

**Opinion 495**  
**March 1994**  
**Tex. Comm. on Professional Ethics, Op. 495, V. 57 Tex. B.J. 1028 (1994)**

[PEC 92-15]

**QUESTION PRESENTED**

To what extent is it permissible for a law firm to provide the following information to a collection agency:

- (1) Name, address, telephone No. of the client;
- (2) The amount the law firm contends the client owes;
- (3) Copies of actual billings that are outstanding;
- (4) Copies of the fee agreement and previous correspondence with the client concerning billings; and (5) A copy of the entire file to which the account receivable relates.

**STATEMENT OF FACTS**

A Texas law firm is considering engaging the services of an independently owned and operated collection agency to assist the Texas law firm in collecting accounts receivable due the firm from clients for whom the firm had provided legal services or representation in legal matters. The law firm would retain ownership of the accounts receivable. The collection agency would handle collection in accordance with the Fair Debt Collection Practices Act, as well as the Texas Debt Collection Practices Act. The debt collection agency would communicate by telephone and letter to the client in the agency's own name stating that it is representing the law firm in collecting the account receivable.

**DISCUSSION**

Except as otherwise provided by the Texas Disciplinary Rules of Professional Conduct (the "Disciplinary Rules"), a lawyer may not reveal a client's or previous client's confidential information. Rule 1.05(b). "Confidential information" is broadly and specifically defined to include both "privileged information" and "unprivileged client information." Rule 1.05(a). A lawyer may reveal confidential information to the extent *reasonably necessary* to enforce a claim or establish a defense on behalf of the lawyer in a controversy between the lawyer and the client. Rule 1.05(c)(5) (emphasis added); see also Rule 1.05(d)(2)(iv). Because of the fiduciary relationship involved, any disclosure by the lawyer should be as *protective* of the client's interests as possible. Rule 1.05, Comments 14 and 15 (emphasis added). Under the Rules, "reasonable" denotes the conduct of a reasonably prudent and competent lawyer. Disciplinary Rules, Terminology. A lawyer also may reveal confidential information when the client consents after consultation. Rule 1.05(c)(2); see also Rules 1.05(b)(2) and (4).

Under Rule 1.05, most information concerning a law firm's legal services for a client, including the amount due from a client for legal services and information on the nature of these services, will in almost all cases be confidential and part of the information may also be privileged. (See Texas Professional Ethics Committee Opinion 464, *Texas Bar Journal*, November 1989).

In Opinion 464, the question was under what circumstances a lawyer could sell outright his delinquent accounts receivable to a third party factoring company. The committee concluded that such sale is impermissible unless each client involved had previously given consent, after consultation with the lawyer, to the disclosure of confidential information incident to such a sale. The committee recognized that although Rule 1.05(c)(5) permits a lawyer to disclose confidential

information to the extent reasonably necessary in a legal proceeding that is brought by the lawyer to collect a fee, disclosure of confidential client information as part of the sale of a delinquent account receivable to a factor is not necessary for the enforcement of the claim for the lawyer's fee. This conclusion also applies in the case of information provided to a collection agency. The employment of a collection agency and the disclosure of client information to such an agency is not necessary for the enforcement of the lawyer's claim.

In certain circumstances, an attorney may properly disclose confidential and privileged information to the attorney's agent who is subject to the direct control of the attorney. For example, Rule 1.05(c)(3) authorizes an attorney to reveal confidential information to employees of the lawyer's firm (unless the client instructs otherwise). However, because of the requirement that an attorney retain control of a client's confidential information, an attorney may not, in the absence of effective consent by the client, disclose privileged or confidential information to an agent who is not an employee of the attorney. Accordingly, an attorney may not turn over to an independent collection agency confidential client information even though the collection agency would be acting as an agent of the attorney in the collection process.

## **CONCLUSION**

A lawyer may not ethically disclose confidential information to a collection agency to enable the agency to collect the fees which might be due to the lawyer from such lawyer's client, unless the lawyer complies with the requirements of Opinion 464 and Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct.