

**STATE BAR OF CALIFORNIA  
STANDING COMMITTEE ON  
PROFESSIONAL RESPONSIBILITY AND CONDUCT  
FORMAL OPINION NO. 1982-68**

**ISSUE:** Creditor client's use of attorney demand letters on delinquent accounts.

**DIGEST:** An attorney who has been retained by a creditor for collection matters may use his or her creditor-client's employees to aid in the preparation of form letters to delinquent debtors on the attorney's stationery and over his or her signature, provided that the attorney properly supervises the employees. The attorney must ensure that he or she is not (1) lending his or her name to a non-lawyer; (2) aiding the unauthorized practice of law; and that (3) the letters are not deceptive; and (4) the attorney is not assisting the client to violate the law.

**AUTHORITIES  
INTERPRETED:**

Rules 3-101, 6-102 and 7-101 of the Rules of Professional Conduct of the State Bar of California.

Business and Professions Code sections 6067, 6105, 6106, 6125, 6863 and 6947

Civil Code sections 1788.2(c) and 1788.13(c)

**DISCUSSION**

Creditors with a large number of accounts may wish to send form letters to delinquent debtors on an attorney's letterhead and over an attorney's signature. Such letters are frequently computer-generated. We have been asked whether, and under what circumstances, attorneys may permit such letters to be sent. Although an attorney may use the creditor-client's employees to assist in handling collection matters, the attorney must adequately supervise the employees to ensure that:

- (1) The attorney is not lending his or her name to a non-lawyer.
- (2) In permitting a creditor-client to send such letters, the attorney is not aiding the unauthorized practice of law.
- (3) The letters are not deceptive.
- (4) The letters do not violate the law.

**A. Attorney's Use of Client's Employees**

In many cases it will be economical and efficient for a creditor-client's employees, who will be most familiar with the creditor's accounts, to assist the attorney in debt collection matters. An attorney retained by a creditor may use the creditor's employees to aid in the attorney's representation of the creditor. A lawyer may delegate tasks to his or her office staff provided he or she accept responsibility to supervise the work of the staff. American Bar Association Code of Professional Responsibility, Ethical Consideration 3-6, provides:

"A lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product. This delegation enables a lawyer to render legal service more economically and efficiently."

(See Bus. & Prof. Code; § 6067; *Spindell v. State Bar* (1975) 13 Cal.3d 253, 261 [118 Cal.Rptr. 480; 530 P.2d 168]; *Vaughn v. State Bar* (1972) 6 Cal.3d 847, 857 [100 Cal. Rptr. 713; 494 P.2d 1257]; *Moore v. State Bar* (1964) 62 Cal.2d 74 [41 Cal.Rptr. 161; 396 P.2d 577]; *Sanchez v. State Bar* (1976) 18 Cal.3d 280 [133 Cal.Rptr. 768; 555 P.2d 889].)

In debt collection matters, as in other legal matters, a member of the bar may delegate tasks to non-lawyer assistants. For efficiency, the creditor may wish to make available its own employees to assist the attorney in evaluating and possibly taking legal action to collect debts. The attorney may delegate tasks to the creditor-client's agents or employees provided that the lay assistants are under the direction and control of the attorney and that the attorney supervises their work. Collection agency regulations recognize this practice:

"All clerical work delegated by the attorney of record shall be under the direction and control of that attorney. Should an attorney delegate clerical work to a person on the payroll of a collection agency, said delegation shall be in writing and shall specifically set forth the work to be done." (16 Cal. Admin. Code, § 628 subd. (b).)

The extent to which a lawyer must supervise those to whom he or she has delegated work depends on the nature of the delegated task. The attorney must exercise the degree of control over a creditor-client's employees that he or she would be required to exercise over his or her own employees engaged in the same task on behalf of his or her law firm or law office. The attorney is professionally responsible for all work performed by the creditor's employees, just as he or she would be as to his or her own employees.

Debt collection matters will vary from complex to routine. Routine debt collection letters may justify the use of form letters, just as other routine matters may justify the use of form letters. Although an attorney may utilize a creditor-client's employees to help determine whether a particular case justifies the sending of a form letter, and to prepare a form letter, those employees must in fact be working under the direction of and on behalf of the attorney when they are engaged in such collection activities.

Thus, the attorney is responsible for the accuracy of all letters sent to debtors on his or her letterhead. "In our view, it is not enough that the lawyer rely upon the client's certification of the 'validity' of the account. The lawyer must take responsibility for the reasonable accuracy of each letter and must exercise due care that no letter misstates a fact with respect to the account of the debtor." (ABA Committee on Ethics and Prof. Responsibility, informal opn. No. 1368 (1976).)

In deciding the extent to which he or she must direct, control and supervise the creditor and its employees when they perform work on his or her behalf, including preparation of attorney letters, the attorney must have in mind the need to avoid the following ethical violations.

**(1) Lending Name to a Non-Lawyer**

Business and Professions Code section 6105 provides:

"Lending his name to be used as attorney by another person who is not an attorney constitutes a cause for disbarment or suspension."

*McGregor v. State Bar of California* (1944) 24 Cal.2d 283 [148 P.2d 865] concerned an attorney who had permitted his employee, a layperson, to use the attorney's name as an attorney in the operation of a collection agency within his law office. The employee was authorized to interview clients, fix fees and write letters, signing the attorney's name. In a particular instance, a client thought the employee was the attorney. The attorney's legal and collection affairs were so intermingled that it was difficult to distinguish them. The court found this to be a violation of section 6105 of the Business and Professions Code. (See also *Townsend v. State Bar* (1930) 210 Cal. 362 [291 P. 837].)

A lawyer who permits a non-lawyer to generate letters on his or her stationery and over his or her signature without taking an active role in the matter has lent his or her name to a non-lawyer and would be subject to discipline for violating section 6105 of the Business and Professions Code. (See also L.A. Co. Bar Assn. Legal Ethics Committee, opn. No. 61 (1930).) What constitutes a sufficiently active role in the matter will vary depending on the circumstances. An attorney should not, however, merely permit a client to use his or her stationery and signature.

**(2) Aiding the Unauthorized Practice of Law**

Rule 3-101(A) of the Rules of Professional Conduct provides: "A member of the State Bar shall not aid any person, association, or corporation in the unauthorized practice of law." Business and Professions Code section 6125 provides that no person shall practice law in California unless he or she is an active member of the bar. In *Smallberg v. State Bar* (1931) 212 Cal. 113, 119 [297 P. 916], the California Supreme Court, citing other authority, defined the practice of law:

"As the term is generally understood, the "practice" of the law is the doing or performing services in a court of justice.... But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matters may or may not be depending in a court."

The rules regulating licensed collection agencies, adopted under Business and Professions Code, sections 6863 and 6947, deem as practicing law "communicating with debtors in the name of an attorney or upon the stationery of an attorney, unless expressly authorized by an attorney" (16 Cal. Admin. Code, § 628.5 subd. (a)(4)) and intervening between a creditor and attorney in any manner which would control or exploit the services of the attorney or which would direct those/services in the interest of a collection agency (16 Cal. Admin. Code, § 628.5 subd. (a)(5)).<sup>1/</sup>

To prevent collection agencies from engaging in the unauthorized practice of law, 16 California Administrative Code section 628.5, subdivision (b)(4), prohibits a collection agency from threatening the commencement of judicial proceedings other than to notify the debtor that the matter will be referred to its attorney for legal action, and that in the event its attorney should file suit, the debtor may as a result become liable for additional costs and expenses.

The preparation and sending of a letter on the stationery of a lawyer which includes a legal conclusion that the debtor is liable for an amount of money owed and which threatens to institute judicial proceedings to collect the debt constitutes the practice of law. Where a lawyer permits such a letter to be sent on his or her stationery, with or without his or her signature, without having expressly authorized the letter in that particular case, the lawyer is conferring upon persons not entitled to practice law the powers and privileges of an attorney. Such a practice violates the proscriptions against aiding and abetting the unauthorized practice of law under rule 3-101 of the Rules of Professional Conduct. As the Supreme Court stated in *Townsend v. The State Bar*, supra, 210 Cal. at pages 364-365:

"The right to practice law not only presupposes in its possessor integrity, legal standing and attainment, but also the exercise of a special privilege, highly personal and partaking of the nature of a public trust. It is manifest that the power and privileges derived from it may not with propriety be delegated to or exercised by a nonlicensed person. . . If such a practice were allowed, an attorney might have a number of undisclosed associates through his agency exercising the functions of an attorney and counselor, and reaping the rewards flowing therefrom, without resting under any of the responsibilities incident to such a position, and possessing none of the qualifications which the law demands and requires."

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<sup>1/</sup> Civil Code section 1788.13(c) regulates only debt collectors who are not attorneys (Civ. Code § 1788.2(c)), which parallels what we have said here and provides:

". . . Any communication with a debtor in the name of an attorney or counselor at law or upon stationery or like written instruments bearing the name of the attorney or counselor at law, unless such communication is by an attorney or counselor at law or shall have been approved or authorized by such attorney or counselor at law, . . ."

(See *Spindell v. State Bar*, supra, 13 Cal.3d at 261; *Vaughn v. State Bar*, supra, 6 Cal.3d at 857; *Moore v. State Bar*, supra, 62 Cal.2d at 75; *Sanchez v. State Bar*, supra, 18 Cal.3d at 284.)

**(3) Deception**

A creditor who prepares his or her own letters to delinquent debtors may want to use an attorney's letterhead (as opposed to his or her own) to give his or her letters greater impact. To the lay person who is a delinquent debtor, a letter from an attorney has greater impact than a letter from his or her creditor because of the attorney's ability to pursue legal remedies. A letter from a lawyer may demonstrate to the debtor that his or her creditor has taken a significant step toward collecting the debt. It may imply that the attorney has been retained, has examined the account, determined the debt to be owing and payment to be delinquent, and prepared the letter or directed that it be sent. If, in fact, all that has happened is that a computer or the creditor's clerks will have determined to send a particular form letter, the letter may be deceptive. An attorney is professionally responsible to ensure that there is no such deception. (Bus. & Prof. Code, § 6106.)

**(4) Advising the Violation of Law**

An attorney must exercise his or her best judgment in the exercise of skill to accomplish his or her client's purposes. (Bus. & Prof. Code, § 6067.) The attorney must not advise the violation of any law or rule. (Rules 6-102 and 7-101, Rules Prof. Conduct.) For example, an attorney who uses a creditor-client's employees to send letters on the attorney's letterhead must ensure that in doing so he or she is not permitting the client to violate the law cited above designed to prevent collection agencies from engaging in (1) the practice of law; or (2) misleading communications with debtors.<sup>2/</sup>

**B. Conclusion**

The Committee concludes that, although an attorney may use a creditor-client's employees to aid in the preparation of letters to be sent delinquent debtors,<sup>3/</sup> he or she must take great care to ensure that his or her procedures are not unethical or illegal. We do not opine on whether the practices discussed may violate any state or federal law, rule or regulation, or whether such practices may give rise to civil liability.

This opinion is issued by the Standing Committee on Professional Responsibility and Conduct of The State Bar of California. It is advisory only. It is not binding upon the courts, The State Bar of California, its Board of Governors, any persons or tribunals charged with regulatory responsibilities, or any member of the State Bar.

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<sup>2/</sup> Although governmental agencies may regulate debt collection practices, they have no authority to discipline attorneys for professional misconduct. The power to discipline attorneys is an inherent judicial power. The legislature is forbidden by the California Constitution from conferring such power upon a governmental board or agency. (See *Katz v. Workers' Compensation Appeals Board* (1981) 30 Cal.3d 353 [178 Cal.Rptr. 815; 636 P.2d 1153] and *Hustedt v. Workers' Compensation Appeals Board* (1981) 30 Cal.3d 329 [178 Cal.Rptr. 801; 636 P.2d 1139].)

<sup>3/</sup> Cf. Los Angeles Bar Association Legal Ethics Committee, opinions No. 338 (1973) and No. 402 (1982). (See also section A.(2) of this opinion and footnote I thereunder.)