtor/client and is in full compliance with national and state law regulating collection agencies and practices"?

**AUTHORITIES INVOLVED:** EC 2-23, DR 4-101(B)(1), DR 4-101(C)(4), EC 5-2 and DR 5-101(A) of the West Virginia Code of Professional Responsibility.

The Committee has examined the above authorities as well as the general philosophy which has guided this Committee, in the past, in the determination of similar inquiries. While DR 4-101(C)(4) allows revelation of confidences and secrets otherwise protected under DR 4-101(B)(1) in order to collect a fee, it is the view of the Committee that such provision allows revelation of only the minimum information necessary to locate, and collect from, debtors. Additionally, DR 4-101(C)(4) assumes that a method of collection has been found appropriate under our ethics rules.

In fact, guidance concerning the answer to that threshold question must be found elsewhere in the Code of Professional Responsibility.

EC 2-23 provides:

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 5-2 and DR 5-105(A) also warn that a lawyer must not allow his personal financial interests to dilute his zeal and loyalty to his client.

In West Virginia Legal Ethics Case No. 213 (May, 1964) this Committee cited old Canon 12 and emphasized that the law is not a mere money-getting trade and that a lawyer, as a professional, should willingly surrender attitudes and policies or tradesmen in favor of better client relations and a more wholesome professional image.

The closeness of the attorney/client relation can be best maintained only when the setting and collection of fees is done on a personal lawyer-to-client basis. The injection of a collection agency or agent into this unique and personal relationship, even when the lawyer retains some general control over the agency, would present an unacceptably high possibility of injury to the attorney/client relation, which should be avoided. The New York State Bar states that such collection arrangement is not in keeping with the dignity of the profession in its recent Opinion 400 of June 27, 1975, 47 N.Y.S.B.J. 434 (1975).

Therefore, it is the conclusion of the Committee that the question presented should be answered in the negative.