

Opinion 484
February 1994
Tex. Comm. on Professional Ethics, Op. 484, V. 57 Tex. B.J. 202 (1994)

STATEMENT OF FACTS

A retail credit card company has referred debtors' account files and/or information regarding each debtor, to an attorney for a collection letter. A duplicate of each file and/or the information has been retained by either an outside collection agency or by the retail credit card company's in-house collection department but each has been instructed not to actively work on the files unless (a) the debtor contacts in response to the attorney's letter; or (b) over 45 days expires from the date of the attorney's letter to the individual debtor.

The attorney's letter does not appear to violate the state or federal "Fair Debt Collection Act" but does advise the debtor that the attorney has recommended to his client to "pursue any and all legal proceedings available to it in order to collect this debt" as well as to seek to recover "reasonable attorney's fees and court costs."

This letter will be the attorney's only contact with debtor's accounts.

QUESTIONS PRESENTED

1. Since the attorney is not truly collecting the account, is use of the attorney's letterhead a potential for the unauthorized practice of law?
2. Does the attorney's letterhead appear "deceptive" since some debtors may believe the attorney is actually handling the account?
3. If the attorney is an in-house attorney for the creditor, will such a relationship satisfy the State Bar rules?

APPLICABLE AUTHORITY

State Bar Rule 4.01 prohibits false statements and would require the attorney to ensure the truthfulness of statements contained in the letter, whether prepared by the creditor or by the attorney. State Bar Rule 4.03 requires the attorney to make reasonable efforts to correct any potential misunderstandings, thus meaning that the attorney would be required to examine the collection letter prepared by his client or prepared by the attorney to eliminate any potential misunderstandings. State Bar Rule 4.04 prohibits attorney conduct solely intended to embarrass, delay or burden a third person.

Texas Ethics Opinion No. 160 decided that improper conduct occurs when an attorney provides his letterhead to a bank for collection letters when that attorney has little or no contact with the debtor or the debtor's situation. Thus, if an attorney mails out letters on the attorney's stationery and such letters have been prepared by the attorney's client without any knowledge by the lawyer of the debtor's situation, such letters would be prohibited.

When an attorney signs a debtor letter or authorizes someone under his direct supervision to sign such a letter, such action is a manifestation that the attorney has exercised his professional judgment that the particular letter is appropriate for the particular debtor and for a debtor's particular account. The rules require that an attorney should review the debtor's file and determine that the letter to be sent is appropriate for this particular debtor. A lawyer must exercise care and independent judgment to make sure that each debtor's letter is accurate and appropriate as to the account of the debtor.

Collection letters should not contain misleading or deceptive statements. For example, an attorney's collection letter should not represent suit is going to be filed when the attorney knows in fact that such suit is not going to be filed. Collection letters should not give the debtor advice on the law. Collection letters should likewise, according to Texas Ethics Opinion No. 380, not contain a detail warning about future court processes and attorney's fees and court costs.

Whether an attorney is employed as an in-house attorney employee or is an outside attorney acting as an independent contractor is irrelevant since the ethical professional responsibilities apply to both types of attorneys.

CONCLUSION

Use of an attorney's stationery for collection purposes is not per se improper use of the attorney's letterhead, but the attorney must exercise his professional judgment regarding the validity and accuracy of the debt, and must make sure that no misleading, deceptive or false statements are contained in the collection letter. The attorney must make sure the letter does not advise the debtor concerning the law and does not provide detail warnings or threats about future court processes, and attorney's fees and court costs.