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Connecticut Bar Association

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INFORMAL OPINION 2010-06

Reporting to Credit Bureau a Judgment Obtained Against Former Client for Unpaid Fees

You have asked our opinion as to whether a firm may report to the three major credit bureaus a judgment for unpaid fees that it has obtained against a former client. You have stated that your firm recently represented a client who failed to pay the agreed upon legal fees. Your firm made repeated requests for payment but has not been compensated for the legal services it provided. Your firm brought suit and obtained a judgment against your former client for the unpaid fees. Having obtained the judgment, your firm now seeks to collect the judgment in a manner consistent with your firm's ethical obligations under the Rules of Professional Conduct. With specific reference to Rules 1.6(d) and Rule 1.9, you ask whether the Rules permit your firm to report the judgment to the credit bureaus.

Rule 1.6 governs the disclosure of client information, while Rule 1.9 governs the disclosure of former client information. With certain exceptions, Rules 1.6 and 1.9 prohibit a lawyer from the unauthorized disclosure of "information relating to the representation" of a client or former client. Accordingly, the threshold issue is

whether the judgment in a collection action that follows representation is "information related to the representation." For the reasons set forth below, we conclude that a judgment against a former client for unpaid fees is not "information related to the representation" of the client and therefore neither Rule 1.6 nor Rule 1.9 prohibits the disclosure of the judgment to a credit bureau.

An unpaid legal bill is considered client information.[1] In several jurisdictions, an attorney is not permitted to report a delinquent client account to a credit bureau without the client's consent,[2] because reporting a client to a credit bureau is not usually considered part of the collection process. [3] Your firm's situation is, however, different: your firm wants to report a judgment that it has against a former client, rather than simply a claim for unpaid fees not reduced to judgment.

In our view, a judgment against a former client is not information "related to the representation." The collection action was a separate matter from the matter in which you represented your client. It was not a matter in which you provided legal services to the client, nor does it draw on the work your firm did for the client in the

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[1] *See* Michigan Opinion RI-335 (2005).

[2] *See, e.g.,* Alaska Ethics Op. 2000-3 (2000)(client consent required); Arizona Ethics Op. 94-11 (1994)(client consent required).

[3] *See, e.g.,* Montana Ethics Op. 001927 (2000)(reporting is "punitive" and unnecessary); New Hampshire Ethics Op. 1987-8/8 (1988)(reporting unnecessary); New York State Ethics Op. 684 (1996)(disclosure unnecessary and injures client). *Cf.*, Florida Ethics Op. 90-2 (1991)(firm may report delinquent accounts to credit bureau); Kansas Ethics Op. 94-5 (1994)(lawyer may report client account to credit bureau).

underlying matter. While the collection action might be deemed "related to" the representation if the phrase were to be construed in its broadest sense, the relationship between the underlying representation and the judgment is tangential, and too attenuated to bring the judgment within the ambit of the prohibition on disclosure contained in Rule 1.6 or Rule 1.9. Once your firm's claim against its former client has been reduced to judgment, it is not "information relating to the representation of the client" within the meaning of Rules 1.6 and 1.9. For similar reasons, we also conclude that disclosure of the judgment to the credit bureaus does not violate Rule 1.8(b) which prohibits use of information relating to the representation to the disadvantage of the client or former client.

We find support for this conclusion in Subsection (d) of Rule 1.6, which permits a lawyer to disclose client information when there is a fee dispute with a client. The first clause of Subsection (d) expressly provides that a lawyer may "reveal such information to establish a claim . . . on behalf of the lawyer in a controversy between the lawyer and the client . . . ." The Commentary to Rule 1.6 makes clear that such disclosures may be made in efforts to collect a fee from a client:

> A lawyer entitled to a fee is permitted by subsection (d) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that a beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

The exception created in 1.6(d) implies that the Rule's general confidentiality obligations in regard to "information relating to the representation"

apply only to the representation itself and not to ancillary matters such as collection efforts arising out of that representation. It would also be illogical and inconsistent to construe the Rules as permitting disclosure of matters relating to the representation in the context of a collection action, but prohibiting disclosure of the outcome of the collection action.

Your firm also may avail itself of the post-judgment remedies provided in the Connecticut General Statutes and the Rules of Practice. In each of these circumstances, your firm should limit the disclosure of client information to that reasonably necessary under the circumstances and take precautions to control access to protected information as much as possible. See Comment to Rule 1.6.

THE COMMITTEE ON PROFESSIONAL ETHICS

By: Wick R. Chambers

Wick R. Chambers, Chair