

Using A Client's Confidential Information To Collect A Fee

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It is the nature of the practice of law that lawyers encounter conflicting ethical responsibilities. Virtually all difficult ethical issues arise from the conflict between the lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in acting ethically while earning a living. A good example of this is the conflict between the lawyer's responsibility not reveal or use "to the disadvantage of the client" a client confidence or secret and the lawyer's ability to reveal that same information "to establish or collect a fee." Rule 1.6, Minnesota Rules of Professional Conduct (MRPC).

If the lawyer is to use such information to collect a debt, the lawyer must exercise caution to ensure that the disclosure is necessary to collect the debt and the information is used in a legitimate collection effort.

In a recent case, the director issued an admonition to a lawyer in part because the lawyer's conduct was geared more toward embarrassing the client than it was to collecting an unpaid bill.

Client hired the lawyer to represent him in a litigation matter. Initially, the lawyer was in regular contact with the client. However, as time passed, the lawyer's contacts became less and less frequent. Eventually, the lawyer failed to return calls from the client. This continued for a period of months. Eventually, the lawyer agreed to meet with the client and afterward concluded that he could not pursue the matter further. The lawyer subsequently sent a bill to the client, which the client did not pay because of the client's belief that the lawyer had not done the promised work.

Other than billing the client, the lawyer made no additional efforts to collect the debt.

The lawyer subsequently had a conversation with the lawyer's teenage daughter in which the lawyer explained why (according to the lawyer) the lawyer was working for "deadbeat clients." The lawyer then identified the client, by first name, as an example of a person who had dealt "dishonestly" with the lawyer and refused to pay for services rendered.

The lawyer's daughter then wrote a letter to the client, using his first name.

In that letter she explained that while most of her friends were packing their bags and flying on a plane to visit some wonderful vacation resort, she would be forced to stay at home over spring break because of the client's failure to pay his bill. The daughter suggested a payment plan and provided her address, requesting that the client respond to her letter. The lawyer then mailed the letter to that client and another client.

The Director subsequently issued an admonition to the lawyer. The Director found that the lawyer's admitted failure to promptly return client phone calls and his failure to respond to reasonable requests for information from the client conduct was in violation of Rule 1.4, (Communication). The admonition was also based upon the lawyer's violation of Rule 1.6(a)(3), which provides that a lawyer may not use a confidence or secret of a client for the advantage of the lawyer without the consent of the client. In the

admonition, the Director noted that the lawyer's disclosure of the confidential information (the unpaid bill) to the daughter and the lawyer's sending of the daughter's letter to the client (as well as another client) was clearly an attempt to embarrass the client into paying his bill. While Rule 1.6(a)(5) permits lawyers to use confidential information to collect fees, the exception is only available if disclosure is "necessary to establish or collect a fee." The letter written by the lawyer's minor daughter was not a necessary means of establishing or collecting the fee.

While lawyers have every right to pursue the collection of legitimate fees, they may only divulge client confidences and secrets necessary to establish or collect their fees. An unpaid bill does not provide the lawyer with carte blanche to use information gained in the course of the representation for the lawyer's advantage. Lawyers should be careful that their use of confidential information is narrowly tailored to accomplish that legitimate objective.

For a discussion of the ethical considerations involved with hiring a collection agency to collect a debt from a client see "Ethically Collecting a Debt From a Client," Minnesota Lawyer, Dec. 11, 1998. This article is also available for viewing at the Lawyers Professional Responsibility Board Web site, www.courts.state.mn.us/lprb.