

**THE PROFESSIONAL ETHICS COMMITTEE  
FOR THE STATE BAR OF TEXAS  
Opinion No. 655**

**May 2016**

**QUESTION PRESENTED**

Is it permissible under the Texas Disciplinary Rules of Professional Conduct for a lawyer to sell accounts receivable owing by the lawyer's clients to a collection company?

**STATEMENT OF FACTS**

A Texas lawyer has clients (or former clients) who are delinquent in paying fees that have been earned. The lawyer proposes to sell those accounts receivable to a collection company for the payment of a percentage of the amount owed on the accounts receivable. The sale would involve the transfer or assignment of the ownership of the accounts receivable to the collection company after which the lawyer would no longer have any interest in the accounts receivable.

**DISCUSSION**

A critical issue presented in this circumstance is the extent of a lawyer's obligation to protect her client's confidential information from disclosure or use adverse to the client. This issue was the subject of Professional Ethics Committee Opinion 464 (August 1989), which considered a lawyer's sale of delinquent accounts receivable to a third party factoring company, and Opinion 652 (January 2016), which considered a lawyer's use of a collection agency to collect delinquent accounts receivable. Those opinions were based on Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct. Rule 1.05(b) provides as follows:

“Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e) and (f), a lawyer shall not knowingly:

- (1) Reveal confidential information of a client or a former client to:
  - (i) a person that the client has instructed is not to receive the information; or
  - (ii) anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm.
- (2) Use confidential information of a client to the disadvantage of the client unless the client consents after consultations.
- (3) Use confidential information of a former client to the disadvantage of the former client after the representation is concluded

unless the former client consents after consultation or the confidential information has become generally known.

(4) Use privileged information of a client for the advantage of the lawyer or of a third person, unless the client consents after consultation.”

In the circumstance here considered, the only possible exceptions to the general requirements of Rule 1.05(b) set forth above are certain provisions of Rule 1.05(c) that permit a lawyer to reveal confidential information relating to a client in the following circumstances:

“(2) When the client consents after consultation.

....

(5) To the extent reasonably necessary to enforce a claim or establish a defense on behalf of the lawyer in a controversy between the lawyer and the client.

....”

As recognized in Opinion 464, in most cases the amount due from a client to a lawyer for legal services will involve to some degree confidential information relating to the client: “In some cases, the fact that the lawyer was engaged by the client may be confidential; in many cases, the nature of the legal services resulting in the fee statement will be confidential; in most cases, the amount of the fee owing and the fact that the fee has not been paid would be confidential.”

Opinion 464 held that consent of the client is the only permissible basis for the disclosure of confidential client information incident to a sale of delinquent accounts receivable. Under Rule 1.05(c)(5), a lawyer may disclose confidential client information “[t]o the extent reasonably necessary to enforce a claim or establish a defense on behalf of the lawyer in a controversy between the lawyer and the client”—for example in a legal proceeding that is brought by the lawyer to collect a fee, or under the conditions provided in Opinion 652, a lawyer may reveal to a collection agency the minimum amount of client information necessary for the collection agency to assist the lawyer in collecting the debt. However, in accordance with Opinion 464, it is still the opinion of the Committee that disclosure of confidential client information as part of the sale of delinquent accounts receivable to another person or entity is not reasonably necessary for the enforcement of a claim for the lawyer's fee. Therefore, as discussed in Opinion 464, obtaining consent from the client is “the only permissible basis for the disclosure of confidential client information incident to a sale of delinquent accounts receivable” to a collection company.

## **CONCLUSION**

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer may not sell or transfer to a collection company accounts receivable owing by the lawyer’s clients

or former clients except with the clients' consent, after consultation with the lawyer, to the disclosure of confidential information incident to such sale or transfer.