

THE WEST VIRGINIA STATE BAR
COMMITTEE ON LEGAL ETHICS

LEGAL ETHICS INQUIRY 79-6
February 14, 1979

I have your letter of January 12, 1979, in which you asked whether an "ethical question" exists with respect to the following:

Creditor [c] refers delinquent accounts for collection to collection agency [a]. Later, one or more accounts become uncollectable without the filing of a lawsuit. Collection agency [a] has written authorization from creditor [c] to hire an attorney to file suit in the creditor's behalf. Accordingly, collection agency [a] refers the delinquent accounts to an attorney and suit is filed. The attorney has no proprietary interest in the collection agency and is not an employee of the collection agency. The attorney works on a contingency fee basis.

The Committee on Professional Ethics of the American Bar Association, after a discussion with representatives of The West Virginia State Bar during which a so-called "Statement of Principles" governing attorney-agency relations was formulated, embodies those principles in Formal Opinion No. 294, dated June 21, 1958. Those principles, which answer your question, are as follows:

1. The compensation of an attorney in the handling of commercial claims is a matter of contract between the attorney and the creditor, and any schedule of rates now in force or hereafter adopted is not mandatory and is but a recommendation.

2. The receiving by an attorney of a claim from a lay forwarder as agent of a creditor is approved where this is expressly authorized by the creditor, provided there is compliance in fact and in spirit with Canons 34, 35 and 47.

The following minimal conditions are requisite to compliance with Canons 34 and 35:

(a) It is recognized that the lay forwarder, in performing a non-legal service separate and apart from the legal services rendered by the receiving attorney, is entitled to be paid therefor by the creditor upon the basis of the service rendered by the forwarder, separate and apart from the legal services rendered by the receiving attorney.

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(b) The attorney in the collecting of claims with or without suit is engaged in the practice of law, and his conduct must conform to the requirements of the Canons of Professional Ethics; and any compensation earned by the attorney in his commercial practice, whether denominated "collection commission" or "suit fee," is a fee for legal services.

(c) No division of fees for legal services is proper, except with another lawyer based upon a division of service or responsibility.

(d) The receiving attorney shall not under any guise or form share his fee for legal services with a lay agency, personal or corporate, without prejudice, however, to the right of the lay forwarder to charge and collect from the creditor proper compensation for non-legal services rendered by the law forwarder which are separate and apart from the services performed by the receiving attorney.

(e) When the lay forwarder, as agent for the creditor, forwards a claim to an attorney, the direct relationship of attorney and client shall then exist between the attorney and the creditor, and the forwarder shall not interpose itself as an intermediary to control the activities of the attorney.

3. Neither the Statement of Principles superseded hereby nor the foregoing Opinion was or is intended to diminish the requirements of Canons 34, 35 and 47.

4. Questions as to what, in any given situation, constitutes the unauthorized practice of law, within the purview of Canon 47, are within the jurisdiction of the Standing Committee on Unauthorized Practice of Law of this Association and are not intended to be covered hereby.

It would seem, therefore, that the attorney may accept collections from the collection agency acting at the request of and with the authority of the creditor and represent the creditor in effecting collections provided that (1) there is no division of fees between the attorney and the collection agency, and (2) the forwarding agency does not interpose itself as an intermediary to control the activities of the attorney on behalf of the creditor.