

ETHICS OPINION NO. 39

Debt Collection Procedures

In order to prevent the possibility of allowing unauthorized practice of law and misleading the public regarding its dealings with attorneys, it is imperative that the activities of attorneys be separate from — and be perceived by the public to be separate from — the activities of debt collection agencies in particular and creditors' collection attempts in general. The blurring of the distinction between the actions of a lawyer seeking to collect on a claim for a client and the actions of a debt collection agency seeking to collect an account for a creditor may lead to abuses of debtors and adversely reflect upon the legal profession. To prevent the possibility of (a) misleading the public, or (b) abusing debtors, or (c) allowing the unauthorized practice of law the following guidelines have been established by this committee, pursuant to the N.D. Code of Professional Responsibility. They are to be used by attorneys in connection with debt collection work.

1. An attorney who represents, or performs legal work for a debt collection agency may not do any of the following:

A. An attorney may not list his or her name in, or on, any building office sign, building tenants' directory, office sign or door sign of the debt collection agency if an attorney is engaged both in the practice of law and in the debt collection agency business. (DR 2-102 (E))

B. An attorney may not indicate on his or her letterhead, office sign or shingle, or professional card, that the attorney is in any way associated with a debt collection agency. (DR 2-102(A) (1), (3), (4); DR 2-102 (E))

C. An attorney may not identify himself or herself as a lawyer in any

publication relating to the operation of a debt collection agency, unless it is in connection with an article stating or interpreting applicable law. (DR 2-102 (B))

D. An attorney may not have, or use, the same telephone number as that used by a debt collection agency. (DR 2-102 (E))

E. An attorney may not use the same office address as that used by the debt collection agency. (DR 2-102 (E))

F. An attorney may not permit his or her name to be used in connection with any oral or written advertisement or solicitation for business by a debt collection agency. (DR 2-102; DR 2-102 (E))

2. An attorney who represents or performs legal work for a debt collection agency shall exercise reasonable care to ensure that confidences and secrets of the attorneys' clients are not disclosed by employees of the debt collection agency to any person not authorized by the client to receive such information. (DR 4-101 (D); EC 3-4; EC 3-6))

3. Except for purposes of effecting services of legal process according to law, no attorney shall permit any correspondence, pleadings, garnishment, summons, execution, releases, or other documents which bear his or her signature (or a facsimile thereof) to be used, or mailed, by persons who are not in the exclusive employ of the attorneys representing either a creditor or a debt collection agency.

4. An attorney who represents or performs legal work for a debt collection agency shall monitor and direct the role of employees of the debt collection agency so that no inappropriate unauthorized negotiations on the debt are conducted during the pendency of a legal action being handled by the attorney. (EC 3-6, DR 3-101)

5. An attorney who represents, or performs legal work for, a debt collection agency shall be responsible for all acts of the attorney's own lay employees,

and the attorney may not permit, expressly, by implication or by non-action, lay employees to engage in conduct which, if engaged in by an attorney, would be in violation of the Code of Professional Responsibility. This applies to attorneys representing either a creditor or a debt collection agency.

6. Form letters, pleadings, or other legal documents shall be reviewed and signed by any attorney who represents or performs legal work for a creditor or a debt collection agency in the completed form in which they are to be sent, served or delivered. (DR 1-102 (A) (4), (5); EC 3-6))

7. An attorney who represents or performs legal work for, a creditor a debt collection agency shall not deliver to, or otherwise make available to, lay persons who are not in the exclusive employ of the attorney's law office (a) rubber stamp signatures, (b) reproduced signatures, (c) mechanized signatures or (d) other facsimile signatures of the attorney, for purposes of allowing use of the same on demand letters, original pleadings, or on any other documents used in debt collection (EC 3-6; DR 1-102 (A) (5); DR 3-101 (A))

8. No attorney shall furnish a creditor or debt collection agency with said attorney's letterhead in any form, for use in writing general pre lawsuit collection letters. (EC3-6, DR3-101, DR6-101 (A) (2))

9. An attorney shall not aid, abet or assist any debt collection agency in the violation of the provisions of ND. N.D.C.C. 13-04 or relevant state regulations promulgated by the N.D. Department of Banking and Institutions, prescribing prohibited practices of debt collection agencies. Similarly, an attorney shall not aid, abet or assist a debt collection agency in the violation of any other state or federal laws, rules or regulations governing debt collection agency practices. (DR3-101 (A); DR 1-102 (A) (6))

Linda Catalano

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