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Opinion No. 00-105

Applicability of Collection Service Licensure Requirements to Company Owned and Operated by Attorneys

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QUESTIONS

1. Is the attorney exemption to the requirements of the Collection Service Act contained in Tenn. Code Ann. § 62-20-103(a)(2) dependent on whether or not the attorney is acting within the scope of his practice of law and assisting his legal clients?

2. Does the attorney exemption to the Collection Service Act contained in Tenn. Code Ann. § 62-20-103(a)(2) apply to attorneys regardless of the entity for which or under which they are working?

3. Are the activities of a company that purchases uncollected judicial judgments and that is owned and operated by licensed attorneys those of a "collection service" as defined in Tenn. Code Ann. § 62-20-102(3)?

4. If a company as described in Question 3 is required to be licensed by the Collection Service Board, does the requirement of a full-time, licensed location manager as defined in the Act preclude such a company from operating on a part-time basis?

OPINIONS

1. Yes. The attorney exemption to the requirements of the Collection Service Act is only applicable to those attorneys who seek to collect the debts owing to their clients who have retained them for their services as attorneys.

2. No. The attorney exemption to the requirements of the Collection Service Act is only applicable to those attorneys who seek to collect the debts owing to their clients who have retained them for their services as attorneys. Attorneys who own or work for a collection service agency have a distinct identity from that of the agency, and their mere connection to the agency does not relieve that agency of the requirements specified in the Collection Service Act.

3. Yes. A company that is owned and operated by licensed attorneys that obtains assignments of judgments for a fee from judgment creditors, and that divides net proceeds collected on the judgments with the judgment creditors, is operating as a "collection service" as defined in Tenn. Code Ann. § 62-20-102(3).

4. No. Collection services operating in the State of Tennessee must employ a full time, licensed location manager. The Collection Service Act does not mandate hours of operation for collection services. A collection service meets the statutory requirement of a full time location manager if it keeps an employee who otherwise meets the statutory definition at its place of business while it is conducting business.

ANALYSIS

(1 and 2)

As part of the instant opinion request, this Office was presented with a hypothetical factual summary. The first two paragraphs of this summary are repeated here since the hypothetical facts are necessary to a full understanding of the Opinion.

> Attorneys X and Y are hereby licensed members of the Tennessee Bar and are co-owners of Company Z, an LLC which was formed for the purpose of purchasing uncollected judgments, tracking the assets of the judgment debtors, and executing the judgments. The typical arrangement is that Company Z will pay a nominal fee to the judgment creditor, take an assignment of the judgment, and enter into a separate agreement whereby Company Z agrees to divide the net proceeds collected on the judgment with the judgment creditor according to an agreement reached in advance. No correspondence sent by Company Z identifies either Attorney X or Attorney Y as being attorneys.
>
> Attorney X is the firm administrator of a law firm. Attorney Y is a member shareholder of the law firm which employs Attorney X. The day to day business of Company Z is conducted by Attorney X out of his home at night, including preparation of solicitation letters to judgment creditors, conducting asset searches, and preparation [of] all documents in furtherance of execution of judgments. The role of Attorney Y is mainly limited to provision of operating capital, handling tax matters and providing potential connections which may [be] interested in the services of Company Z.

Thus, the opinion request is premised on the creation of a limited liability company, Z, that is a corporate entity, legally separate from the persons X and Y. Correspondence sent by Z will not identify either X or Y as attorneys. Z is the entity engaged in the solicitation of clients for the purchase of judicial judgments and the subsequent attempts to execute on these judgments.

The Tennessee Collection Services Act, Tenn. Code Ann. § 62-20-101 *et seq*. requires all collection service businesses to be licensed and imposes other requirements such as the posting of bonds and the presence of a location manager at each business location. Pursuant to Tenn. Code Ann. § 62-20-103(a)(2) "[a]ttorneys at law" are exempt from the provisions of the Act. The Company, Z, is not an attorney. There is no information in the opinion request or its attached hypothetical fact summary that suggests that Z is a law firm, solo law practice, association of attorneys or other business that is subject to the oversight of the Tennessee Supreme Court and its Board of Professional Responsibility. Rather, the fact summary states that Z will neither advertise nor promote the fact that it is owned by attorneys.

The phrase "[a]ttorneys at law" is not given a statutory definition for purposes of the Act. There is nothing in the language of Tenn. Code Ann. § 62-20-103 or the remainder of the Act that suggests "[a]ttorneys at law" means anything more than its commonly understood meaning -- licensed attorneys. Thus, Z cannot claim an exemption from the requirements of the Collection Service Act.

In Opinion No. 98-079, this Office opined that a proposed legislative bill[1] that would have modified the attorneys exemption was unconstitutional because it would interfere with the Tennessee Supreme Court's supervisory authority over the regulation and licensing of attorneys. Opinion No. 98-079, however, should not be read as stating that any and all licensed attorneys are exempt from the provisions of the Collection Service Act. A fair reading of this prior opinion demonstrates that this Office was concerned with the potential regulation of attorneys engaged in collection activities for their law practice clients. This concern is evident in the following quote:

> Based upon the wording of this clause and the definition of "collection service" under this chapter, the CSB would then appear to be granted the power to regulate ***activities that are engaged in by an attorney on behalf of a client in the course of the practice of law*.** (emphasis added)

As noted *supra*, the attorneys who will own and operate Z will not be holding themselves out to the public as attorneys. The judgments they purchase will be the results of legal proceedings that predate their involvement with the judgment creditors. Their efforts to execute on the purchased judgments will not, as a legal matter, be on behalf of clients, but rather on behalf of the company Z. The judgment creditors are not clients who will be knowingly retaining the services

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[1] The proposed legislation, House Bill 2580/Senate Bill 2737 (1998), would have replaced the current exemption in Tenn. Code Ann. § 62-20-103(a)(2) with the following language:

> (2) Attorneys at law in the normal course of an attorney-client relationship; provided, however, an attorney who hires or contracts with individuals for the sole purpose of the collection of bad debts or who holds himself out to be a collection service is subject to and shall comply with the provisions of this chapter; or

of a licensed attorney. The concerns expressed in Opinion No. 98-079 are not applicable to a collection service that is owned and operated by attorneys.

(3)

For purposes of the Collection Service Act, "collection service" is defined as "any person who, directly or indirectly, for a fee, commission, or other compensation, offers to a client or prospective client the service of collecting, or purchasing for collection, accounts, bills, notes or other indebtedness due such client for various debtors." This Office has previously opined that the Act covers a person who is engaged in the business of collecting judgments for judgment creditors. See Op. Tenn. Atty. Gen. 99-224 (December 1, 1999).

An example of a collection service included as part of this statute is "any person who engages in the solicitation of claims in this state for purchase or collection." Tenn. Code Ann. § 62-20-102(3)(D). Z will be sending out solicitation letters to judgment creditors. The statutory definition of "collection service" speaks for itself. The activities of Z fit within the statutory definition. As described, Z is a collection service. The nature of Z's business and its activities make it a collection service regardless of its owners and operators.

(4)

For purposes of the Collection Service Act, a "location manager" is "an individual who is employed full time at a location of a collection service and designated to be in active and responsible charge of a collection service at the location at which the individual is employed." Tenn. Code Ann. § 62-20-102(6). Pursuant to Tenn. Code Ann. § 67-20-108, every collection service must have a location manager at every location at which it conducts business. The Act does not specify the number of hours a collection service must operate or have its office open to the public. If Z has an employee who otherwise meets the definition of a "location manager" at its place of business while it conducts business, the statutory requirement is met.

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