

Committee Opinion  
April 12, 1993

LEGAL ETHICS OPINION 1514

AIDING THE UNAUTHORIZED  
PRACTICE OF LAW: LAW FIRM  
EMPLOYING REVOKED ATTORNEY  
AFTER PURCHASING HIS  
COMPUTERIZED COLLECTION  
PROGRAM.

You have presented a hypothetical situation in which Attorney A, for number of years, has represented numerous clients in collection matters (the "Collection Clients"). A majority of the Collection Clients are residential landlords. As a consequence of professional misconduct, Attorney A has surrendered his license to practice law. The professional misconduct did not involve any of the Collection Clients and occurred well after his initial representation of any of them.

In furtherance of his collection practice, Attorney A designed and developed an extensive and complex computer program for the processing of claims (the "Collection Program"). The records of the Collection Clients are contained in a computer data base created and maintained using the Collection Program. You indicate that, in addition to specific information related to the Collection Clients, this data base includes more than 20,000 debtor records, information related to debtor records, notes of debtor contracts, personal history and information, records of amounts claimed and payments received, records of actions taken in various courts, including judgments entered, post-judgment actions taken, judgments satisfied, etc.

You further indicate that, in addition to the storage and maintenance of debtor information, the Collection Program prints various forms used in the collection process. These include Motions for Judgment, Unlawful Detainer and Civil Warrants, Summons in Garnishment, and various pleadings (Bills of Particular, Affidavits, Motions, Notices, etc.). Numerous letters and miscellaneous forms are also printed as well as periodic accounting and other reports to clients. The Collection Program also maintains docket control for cases pending before various courts.

You advise that, following surrender of Attorney A's license, a majority of the Collection Clients have retained Law Firm B (the "New Firm") to represent them in connection with the collection of claims previously handled by Attorney A, as well as the collection of new claims. The New Firm has its own substantial collections practice and maintains its own, separate offices. You also advise that there had been no prior association between Attorney A and the New Firm.

Finally, you indicate that, after surrendering his license, Attorney A sold the Collection Program and various items of computer hardware and software to the New Firm. In addition, in compliance with the wishes of the Collection Clients now represented by the New Firm, Attorney A has transferred to New Firm that portion of the data base relating to those clients' claims.

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You have asked the committee to opine whether, under the facts of inquiry, it is improper for the New Firm to employ Attorney A to perform any of the following functions (the "Enumerated Functions") with respect to the Collection Clients, if they are performed under the direct supervision of one of the New Firm's licensed attorneys:

- a. Maintain, service and update the computer software comprising the collection program and the data base;
- b. Train personnel of the New Firm in the operation of the Collection Program;
- c. Utilize the Collection Program to perform clerical duties such as data entry for new claims entered into the data base and maintenance and updating of existing debtor records already contained in the data base;
- d. Utilize the Collection Program to perform clerical duties involved in the preparation of Warrants, Garnishments, and other legal papers, which would be reviewed, signed, and filed by one of the attorney members of the New Firm;
- e. Utilize the Collection Program to perform clerical duties involved in the preparation of pleadings (Bills of Particulars, Affidavits, Motions, Notices, etc.), which would be reviewed, signed and filed by one of the attorney members of the New Firm;
- f. Communicate with personnel of the Clerk's Offices in the various jurisdictions in which actions are pending regarding dockets, court dates, etc.;
- g. Communicate with personnel employed by the Collection Clients regarding factual matters relating to the status of pending claims, court actions, dockets, etc.;
- h. Perform routine duties normally associated with debt collection which are not prohibited to a lay collection agency, i.e., preparation of statements of account, skip tracing, direct contact with debtors by mail or telephone to solicit payments, gather information, etc.;
- i. Prepare routine accounts of money collected on behalf of the Collection Clients, including calculation of fees earned by the New Firm and preparation of bills for same.

You have also asked the committee to opine whether, if the performance of any of the enumerated functions on behalf of the Collection Clients is improper, Attorney A may be employed to perform them with respect to the New Firm's other clients.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:3-101(C), which states that a lawyer, law firm or professional corporation employing a lawyer as a consultant, law clerk or legal assistant when that lawyer's license is

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suspended or revoked for professional misconduct shall not represent any client represented by the disciplined lawyer or by any lawyer with whom the disciplined lawyer practiced on or after the date of the acts which resulted in suspension or revocation.

As to your first inquiry, the committee is of the opinion that the functions enumerated under (a) through (c) are typically performed by a (non-lawyer) computer consultant. This is especially true here, since Attorney A developed the Collection Program to be used by the New Firm. The committee is of the further opinion that the functions listed under (d) through (i) are commonly performed by a law clerk or legal assistant. The committee recognizes that the new firm would be representing clients formerly represented by Attorney A after the date of the events leading to Attorney A's license surrender. Thus, the committee opines that it would be improper, under DR:3-101(C), for the new firm to employ Attorney A to perform these functions, even if under the direct supervision of an attorney in the firm.

Regarding your second inquiry, the committee assumes that the other clients have not been represented by Attorney A on or after the date of the acts which resulted in suspension or revocation. The committee opines, then, that it would not be improper for the new firm to employ Attorney A to perform the enumerated functions with respect to the new firm's other clients, provided those functions are performed only under the direct supervision of a licensed attorney in the firm. See DR:3-104.