New York State Bar Association

Committee on Professional Ethics

Opinion 813 – 5/7/07
Clarifies: N.Y. State 803 (2006)

Topic: Unauthorized practice of law; debt collection; letterhead

Digest: A lawyer who provides debt collection services as a non-legal service may not use law firm letterhead in doing so, but a lawyer who, as a lawyer, represents clients in collecting debts may use law firm letterhead.

Code: DR 1-106(A), 1-102(A)(4), EC 3-6.

QUESTION

1. A lawyer in New York has been retained by several debt collection agencies, both in New York and out of state, to assist in the collection of debts. The lawyer has hired employees of the debt collection agencies to assist in this work, including preparing letters to debtors. The employees are located in New York and out of state. May the lawyer use the lawyer's letterhead in sending letters to the debtors?

OPINION

2. We see no impediment in the New York Code of Professional Responsibility to a New York lawyer, acting as a lawyer, using law office letterhead in seeking to collect a debt, assuming no violation of any other jurisdiction's rules. In N.Y. State 803 (2006) we addressed an inquiry in which a lawyer wished to engage in a debt collection business outside of New York without engaging in the practice of law in the state where that business was conducted. The lawyer was not admitted in that state. Rather, the inquirer there sought to assist clients in collecting debts as a non-legal service, which we assumed was permitted by the rules of that other state. Our opinion focused primarily on the requirements of DR 1-106(A) where a law firm is offering both legal and non-legal services, and in particular the requirement that the lawyer advise the client in writing that the protection of the attorney-client relationship does not exist with respect to the non-legal services.

3. In addition, in paragraph 4 of the opinion we addressed the implications of DR 1-102(A)(4), which prohibits a lawyer from engaging in "conduct involving dishonesty, fraud, deceit, or misrepresentation." We said:

> Similarly, the firm must avoid misleading debtors with whom it communicates pursuant to the collection activities [citing DR 1-102(A)(4)]. For example, it may not use its law firm letterhead in communicating with debtors and must otherwise avoid suggesting to debtors in such communications that the firm or its representatives are functioning as lawyers engaged in the representation of the creditor-client or that the firm or its representatives might undertake legal action on the creditor-client's behalf.

4. This discussion of the use of firm letterhead related only to the conduct of a collection business as a non-legal activity in a state where that was permitted. Our concern was that the lawyer not mislead debtors as to the capacity in which the lawyer is acting, so as to suggest, for example, that a lawyer has considered the merits of the claim or is preparing to sue the debtor.

5. In the present inquiry, a lawyer proposes to offer *legal* services to the lawyer's debt-collection-agency clients. In that situation, the lawyer is acting as a lawyer in seeking to collect the debt, and can use law office letterhead in doing so.

6. We caution that in conducting such a debt-collection practice, the lawyer must adequately supervise his or her non-lawyer employees.[1] A lawyer must retain full professional responsibility and meaningful involvement in supervising the activities of law firm employees. As we said in N.Y. State 179 (1971), "It would not be improper to permit a stenographer in the office of the client to type the collection letters in the form prepared by the attorney and to forward them to the attorney, who would read, sign and mail the letters to the debtors in the event the letters met with the attorney's approval." But it would be a violation were the lawyer to turn the sending of the lawyer's collection letters over to the collection agency or to the lawyer's debt-collection employees without any meaningful involvement by the lawyer.[2]

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[1] *See* EC 3-6 (delegation of tasks to clerks, secretaries and other nonlawyers "is proper if the lawyer maintains a direct relationship with the client, supervises the delegated work, and has complete professional responsibility for the work product").

[2] *Cf. Clomon v. Jackson*, 988 F.2d 1314, 1320 (2d Cir. 1993) (finding violation of federal law prohibition on use of "false, deceptive or misleading" representations or means in debt collection where lawyer did not determine to whom letters over his name should be sent, did not see, review or approve letters before they were sent, and did not know to whom they were sent).

7. As in N.Y. State 803, we express no opinion on any question arising out of the rules relating to the unauthorized practice of law. We do not opine on the law or ethics rules of any other jurisdiction.[3]

CONCLUSION

8. The New York Code of Professional Responsibility does not prevent a lawyer offering legal services from using the lawyer's law firm letterhead in the course of representing clients in collecting a debt. If the law firm undertakes to offer debt collection services as a non-legal service in places where doing so is otherwise permitted, the lawyer should not use law firm letterhead in doing so, as that would suggest that the lawyer is offering legal services.

(10-07)

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[3] Indeed, we do not opine on what constitutes unauthorized practice of law in New York either, because the rules governing unauthorized practice of law in New York are matters of law, not the Code of Professional Responsibility. New York Judiciary Law §§ 476-a, 476-b, 478, 484-486.