

State Bar of South Dakota

Ethics Opinion 95-3

April 4, 1995

- **Rules: 1.6**
- **Subject: Attorney's fees; Collection agency; Confidentiality**
- **Summary: Lawyer may not report non-paying clients to a credit bureau. However, lawyers may use a collection agency to collect past due accounts.**

FACTS

Having had legal services performed, a client chooses not to pay the bill. The client simply ignores subsequent billings, without any explanation whatsoever. Client's failure to pay for services rendered constitutes in your opinion a breach of the attorney-client contract. Client's file contains last known address, social security number, employment and other personal information, which may be useful to a collection agent. The question you raise is whether or not the South Dakota Rules of Professional Conduct prohibit the release of this information for purposes of debt collection.

OPINION

In Ethics Opinion 94-23, this Committee determined that a lawyer may not report nonpaying clients to a credit bureau. The basis for this opinion was Rule 1.6(b)(2) and South Carolina Ethics Opinion 94-11. Ethics Opinion 94-23 dealt specifically with the issue of reporting nonpaying clients to the credit bureau. This Committee was of the opinion that reporting nonpaying clients to the credit bureau was not permitted under the South Dakota Rules of Professional Conduct because it was not necessary to establish the fee claim, risked compromising confidentiality, and smacked of punishment in trying to lower the client's credit rating. See, Ethics Opinion 94-23. Ethics Opinion 94-23 did not address use of a collection agency.

With respect to turning an unpaid account over for collection, this Committee is of the opinion that a lawyer may use a collection agency to collect past due accounts. See, South Carolina Ethics Opinion 94-11. Under Rule 1.6(b)(2) a lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to establish a claim on behalf of the lawyer. The use of a collection agency to collect an unpaid bill for legal services rendered is an attempt to establish a claim on behalf of the lawyer.

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Chair, Ethics Committee
State Bar of South Dakota