

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-379
Issued: March 1995

Since the adoption of the Rules of Professional Conduct in 1990, the Kentucky Supreme Court has adopted various amendments, and made substantial revisions in 2009. For example, this opinion refers to Comment 19 of Rule 1.6, which has been deleted. Lawyers should consult the current version of the rules and comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: May a lawyer report clients to a credit reporting agency when they have refused requests for payment and the lawyer does not wish to sue them?

Answer: No.

References: KBA Es-237 and 253; Rule 1.6, Comment (19); Alaska Op. 86-3 (1986).

OPINION

The requestor is interested in using the credit reporting agency, and states that other lawyers are using such agencies. The answer to the question is not obvious, and the Committee believes that a Formal Opinion on the subject would be helpful.

In KBA E-237 we noted that a lawyer may sue to collect a fee. Rule 1.6, Comment (19) notes that a lawyer may make disclosures that are necessary for the collection of the fee.

However, here the disclosures are not being made for, or limited to the purpose of collecting the lawyers fee. Alaska Op. 86-3 (1986) states that while it is proper for a lawyer to use a collection agency to collect the lawyer's fee, it is not proper for a lawyer to refer a client's unpaid accounts to a credit bureau. "The disclosure of a client's name and delinquent fee amount to a credit bureau with the intention that the information be used freely by the credit bureau constitutes the unauthorized disclosure of a client confidence or secret. Moreover, the probability that referral of a client's delinquent account to a credit bureau will result in its collection is too small to justify its use." *See also* KBA E-253 (1981), to the effect that a client's credit history can only be revealed "where the client has specifically authorized the release of the information in writing."

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.