

RESPONSIBILITY BOARD OPINIONS

By

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The renewal of the telephone advisory opinion service has illustrated the need to publish again the opinions of the Lawyers Professional Responsibility Board. Since the opinions were last published, the board has repealed Opinion No. 7 dealing with an attorney's liability for professional indebtedness and adopted Opinion No. 12 dealing with trust account signatories. [See: *Bench & Bar* 40, 3 (March, 1983) regarding repeal of Opinion No. 7.] Board opinions deal with topics ranging from jurisdictional limits on a prosecutor's ability to represent criminal defendants to the books and records required for attorney bank accounts. The opinions are guidelines for conduct and an attorney may be disciplined for a violation of a board opinion.

OPINION NO. 1 The Legal Force and Effect of Opinions Issued by the State Board of Professional Responsibility

It is the policy of the State Board of Professional Responsibility to issue, from time to time, advisory opinions as to the professional conduct of lawyers, whether as a result of a specific request or its own initiative, on matters deemed important by the board.

The board considers these opinions to be guidelines for the conduct of lawyers in the state of Minnesota. Opinions issued by the board will be subject to change from time to time as deemed necessary by the board, or as required by decisions of the Minnesota Supreme Court.

Adopted: October 27, 1972.

OPINION NO. 2 Defense of Criminal Cases by a County Attorney

It is improper for a county attorney of one county to accept the defense of a criminal case in another county of the state. Nevertheless, this rule would be outweighed in any case where the accused would be deprived of competent counsel or put to an unreasonable burden of expense by the application of this rule. In this event, the county attorney to be retained, as soon as practicable after he is asked to represent the accused shall petition a judge of the court before which the matter is to be tried for permission to represent the accused. Upon a proper showing of good cause, the judge may issue an order approving defense of the case by the petitioner. If the court decides that the facts of the situation do not justify granting this exception, the attorney involved shall then withdraw from the case. In any event, defense counsel who is also a county attorney shall scrupulously refrain from any reference to his position as a county attorney in the course of all proceedings.

Adopted: October 27, 1972.

OPINION NO. 3

It is improper for a part-time judge, or his partners or associates, to practice law in the court on which the part-time judge serves, or in any court of record subject to the appellate jurisdiction of the court on which the part-time judge serves.

Adopted: November 20, 1972.

OPINION NO. 4

It is professional misconduct for a lawyer, having accepted a fee to represent a client, to refuse to proceed with the client's matter until any remaining fee is paid in full unless the client has failed to honor an agreement or obligation to the lawyer as to expenses or fees. If the attorney raises the client's failure to honor a fee agreement as a defense for his failure to proceed, the agreement must be established by clear and convincing evidence or be in writing, signed by the attorney and the client.

It is professional misconduct for a lawyer to withdraw from employment in a proceeding before any tribunal unless and until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with the applicable laws and rules. A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

Adopted: October 12, 1973.

OPINION NO. 5

It is professional misconduct for an attorney who has signed an agreement to arbitrate a fee dispute to refuse to honor and carry out the final decision reached in such proceedings.

Adopted: April 19, 1974.

OPINION NO. 6 Defense of Criminal Cases by Municipal Attorneys

It is improper for a city or municipal attorney to accept the defense of a criminal case arising within the limits of the city or municipality which he serves. It is not improper for a city or municipal attorney to accept the defense of criminal cases in other areas provided he is not required to challenge the validity of a state statute which he would otherwise be required to support while acting in his capacity as a prosecutor, and provided there is no other actual conflict of interest. If such a challenge or conflict arises, he should withdraw from the case.

In any event, defense counsel who is also a city or municipal attorney shall scrupulously refrain from any reference to his position as a city or municipal attorney in the course of all proceedings.

Adopted: June 26, 1974.

AMENDED OPINION NO. 7

REPEALED: January 7, 1983.

AMENDED OPINION NO. 8 Attorneys' Guidelines for Law Office Services by Non-Lawyers

By duly approved resolution of June 18, 1980, Opinion No. 8 of the Lawyers Professional Responsibility Board is hereby amended to read as follows:

Except to the extent permitted by the Supreme Court of the state of Minnesota, neither law students nor any other person not duly admitted to the practice of law shall be named on pleadings under any identification.

Legal assistants, or other paralegal employees, may be listed on professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices, so long as the paralegals are clearly identified as such, and so long as no false, fraudulent, misleading, or deceptive statements or claims are made concerning said paralegals, their legal status and authority, or their relationships to the firms by which they are employed. Paralegals may use business cards so identifying themselves, which cards carry the law firm's name and address.

Such a paralegal, so identified, may sign correspondence on behalf of the law firm, provided he or she does so by direction of the attorney-employer.

Non-lawyers must be supervised by an attorney who is responsible for their work. If the attorney-supervisor permits violations of these guidelines, he shall be guilty of professional misconduct.

Adopted: June 18, 1980.

AMENDED OPINION NO. 9 Maintenance of Books and Records

To establish compliance with the applicable provisions of the Code of Professional Responsibility relating to funds and property held in a fiduciary capacity, every attorney engaged in the private practice of law, or partnerships or professional corporations of which the attorney is a member, associate, or employee, should maintain the books and records described below. Equivalent books and records demonstrating the same information in an easily accessible manner and in substantially the same detail would be acceptable. Books and records may be prepared manually, by machine, or by computer. The following books and records should be maintained for funds and property received and disbursed other than in a fiduciary capacity:

- 1) A cash receipts journal reflecting monies received on his own account such as fees received and other non-fiduciary receipts. The receipts journal should identify the source of the receipt and show the date of the receipt. Receipts should be deposited intact and the duplicate deposit slip should be sufficiently detailed to identify each item.
- 2) A cash disbursements journal reflecting all monies disbursed on his own account.
- 3) A record in the form of a fees book or file copies of billing invoices reflecting all fees charged and other billings to clients.
- 4) Bank statements, cancelled checks, and duplicate deposit slips.
- 5) A periodic reconciliation of the cash balance derived from the cash receipts and disbursements journal

totals, the checkbook balance and the bank statement balance.

The following books and records should be maintained for funds and property received and disbursed in a fiduciary capacity for clients or others:

- 1) An identification of all trust accounts maintained, including the name of the bank or other depository, account number, account name, dates account is open, agreement with bank establishing account and its interest-bearing nature. A record should also be maintained showing clearly the type of each such account as pooled, without allocation of interest [DR 9-103(B)], or pooled with allocation of interest [DR 9-103(C)(2)] or individual, including the client name [DR 9-103(C)(1)].
- 2) A cash receipts journal (separate from the non-fiduciary funds journal) listing the sources of the receipt and the date of the receipt. Receipts should be deposited intact and the duplicate deposit slip should be sufficiently detailed to identify each item.
- 3) A disbursements journal listing the date of the disbursement and payee. All disbursements should be made by check.
- 4) A subsidiary ledger containing a separate page for each person or company for whom monies have been received in trust showing the date of receipt and the amount, monthly accruals of interest, if any, the date and amount of each disbursement, including disbursements from accrued interest for cost of establishing and administering the account and any unexpended balance. For accounts established pursuant to DR 9-103(B), interest accruals and transaction costs need not be entered in ledgers or in monthly trial balances if such accruals and costs are completed by the depository and net interest paid by the depository to the Lawyer Trust Account Board.
- 5) A monthly trial balance of the subsidiary ledger showing the name of the client; and the balance of the client's account at the end of each month.
 - a) The total of the monthly trial balance should reconcile with the control figure computed by taking the beginning balance, adding (1) the total monies received in trust for the month and (2) the interest accrued for the month and deducting (1) the total of monies disbursed for the month and (2) the costs paid for establishing and administering the account.
 - b) Monies disbursed for a client which exceed monies received should be supported by an adequate written explanation.
- 6) A monthly reconciliation of the cash balance derived from the cash receipts and cash disbursements journal totals, the checkbook balance, the bank statement balance, and the subsidiary ledger trial balance total.
- 7) Bank statements, cancelled checks, duplicate deposit slips, and bank reports showing trust account interest accrued, transaction costs and net amounts paid to the Lawyer Trust Account Board.
- 8) A record showing all property, specifically identified, other than cash, held in trust from time to time for clients or others, provided that routine files, documents and items such as real estate abstracts which are not expected to be held indefinitely need not be so recorded but should be documented in the files of the lawyer as to receipt and redelivery.

Adopted: June 23, 1983.

OPINION NO. 10 Debt Collection Procedures

In order to prevent the possibility of misleading the public regarding its dealings with attorneys, it is imperative that the activities of attorneys be separate from – and be perceived by the public to be separate from – the activities of debt collection agencies. The blurring of the distinction between the actions of a lawyer seeking to collect on a claim for a client and the actions of a debt collection agency seeking to collect an account for a creditor may lead to abuses of debtors and adversely reflect upon the legal profession. To prevent the possibility of (a) misleading the public, or (b) abusing debtors, violations of the following guidelines by attorneys in connection with debt collection work shall be grounds for the initiation of disciplinary proceedings against an attorney:

- 1) An attorney who represents, or performs legal work for, a debt collection agency may not do any of the following:
 - a) If an attorney is engaged both in the practice of law and in the debt collection agency business, the attorney may not list his or her name in, or on any building office sign, building tenants' directory, office sign or door sign of the debt collection agency. [DR 2-102(E)]
 - b) An attorney may not indicate on his or her letterhead, office sign or shingle, or professional card, that the attorney is in any way associated with a debt collection agency. [DR 2-102(A)(1), (3), (4); DR 2-102(E)]
 - c) An attorney may not identify himself or herself as a lawyer in any publication relating to the operation of a debt collection agency. [DR 2-101(B); DR 2-102(E)]
 - d) An attorney may not have, or use, the same telephone number as that used by a debt collection agency. [DR 2-102(E)]
 - e) An attorney may not use the same office address as that used by the debt collection agency. [DR 2-102(E)]
 - f) An attorney may not permit his or her name to be used in connection with any oral or written advertisement or solicitation for business by a debt collection agency. [DR 2-101; DR 2-102(E)]
- 2) An attorney who represents, or performs legal work for, a debt collection agency shall exercise reasonable care to insure that confidences and secrets of the attorney's clients are not disclosed by employees of the debt collection agency to any person not authorized by the client to receive such information. [DR 4-101(D); EC 3-4; EC 3-6]
- 3) Except for purposes of effecting service of legal process according to law, no attorney shall permit any correspondence, pleadings, garnishment summonses, executions, releases, or other documents which bear his or her signature (or a facsimile thereof) to be used, or mailed, by persons who are not in the exclusive employ of the attorney's law office. [DR 1-102(A)(5), (6)]
- 4) An attorney who represents, or performs legal work for, a debt collection agency shall be responsible for all acts of the attorney's own lay employees, and the attorney may not permit, expressly, by implication or by non-action, lay employees to engage in conduct which, if engaged in by an attorney, would be in

violation of the Code of Professional Responsibility. [DR 2-102(A)(2); DR 3-101(A); DR 4-101(D); EC 3-8)]

5) Form letters, pleadings, or other legal documents shall be signed by any attorney who represents or performs legal work for a debt collection agency in the completed form in which they are to be sent, served or delivered. [DR 1-102(A)(4), (5); EC 3-6)]

6) An attorney who represents, or performs legal work for, a debt collection agency shall not deliver to, or otherwise make available to, lay persons who are not in the exclusive employ of the attorney's law office (a) rubber stamp signatures, (b) reproduced signatures, (c) mechanized signatures, or (d) other facsimile signatures of the attorney, for purposes of allowing use of the same on demand letters, original pleadings, or on any other documents used in debt collection. [EC 3-6; DR 1-102(A)(5); DR 3-101(A)]

7) An attorney shall not aid, abet, or assist any debt collection agency in the violation of the provisions of Minnesota Statutes §332.37, prescribing prohibited practices of debt collection agencies. Similarly, an attorney shall not aid, abet, or assist a debt collection agency in the violation of any other state or federal laws, rules, or regulations governing debt collection agency practices. {DR 3-101(A) DR 1-102(A)(6)}

Adopted: June 22, 1977.

OPINION NO. 11 Attorneys' Liens

It is professional misconduct for an attorney to assert a retaining lien on the files and papers of a client. This prohibition applies to all retaining liens, whether they be statutory, common law, contractual, or otherwise.

Adopted: October 26, 1979

OPINION NO. 12 Trust Account Signatories

Every lawyer engaged in the private practice of law shall by appropriate direction provide that every check, draft, or other withdrawal instrument drawn against a law firm trust account, or other similar or separate account maintained by a lawyer or law firm for the deposit of client funds and property, shall be signed by at least one lawyer associated with the lawyer or law firm.

Every lawyer engaged in the private practice of law shall by appropriate direction provide that no withdrawal from a law firm trust account or other similar separate account maintained for the deposit of client funds and property shall be made except at the direction of at least one lawyer associated with the lawyer or law firm.

Adopted: May 6, 1983.