

Committee Opinion
September 1, 1988

LEGAL ETHICS OPINION 1121

CREDITOR DEMAND LETTERS.

You have presented three questions regarding the ethical implications of an attorney who accepts employment for the sole purpose of writing a creditor's demand letter. The Committee will address each question in the order in which they are presented.

I. Is it improper for an attorney to accept employment when the client has not referred the account for any purpose other than a demand letter? The Committee believes that such employment is not improper. However, an attorney contemplating such employment should make a complete investigation of the matter so as to enable him to make a good faith, professional judgment that the demand is for a valid existing claim before drafting or mailing a demand letter on his firm's letterhead or over his signature. (DR:7-102(A)(1) and (2).)

A lawyer shall not knowingly advance an unwarranted claim (except as set forth in DR:7-102(A)(2)), write or communicate information that is false, illegal or fraudulent. (See DR:7-102(A)(2), (5) and (7)) Furthermore, a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation which would reflect adversely on a lawyer's fitness to practice law. (DR:1-102(A)(4))

II. Does the use of letterhead to make a demand for payment by an attorney imply that litigation is threatened and could result? The Committee believes that the creditor receiving such correspondence from an attorney could not reasonably infer that litigation could result if the attorney has made no implications or statements to that effect.

III. Is it ethical for an attorney to threaten litigation, whether by implication or otherwise, when he knows that the client has forwarded the account for the sole purpose of a demand letter? The Committee believes that it would be improper for an attorney to engage in such conduct that would result in knowingly making a false statement of fact in violation of DR:7-102(A)(5) and DR:1-102(A)(4). (See also LE Op. 732)

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