

## ETHICS OPINION

RO-87-158

### Referrals from credit bureau partially owned by attorney.

#### QUESTION:

“I am requesting an opinion as to whether or not this firm is prohibited by the canons of ethics or otherwise from handling collection accounts under the following facts:

1. This firm handles collection matters on a daily basis for many different clients.
2. The XYZ Credit Bureau on occasions has need of legal assistance in order to collect certain accounts which have been referred to it for collection. The XYZ Credit Bureau has been authorized by the creditors to authorize an attorney to file suit after other means of collecting the debt are exhausted.
3. Mr. John Doe, Jr., of this firm is connected with the XYZ Credit Bureau as a partner in the partnership which owns the Credit Bureau. He also takes part in management decisions regarding the operation of the XYZ Credit Bureau.

Considering the above, please respond to the following inquiries:

- A. May this firm handle collection matters for third parties referred to it directly by the XYZ Credit Bureau?
- B. May this firm handle collection matters directly referred to it from creditors who have previously used the Credit Bureau to attempt to collect the debt?
- C. May this firm handle collection matters which the Credit Bureau previously tried to collect if the creditor selected this firm from a list maintained by the Credit Bureau of attorneys who handle collection matters?
- D. Does it affect your answer to any of the above questions that the creditor/client is aware that John Doe, Jr. is a member of this firm and a partner in the Credit Bureau?

If your answer to any of the above is in the negative, please cite the particular canon or other prohibition against such.”

#### ANSWER:

Your law firm may not represent collection clients referred to it by a credit bureau in which a member of your firm maintains an interest. This is so whether the third parties are referred directly to your firm by the credit bureau or whether the credit bureau first attempts to collect the debt on behalf of the clients. Disclosure to the clients of the law partner's interest in the credit bureau does not remedy the solicitation problems presented by this arrangement. Your firm may handle collection matters handled by the credit bureau if the creditor selects your firm from a list of firms maintained by the credit

bureau, provided that the bureau in no way recommends your employment and further provided that the list contains a sufficient number of firms to offer the client a meaningful choice of attorneys.

DISCUSSION:

It is well established that an attorney can simultaneously engage in the practice of law and in another business or profession. The Disciplinary Commission has issued ethics opinions permitting attorneys to engage in such varied professions as insurance sales, medicine, private investigation, engineering, mortgage brokerage, and others. See, e.g., RO-86-15, RO-87-105, RO-87-31, and RO-86-101. An attorney whose client is in need of services offered by the attorney's other business may ethically refer those clients to that business if full disclosure is made of the attorney's interest in the business. However, the converse is not true. The attorney's non-legal business cannot ethically refer customers to the attorney. To do so would circumvent the rules against direct in-person solicitation, as the attorney's non-legal business is not prohibited from directly soliciting customers. See RO-87-161. Temporary DR 2-103, provides that:

“A lawyer may not solicit nor cause to be solicited on his behalf professional employment from a prospective client, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term 'solicit' includes contact in-person or by telephone.

Accordingly, your law firm cannot handle matters referred to it by the credit bureau in which one of your partners maintains an interest. This is so whether the credit bureau has attempted to collect the debts or not. Disclosure of the attorney's interest in the credit bureau and consent by the client would not obviate the dangers of solicitation and would therefore not avoid this prohibition. However, your firm may handle matters for clients of the credit bureau if those clients select your firm independently from a list maintained by the bureau without any sort of recommendation from the bureau. The list must contain a sufficient number of attorneys to permit the client a meaningful choice.

HLW/vf

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