

FORMAL OPINION NO. 37

The opinion of the Committee has been sought concerning the propriety of conduct related to the following inquiries:

Inquiry 1:

- A. May an attorney be bonded directly to national collection agencies?
- B. May an attorney properly issue form demand letters on accounts forwarded to him for collection in which he states that he represents the collection agency, and that the account has been assigned to him for collection?

Inquiry 2:

- A. The name of an Idaho attorney, or his signature, or both, appears on the complaint or other papers, filed by a credit bureau as plaintiff. The paper and pleadings are prepared by either the employees of the collection agency, or by attorneys in another state; the attorney in Idaho has no file pertaining to the facts and when inquiry is made, refers the inquirer to the collection agency. Is this proper?
- B. Is it material that the name and address of a law firm in another state also appears on the pleadings?

Inquiry 3:

- A. Is it unethical for an attorney to represent a credit bureau or credit collection agency and to file suit for said agency on collections which have been assigned to the agency for collection? It is assumed the normal procedure is that upon collection, the collection agency retains a percentage of the assigned claim and turns the remaining amount over to its client.

For convenience, these inquiries will be discussed in one opinion. The questions take varied form, but primarily are concerned with the creditor-collection agency-attorney relationship.

An attorney should always be mindful of the parties composing the attorney-client relationship. A collection agency, or other lay forwarder of a creditor's claim, usually has no vested interest in the debt. The forwarder acts as a special collection agent for the creditor, and only when expressly authorized by the principal may it forward the claim to an attorney and authorize the commencement of suit. Since the forwarder is an agent, the attorney-client relationship is created between the attorney and the creditor. The ethical standard established to regulate this relationship is expressed in Canons 34, 35 and 47 of the Canons of Professional Ethics of the American Bar Association and of the Idaho State Bar. These Canons provide:

"No division of fees for legal services is proper, except with another lawyer, based upon a division of service or responsibility."
Canon 34.

"The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between the client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client." Canon 35.

"No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate."
Canon 47.

It is the opinion of the Committee that the Committee on Professional Ethics and Grievances of the American Bar Association has properly applied the above canons in rendering

its Opinion 294, adopted June 21, 1985. We quote the part applicable here:

- "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.

(b) The attorney, in collecting 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) 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 lay forwarder which are separate and apart from the services performed by the receiving attorney.

(d) 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.

When we apply the foregoing to the above inquiries, it becomes apparent that the answers are:

1. A - Yes
B - No
2. A - No
B - No
3. A - No

We feel it unethical for an attorney to have accounts assigned to him personally for collection, or to sign pleadings without knowledge of the truth of the facts stated therein. We believe it is proper for an attorney to represent a collection agency on collections expressly assigned to the agency by an arrangement contemplated within Opinion 294, supra.

DATED this 3rd day of October, 1962.

*See, Rule 11(a)(1), Idaho Rules of Civil Procedure; DR 2-107(A), DR 3-101(A), DR 5-101(A), and DR 5-107, Idaho Code of Professional Responsibility.