

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-93
Issued: March 1974

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: May an attorney ethically be employed by a collection agency to represent a creditor in the filing of suit on a claim under an agency agreement executed by the creditor authorizing the collection agency to employ an attorney in its behalf?

Answer: Yes.

References: DR 3-102, 5-107(B)

OPINION

An attorney inquires whether he may ethically accept employment through a collection agency to file suit on behalf of a creditor under an agency agreement executed by the creditor authorizing the collection agency to employ an attorney in its behalf.

The proper relationship between attorneys and collection agencies has received considerable attention because of the possibility of ethical conflict and abuse. In 1954 the Committee on Professional Ethics of the American Bar Association formulated a "Statement of Principles" governing the attorney-collection agency relationship. These principles were later embodied in ABA Formal Opinion 294 (dated June 21, 1958), where it was held that an attorney may accept a commercial claim from a lay forwarder acting at the request of the creditor and represent the creditor in effecting collection, provided (1) there is no division of fees and (2) the forwarder does not interpose itself as an intermediary to control the activities of the attorney. The following were said to be minimal conditions in the handling of claims by attorney and agency:

- (1) The lay forwarder may receive payment from the creditor for non-legal services, separate and apart from the services rendered by the attorney.
- (2) In performing any phase of collection work, the attorney is practicing law, and his compensation is a legal fee.
- (3) No division of fees with a layman is proper. Legal fees may be divided only with another lawyer who shares the work or responsibility.
- (4) The attorney may not share a fee with the lay forwarder, but the latter may collect directly from the creditor for non-legal services.

- (5) Once a claim is forwarded to the attorney, the direct relation of attorney and client shall exist between the attorney and creditor, and the law forwarder shall not control the attorney's activities.

These rules were an attempt to give practical application to Canon 34 (now DR 3-102), relating to the division of fees with laymen, and Canon 35 (now DR 5-107(B)), forbidding injection of an intermediary between lawyer and client. Relying on these principles, the ABA Committee has said in ABA Informal Opinion 327 that there is no reason why a collection agency may not be properly designated by a creditor as his agent to employ an attorney on prescribed terms, so long as it is remembered that the attorney is representing the creditor and not the credit bureau and provided the bureau receives no portion of the lawyer's fee. It was also said to be proper, where authorized, for the collection agent to suggest a lawyer's name, so long as employment is unsolicited by the lawyer. Once a collection agency authorized to do so has retained a lawyer, the Committee has ruled (ABA Informal Opinion 328) that the lawyer has a duty to get in direct touch with the creditor, unless the creditor specifically authorizes the agency to conduct the correspondence and arrangement with the attorney as the creditor's agent. After collection of the account, said the Committee, the attorney may properly deduct the agreed fee and remit the balance directly to the creditor unless the latter has specifically authorized the agency to receive the net remittance, from which it could then deduct its agreed compensation.

The Ethics Committee has reviewed and fully subscribes to the principles discussed in the opinions of the ABA. Within the framework of these rules, we find no ethical conflict in the contemplated representation.

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.