

ETHICS OPINION

RO-90-85

[REDACTED]

QUESTION:

"My client, a lawyer, has handled accounts referred to him by D Regional Medical Center for collection. These accounts were set up as collection accounts in his law practice and he would undertake to collect them by first writing a collection letter and ultimately, by filing suit to obtain a judgment and then utilize available legal remedies to collect on the judgment obtained. He received a set percentage of all monies collected as his fee for handling these accounts.

My client now wishes to cease all of his collection activity on accounts to date, and further wishes to cease taking any new referrals from D of accounts for collection.

My client wishes to form a new business entity, either partnership or corporation, in which he will have 50% ownership. The new entity would handle all newly referred accounts from D, and my client would like to sell the existing accounts which he has to this entity which would be responsible for all collection efforts which do not include legal services. In the event the entity determines matters must be referred to an attorney, the referral would not be to my client or his law firm. It would go to an attorney or law firm in which my client would have absolutely no interest whatsoever. The new entity, therefore, would not be a feeder for my client's law practice.

The new entity would take whatever steps it deemed necessary to act as a collection agency or to have the various accounts collected in whatever business manner or arrangement it determines necessary. It would not, however, involve my client acting as an attorney, nor his law firm acting as attorney to collect these accounts.

Several specific questions and scenarios would present themselves which are as follows:

1. Is it acceptable for the new entity (of which my client will own 50%) to begin taking all new accounts which are turned over by D for collection? The new entity would see that nonlegal collection efforts take place on these accounts and, in the event they cannot be collected, and in the further event the new entity determines legal action is advisable, then the accounts would be turned over to an attorney or firm of which my client has absolutely no interest.
2. As to accounts previously referred to my client by D, he wishes to sell these accounts to the new entity. These accounts are in various stages of collection which may be summarized as follows:
  - a. Account received from D and collection letter sent but no response or payment made by debtor.

- b. Collection letter sent and debtor agreed to a payment schedule with which debtor failed to comply.
- c. Collection letter sent and debtor made a payment schedule with which debtor is currently complying.
- d. Debtor failed to respond to collection letter or failed to comply with payment schedule and litigation was initiated resulting in a judgment against debtor.
- e. Debtor failed to respond to collection letter or failed to comply with payment schedule and litigation was initiated resulting in a judgment against debtor and collection efforts were initiated pursuant to the judgment resulting in either no payment, irregular payments, or regular payments by debtor."

\* \* \*

ANSWER:

The parameters that apply to business activities entered into by a lawyer outside of the practice of law are difficult to define and, to an extent, ever changing. As a general principle a lawyer may not engage in any other business or occupation, other than the practice of law, when his sole motivation for doing so is to generate business for his legal practice or when the business or enterprise will act primarily as a feeder to the lawyer's practice. In addition, as an absolute principle, a lawyer may not do through third persons (or by extension, businesses or enterprise owned by him), that which he may not do directly.

An additional difficulty is encountered in formulating an answer to this request in that, to an extent, the Commission will have to look at issues such as the unauthorized practice of law, which are not strictly subject to the jurisdiction of the Disciplinary Commission. Nonetheless, in an effort to furnish guidance to you, and to your client, we would advise you that it is ethically permissible for your client to engage in a business or occupation other than the practice of law, and that such business or occupation may include a collection agency. There are, however, several considerations that apply. It is uncertain from this request whether newly generated accounts from D will be refereed directly from D to this collection agency or whether such accounts will be referred through the office of the attorney. In our opinion it would be ethically improper for the attorney to "sub-contract" collection work to a partially owned

collection agency. If the attorney wishes to discontinue handling collection business from D●, then the attorney may so advise D● and D● may seek representation or collection assistance as it wishes. Referral of this business through the office of the attorney is not, in our view, permissible.

Assuming that collection accounts are properly forwarded from D● to the collection agency then it would be permissible, in our view, for a collection agency owned by a lawyer, in whole or in part, to pursue all permissible means of collection allowed to collection agencies. We would further opine that, should it be necessary to turn these accounts over to a lawyer or law firm, then, in such event, your client's intent to exclude himself and his firm from receipt of such referrals is ethically permissible.

We are concerned by your client's desire to "sell" these collection accounts to the new entity (i.e., collection agency). In our view if your client is unable or unwilling to handle these accounts then they should be returned to D● for D● to act upon. If your client wishes to protect his economic interests in these accounts, particularly in those accounts in which judgment has been obtained, or in which payments are being made, then your client can reach an accommodation with D● for services rendered in reference to the same. If your client were to forward these matters to any outside agency, regardless of your client's economic interests in that agency, this would, in our view, constitute aiding or abetting a non-lawyer in the practice of law and splitting legal fees with non-lawyers. All of these are deemed to be in contravention of the Code of Professional Responsibility and the Rules of Professional Conduct. (See Canon 3, Code of Professional Responsibility and also see Rule 5.4 of the Rules of Professional Conduct.)

The Commission in the past has held that it is impermissible for a lawyer to compensate his employees and/or independent contractors who render services to him in reference to his collection practice on a contingency basis, on the theory that such a division of fees or compensation scheme constitutes sharing legal fees with non-lawyers. Likewise, in our view, selling what arguably could be considered legal business and/or retaining an economic interest in collection accounts being handled by non-lawyers might reasonably be construed as splitting legal fees with non-lawyers.

The Philadelphia Bar Association in a 1987 opinion (Opinion 87-3, 5/8/87, ABA/BNA Lawyers Manual on Professional Conduct, 901:7513) stated that prevailing authority maintains that a collection agency which interposes itself between a creditor and a lawyer seeking to collect a creditor's claim is engaged in the unauthorized practice of law. We believe that principle to be sound. We also believe that a lawyer, assisting the collection agency or "sub contracting" claims to the collection agency would be guilty of assisting another in the unauthorized practice of law.

Accordingly, most of the aspects of the plan envisioned by your client are, in our view, impermissible pursuant to both the Code of Professional Responsibility and the Rules of Professional Conduct. While your client may own an interest in a collection agency, and while that agency may take and perform all acts allowed to it by law, the permutations of this particular relationship go far beyond simple ownership of a business and intrude into practices not permitted under the Code or the Rules.

AWJ/vf

12/7/90