



Committee on Professional Ethics

Opinion #371 - 2/26/75 (52-74)

Topic: Acceptance by attorney of referral cases from collection agency which selected him.

Digest: In the absence of authorization from client it would be improper to accept reference case from collection agency.

Code: Canon 5; DR 5-107(B);
DR 3-101(A); 3-102(A);
EC 9-2.

QUESTION

In the absence of express authorization by the client, may an attorney receive referral cases from a collection agency, correspond directly with the agency and not the client in collection matters so referred, and receive his legal fees out of the agency's collection fee?

OPINION

1. It would be improper for an attorney to receive referral cases from a collection agency if he is selected by the agency and not the client, since it would appear that the agency and not the client is retaining the attorney and is controlling his activities. N.Y. City 562 (1941).

Canon 5 provides that:

"A lawyer should exercise independent professional judgment on behalf of a client."

DR 5-107(B) provides that:

"A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services."

However, an attorney may properly accept these cases from a collection agency which has selected him if the agency has received authorization from the client to make the selection and the attorney is aware of such authorization. The collection agency would be acting as agent for the client and the attorney would be responsible to the client with whom he would clearly have a lawyer-client relationship. N.Y. City 568 (1941); N.Y. City 731 (1949); ABA 294 (1958).

2. The attorney may properly correspond with the collection agency

as agent for the client in the performance of his professional services if such correspondence is authorized by the client. However, the attorney could not be properly required to communicate exclusively with the collection agency. If in the exercise of his independent professional judgment the attorney should deem it necessary to correspond with the client in his best interests, he would be obligated to do so. Canon 5; DR 5-107(B); cf. ABA Statement of Principles on Collection Agencies (1937) printed in 6 Martindale-Hubbell 75C (1975).

3. It would not be proper for the attorney to receive his legal fee out of the agency's collection fee since DR 3-102(A) provides that a "lawyer or law firm shall not share legal fees with a non-lawyer". Furthermore, the attorney may be participating in the unauthorized practice of law in violation of Section 495(d) of the Judiciary Law which provides that no corporation or voluntary association shall furnish attorneys or counsel. See also, Judiciary Law Secs. 478, 484.

However, it is not improper for an attorney to receive his fee out of the money paid by the client to the agency if the compensation to the said agency for its services is separate and distinguishable from the payment for the lawyer's services. It should be clear to both the client and the attorney that the client is required to pay the lawyer's fee either as a fixed sum or as a percentage of the amount collected. Such arrangement would be consistent with the lawyer-client relationship between the lawyer and client and would avoid even the appearance of splitting legal fees with the agency. DR 3-102(A); N.Y. City 568 (1941); N.Y. City 731 (1949); ABA 294 (1958); ABA Inf. 735 (1964).
