

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Appointed by the Supreme Court of New Jersey

OPINION 723

Selling Law Firm Accounts Receivable to a Third Party or Retaining a Collection Agency For Collection of Fees Payable by Former Clients

The Advisory Committee on Professional Ethics received an inquiry asking whether a law firm may sell some of its delinquent accounts receivable to a third party for collection of fees payable by its former clients. Similar issues arise when a law firm retains a collection agency. Provided that only such information reasonably necessary to establish the claim for monies is released, and subject to further conditions set forth below, the Committee finds that a sale of accounts receivable to a third party or retention of a collection agency is permissible.

Rule of Professional Conduct 1.6(a) states that “information relating to representation of a client” is confidential and may not be disclosed by the lawyer. *Rule of Professional Conduct* 1.6(d)(2), however, provides that a lawyer “may reveal such information to the extent the lawyer reasonably believes necessary . . . to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client” A lawyer entitled to a fee from a former client has a claim in a controversy between the lawyer and the client, and may reveal confidential information to the extent the lawyer believes it reasonably necessary to establish such claim and collect the fee. As

Comment 11 to *Model Rule of Professional Conduct* 1.6 states: “This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.”

Prior to any sale of accounts receivable or retention of a collection agency, lawyers should first try to resolve disputes directly with the client. Lawyers may not initiate collection action against current clients. Lawyers should not circumvent the fee arbitration process and, before referring a matter to a collection agency or selling the accounts receivable, lawyers should first send the client an arbitration notice pursuant to *Rule* 1:20A-6. Lawyers should make reasonable efforts to satisfy themselves that the collection agency or purchaser of accounts receivable is reputable and will not take improper or illegal measures to collect the debt. Lastly, lawyers may not reveal information about the client or the legal services provided beyond what is reasonably necessary for the agency or purchaser to collect the debt. Subject to these conditions, the Committee finds that a sale of accounts receivable to a third party or retention of a collection agency is permissible.