
E-72-2 Attorney-collection agency relationship

Upon your inquiry of November 18, 1971, addressed to this committee on a considered means of expedition in the handling of commercial collections by which the lawyer engaged in that field would furnish forms either with or without charge to existing clients, as well as upon request to new clients, which forms would contain the attorney's name and address on all parts, the top part to be kept by the client, the middle portion sent to the attorney with instructions to proceed with legal efforts to collect after the expiration of a certain number of days, and the final or bottom portion to be mailed by the creditor-client to the debtor with notification that unless payment is made the matter will be placed directly in the hands of the lawyer whose name and address as such are made part of the form.

It is the opinion of this committee that such a procedure would be in violation of professional ethics, upon several considerations and standards hereafter referred to:

1. It would not permit the lawyer involved to exercise personal judgment on whether or not he should be employed. Acceptance of employment clearly implies that a lawyer shall not accept legal employment unless he knows the circumstances of the case and is able to exercise his own judgment and conscience in determining whether it is purely for harassment, and also whether or not it is warranted. Further, a lawyer may not enter into arrangements in which he submits to the control of others the exercise of his judgment. (DR-109; EC 3-3)

2. Further, by means of furnishing these forms or the authorization of the use of the attorney's name or address or both upon the form, the lawyer is in very clear effect permitting himself to be used in the unauthorized practice of the law. It is fundamental that a lawyer shall not aid in the unauthorized practice of the law (DR 3-101), the purpose of that condemnation being to protect the public from legal services by unskilled persons who are not subject to professional discipline.

3. Further, this would be a form of solicitation of business, not necessarily by payment to secure business, but by furnishing items of value to clients and prospective clients for the purpose of retaining or securing their business.

4. Further, it would be a form of advertising in that the lawyer's name and address would be circulated by the creditor to each debtor, and this traditional ban against advertising is deeply rooted in the public interest. (EC 2-9)

5. It is likewise clear that a lawyer shall not publicize himself nor permit others to do that on his behalf, and shall not circulate "cards, letterheads, or devices" to publicize his name and other identification.

Other considerations that characterize the proposal with inherent concepts of ethical impropriety are as follows:

1. It falsely creates to the public an impression that the attorney has been retained in connection with the claim;
2. It uses the attorney's name as a club in a demand letter;
3. The public is misled in that the arrangements indicate, or at least strictly imply, that the attorney has counseled with the claimant concerning the claim.

As a further comment on the proposal as a whole, the Committee considers most seriously that people must have faith that justice can be obtained through our legal system, and therefore, although explicit guidance may not be available on particular proposals, a lawyer should determine his conduct by acting in a manner that truly reflects public confidence in the integrity and fairness of the legal system and the legal profession, in accord with the thoughts expressed in EC 4-2.

You should further understand that official opinions of the Professional Ethics Committee are advisory only and are subject to review by the Wisconsin Supreme Court.