

Given some recent Fourth Circuit Court of Appeals opinions, it has become necessary for some larger banks to refer civil collections to Attorney A so that A might pursue the account debtors in the county in which they presently reside. So far all of the cases have involved obtaining deficiency judgments for amounts which remain due on account after the bank has foreclosed upon its collateral and giving all proper credits to that account debtor.

All of the notes forwarded to A's attention contain provisions permitting the bank to recover its cost in collection, and an attorney's fee of 25 percent of the unpaid balance. Accordingly, when the account and affidavit is forwarded to A's attention, it bears a calculation of the 25 percent attorney's fee having already been figured upon the outstanding account balance.

These accounts are sent down to obtain a deficiency judgment with the express direction that after obtaining the judgment, a copy of the abstract is to be docketed in the circuit court and the file is to be returned to the bank's central office, and that no further legal action be taken toward the collection of the judgment obtained.

Having already obtained judgment on the account balance due, as well as the 25 percent attorney's fee calculated upon the account balance due, if A were to proceed with attempts to collect the amount of judgment, then A would be entitled to the 25 percent attorney's fees of all amounts collected. However, because these accounts are being sent down with the specific directive that no action be taken to collect the amount of the judgment, and that the file be sent back to the central office, the billing of the file becomes a problem that can be handled in one of three ways. Attorney A submitted three billing procedures for the Committee's consideration:

1. Attorney A would charge a "flat rate" for obtaining and docketing judgment. The file would be returned to the central office for collection by a nonattorney. After payment of A's "flat rate," all other sums would be retained by the banking association and not be paid by any other licensed, practicing attorney.

The Committee believes that this billing method would violate DR:3-101(A).

2. This method would involve a "running account." A would obtain judgment, including attorney's fees of 25 percent of the unpaid balance, and then return the file to the central office for collection by a nonattorney. Each sixth month, 25 percent of the successful collections would be forwarded to A.

The Committee opines that this second billing procedure does not violate any provisions of the Code of Professional Responsibility.

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3. The last billing procedure would be one whereby the contractual provision providing attorney's fees of 25 percent of the unpaid balance would be disregarded. Instead, the court would be asked to enter judgment for an amount equal to a flat rate to be charged each file. Should the bank decide it wishes A to also collect the judgment, a separate fee arrangement would be made.

The Committee opines that nothing within the Code of Professional Responsibility would prohibit billing procedure number three.

As to the judgments which A has already obtained, the Committee believes that the only mentioned billing method that would comply with the Code of Professional Responsibility and also be feasible under the circumstance, would be the second billing method.

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