

ETHICS OPINION

RO-94-03

Lawyer representing collections agency in pursuing child support arrearage for custodial parents must guard against fee-splitting with nonlawyer and possible solicitation by agency of prospective clients

QUESTION:

“Facts: Client, the Acme Collection Group as agent for the custodial parent, contacts law firm seeking representation. Client explains that the Acme Collection Group is under contract with the custodial parent to collect child support from the non-custodial parent which is currently in arrearage. The custodial parent and Acme Collection Group agree that the agency will receive twenty-five percent (25%) or some similar amount of the amount collected for Acme Collection Group's services. Client agrees to negotiate with law firm a separate contract and fee agreement for the firm's future representation and legal services for the Acme Collection Group. As an aside, the client may or may not pay a yearly or monthly retainer to the firm.

The client requests that the law firm begin channels of action to recover the arrearage amount. Such action could ultimately include litigation which would include the custodial parent and potentially the client as a party plaintiff.

Issue: Can the firm represent the client as the client is the direct agent for the custodial parent?

Issue: Can the firm institute litigation on behalf of the client and/or the custodial parent to recover the amount in arrearage?"

ANSWER ONE:

The firm may represent the client (Acme) as the client is the direct agent for the custodial parent.

ANSWER TWO:

The firm, assuming the existence of an attorney-client employment agreement,

may institute litigation on behalf of the client and/or the custodial parent to recover the amount of child support arrearage.

DISCUSSION:

The two main concerns in addressing the issues posed in your inquiry deal with the possibility of solicitation and the opportunity for there to be a division of an attorney's fee with a nonlawyer.

Rule 5.4(a) of the Alabama Rules of Professional Conduct, states as follows:

"Rule 5.4 Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer"

As noted in the Comment to this rule, its provisions express the traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary or recommends employment of a lawyer, that arrangement does not modify the lawyer's obligation to the client.

In the situation described in your question, your fee will be negotiated with and paid by Acme which you have stated is your client. Consequently, if the true client relationship is between you and Acme you can handle the accounts assigned to Acme just as any other collections agency. Acme would then be allowed to compensate you for services rendered to Acme rather than receiving a referral fee for

possible soliciting and referring to you the custodial parent which is impermissible.

For the purposes of this opinion, we make no determination regarding the validity of the custodial parent employing you as their "agent" for collection of child support or whether for litigation purposes, the true client would be the custodial parent or Acme.

In view of the possible assignment of the claim of child support arrearage by the custodial parent to Acme, suit might possibly be required to be brought on behalf of the custodial parent. Barring some form of solicitation, you could likewise represent the custodial parent, even though your fee is paid by Acme, in pursuing whatever legal means are available to them for collection of the child support arrearage.

Finally, some consideration should be given to the loyalty concept which is the underlying basis for the Rules of Professional Conduct. If you truly represent the custodial parent rather than Acme, then Acme should not have any control over your actions so as to conflict with your pursuing remedies which are in the best interests of the custodial parent. Again, your loyalty would lie with the custodial parent, and any interference with your actions or attempts to control same by Acme would be a violation of the Rule.

With regard to solicitation, it would be impermissible for you to compensate Acme for referral of these matters to you as such could be deemed payment to a

third party for referral of cases to you, in other words, a form of solicitation.

Rule 7.3, Alabama Rules of Professional Conduct, states as follows:

"Rule 7.3 Direct Contact with Prospective Clients

A lawyer may not solicit or 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."

Therefore, Acme could not merely serve as a solicitation agent for you in obtaining custodial parents as clients since you would be prohibited from doing this type of solicitation yourself.

In conclusion, you may not under any circumstances compensate, from any source, a nonlawyer for soliciting or referring clients to you. Further, you may not divide an attorney's fee with any nonlawyer involved in the collection process. Your loyalty would lie to that party with whom you have an attorney-client relationship and due consideration should be given to specifically defining such a relationship to ensure that all parties understand the role of each in this process.

RWN/vf

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