

Advisory Opinion 1988-7

An attorney has asked whether it is permissible to refer collection efforts against clients to a "credit bureau."

A distinction should be made between a credit bureau whose purpose is to provide credit information to potential lenders, and commercial collection agencies, whose purpose it is to collect bills. The committee believes that it would be improper for a lawyer to report a client's unpaid account to a credit bureau where the sole purpose in doing so is to impede the client's ability to obtain credit. See, Alaska Bar Assoc. opinion 86-3 (1986).

A lawyer, however, may generally use a commercial agency, paid on a contingent basis, to collect unpaid, earned fees, after pursuing all other reasonable alternatives to collect the fee, and provided that the lawyer first determines that the unpaid fee is reasonable, and considers each case individually to determine that the referral is appropriate. See, e.g., Georgia State Bar Opinion 49 (1985); Florida Bar Opinion 81-3(M) (1981); *but see*, West Virginia State Bar opinion 80-1 (1981).

New Mexico Supreme Court Rule 16-106(D) provides an exception to the general rule that a lawyer shall not reveal information relating to representation of a client, for situations where disclosure is necessary to establish a claim on behalf of the lawyer in a controversy between the lawyer and the client. In a collection effort, a lawyer should disclose only the minimum background information regarding the client that is necessary to establish or collect the fee. ABA Formal opinion 320 (1968); Georgia State Bar Opinion 49 (1985). Disclosures beyond the necessary minimum may be grounds for disciplinary proceedings. See *generally*, *ABA/BNA Lawyers' Manual on Professional Conduct*, pp. 41;2003 and 55:703-704 (1988).

In referring a matter to a collection agency for collection efforts, the attorney must also observe the ethical proscription against splitting fees with non-attorneys. There must be no division of fees with the collection agency for any legal services rendered to collect the fee, and the agency may not exercise any control over any litigation instituted to collect the fee. State Bar of Arizona Opinion 81-23 (1981); Kansas Bar Assoc. opinion 83-5 (1983).