



ETHICS ADVISORY OPINION

19-02

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.

South Carolina Rules of Professional Conduct: 1.6(b), 1.9(c)

Factual Background: Lawyer received a favorable ruling from the Resolution of Fee Disputes Board against Former Client. The award of fees was affirmed on appeal and entered as a judgment. Former Client has not paid the judgment and appears to have no South Carolina assets subject to execution. Former Client has left South Carolina but may have property elsewhere.

Questions:

1. May Lawyer sell the judgment to a third party?
2. If so, are there any ethical constraints on advertising the judgment for sale?

Summary: Lawyer may sell the judgment, and advertise it for sale, provided she does not disclose information related to the underlying representation in doing so.

Discussion: The Rules of Professional Conduct do not provide that a judgment against a former client is subject to restrictions or limitations not applicable to other judgments. Thus, Lawyer's judgment against Former Client may be sold or transferred to the same extent as any other judgment. However, Rule 1.9(c) provides that lawyers may not use or disclose information related to the representation to the client's detriment except as the Rules would permit with respect to a current client. Rule 1.6(b) identifies circumstances in which disclosure of information without client consent is permissible.

Rule 1.6(b)(6) permits a lawyer to reveal information related to the representation if necessary "to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client." This likely would justify disclosure and use of information in the course of litigating the fee dispute itself. See Ethics Advisory Opinion 93-38. However, the committee does not believe that post-judgment transactions between Lawyer and third parties, such as advertisement and sale of the judgment, would qualify as "a controversy between the lawyer and

the client.” As such, Lawyer is advised not to disclose information related to the representation in the course of advertising and selling the judgment.