

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

Repealed: October 25, 2002

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 may constitute grounds for discipline:

1. If an attorney is engaged both in the practice of law and in the debt collection agency business:
 - (a) The attorney shall not identify himself/herself as a lawyer in, or on, any building office sign, building tenants' directory, office sign or door sign of the debt collection agency.
 - (b) The attorney shall not have, or use, the same telephone number as that used by a debt collection agency.
 - (c) The attorney may perform legal services for the debt collection agency but in doing so shall use separate letterhead and shall not utilize the debt collection agency letterhead.
 - (d) All advertising or solicitation for business by the debt collection agency which identifies the attorney as a lawyer shall be subject to Rules 7.1 through 7.5, Minnesota Rules of Professional Conduct (MRPC).
2. If an attorney represents or performs legal work for a debt collection agency:
 - (a) The attorney shall not have, or use, the same telephone number as that used by a debt collection agency.
 - (b) The attorney shall not use the same office address as that used by a debt collection agency.
 - (c) The attorney shall not use the same letterhead as that used by the collection agency.
3. If an attorney is employed by a debt collection agency as in-house counsel:
 - (a) The attorney may use the same telephone number used by the debt collection agency.
 - (b) The attorney may use the same office address used by the debt collection agency.
 - (c) The attorney may use the same letterhead used by the debt collection agency, provided however, that all communications on agency letterhead which includes the attorney's name and/or title of in-house counsel, general counsel, or counsel for the debt collection agency shall be subject to the requirements set forth in paragraphs 4 through 9 of this opinion.
4. 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 attorneys' clients are not disclosed by employees of the debt collection agency to any person not authorized by the client to receive such

information. Rule 1.6(c), MRPC.

5. 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 Rules of Professional Conduct. Rule 8.4(a), Rule 5.3, and Rule 5.5(b), MRPC.

6. Form letters, pleadings, or other legal documents shall be signed by an 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.

7. 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.

8. 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;

(d) Other facsimile signatures of the attorney;

(e) Lawyer's stationery; or

(f) In the case of in-house counsel, debt collection agency letterhead bearing the attorney's name and/or title;

for purposes of allowing use of the same on demand letters, original pleadings, or on any other documents used in debt collection. Rule 8.4(d); Rule 5.5(b), MRPC.

9. 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.

Adopted: June 22, 1977.

Amended: December 4, 1987.

Repealed: October 25, 2002.