

## Advisory Opinion 1984-9

A collection agency manager, turned attorney, wishes to send a letter to the agency's current clients informing them that he is closing the collection agency, but that he will continue to engage in collection work through his law office. In the letter, the attorney offers to handle the current collection work on the same terms, except for the change in business form and other minor changes associated in making the switch from a collection agency business to a law office business. He informs the clients that he will limit his practice primarily to creditor representation. Clients are further advised that they are free to withdraw all of their accounts given to the collection agency and are provided with a form on which to indicate whether they wish to withdraw their accounts or have the attorney continue to collect on them. The letter is signed by the manager in his capacity as an attorney. A copy of the draft letter follows this opinion.

The purpose of the letter ostensibly is to notify clients of the collection agency that the agency is going out of business, but that the manager of the agency will continue to pursue collections as an attorney. Although it is not stated in the request submitted to the Committee, it is fairly clear in the proposed letter that the attorney is in effect the agency and when he leaves, the agency will be dissolved. The attorney states that he will only send the letter to those people who are present clients of the collection agency.

Counsel is referred to Advisory opinion 1984-3 dated July 23, 1984 which discussed letter advertising in New Mexico and to *L.N. vs. The Disciplinary Board of the Supreme Court of the State of New Mexico, et al*, 83-0077 HB. Counsel should also review Rule 7.3 of the Model Rules of Professional Conduct which were adopted by the American Bar Association on August 2, 1983 and Rule 7.3 recommended by the New Mexico Task Force on the Legal Profession, which may be found in the August 23, 1984 issue of *News and Views*.

The Committee feels that these sources sufficiently answer counsels inquiry and therefore he should carefully review them. Counsel is cautioned that distribution of the letter should be limited to present clients of the collection agency. if the attorney distributes the letter to others, he will need to modify the letter to comply with the requirements and guidelines set out in the sources cited above. Counsel may want to consider whether it might be more appropriate for him to sign the letter on behalf of the collection agency rather than in his capacity as an attorney. overall, the Committee does not find the proposed letter objectionable.

DRAFT

Dear Client:

AS you may know, I have been the manager of Collectors, Inc., since 1971. We have represented you for some time, and included in that representation was attorney services. This reflected my belief that under the current collection laws and state of the economy, it became harder and harder to collect debts without recourse to legal action, and that this situation would continue.

As time went on, more and more of our files became legal files. I found that we were spending over \$20,000.00 a year just on collection attorneys, and often they were not specialists in that area and did not know any more collection law than I did. In response to this, I enrolled in law school, and was admitted to the Bar as a New Mexico licensed attorney on April 15, 1983.

Since that time, I have worked on collection cases primarily. I feel I have learned most of the things I need to know about collection lawsuits, although of course, my experience is limited to my agency experience plus one year as a lawyer.

I propose to discontinue the collection agency entirely, effective June 30, 1984, and to concentrate on collections as before, but through the law office. most of the services you were receiving before will be available through the law office. In closing the agency, I have explained my action to Mr. Snider Campbell of the Financial Institutions Division of the State of New Mexico, who regulates collection agencies, and he sees no objection to the transfer of agency accounts to the law office. of course, your permission is required because they are your accounts.

One question has come up: the ethical rule against solicitation of legal work by attorneys. My situation is unique because no one licensed as a New Mexico collection agency manager has ever gone to law school and become a lawyer before; but licensed attorneys have become agency managers. I believe that, since I am not asking for new work but merely offering to honor old assignments on the same terms in a new way, that I have the right--and a duty--to explain the circumstances. I do not believe I must abandon old clients because I have acquired a new skill.

You have an absolute right to withdraw any and all un-sued accounts you have given to Collectors, Inc., and to do whatever you wish with them. Collectors, Inc., has paid the legal fees on any accounts already sued, and believes it has the right to continue on those accounts or to be compensated for costs and fees expended on those. Should you choose to leave your accounts with me as a lawyer and to accept the transfer from Collectors, Inc., I feel I have a duty to offer the same quality of service and diligent representation you were getting before. with minor exceptions, I will be limiting my practice to creditor representation and have withdrawn from some cases in other areas which drained time away from collection work.

I will be glad to answer any and all questions you may have about changes. Remittances, for instance, will be not less often than monthly, and on large accounts may be done when the money is received. Demand notices and letters will have a new look, and telephone demands on debtors will be different to the extent that the laws governing debtor contact are different for attorneys than for agencies.

To help you in notifying me of your choices, I am sending you a letter which you can complete and return to me.

Sincerely,

Attorney at Law

DRAFT  
Dear Mr.

I have reviewed your letter of <Date> explaining that you are closing Collectors, Inc., as a collection agency, that you are now a lawyer, and that your law office will continue to perform on my collection assignments, or return the claims to me, as I choose. On behalf of my firm, or individually,

\_\_\_\_\_ I would prefer the return of all assigned accounts and will contact you for specific arrangements.

\_\_\_\_\_ I want you to assume the duties of Collectors, Inc., and continue to collect for me or my firm on the same basis as outlined in your letter.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature