No. 2016-1. A lawyer may not report a client's failure to pay for professional services rendered to a credit reporting agency absent the client's informed consent, which would be difficult, if not impossible, to obtain.

Facts

The inquirer states that his law firm has a number of clients who have outstanding bills for services rendered. The firm has attempted to collect these past-due amounts through letters, telephone calls, and offers of payment plans, with limited success.

Issue

You have inquired as to whether the firm may ethically report the delinquent clients to credit reporting agencies when other attempts to collect from the clients have failed.

Analysis and Conclusions

The Committee concludes that a lawyer may not disclose information about present or former clients to a credit reporting agency without the fully informed consent of the client.

A lawyer's ethical obligation with respect to maintaining the confidentiality of client information is governed by Colo. RPC 1.6. Rule 1.6(a) states that a lawyer "shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by [the exceptions set forth in Rule 1.6(b)]." Comment [3] further states that this confidentiality obligation "applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source."

The Committee concludes that information regarding the client's payment or nonpayment of invoices is information "relating to the representation" of the client and therefore constitutes confidential information for purposes of Rule 1.6. The question then becomes whether the rule permits a lawyer to disclose that information. Disclosure of a client's delinquency to a credit reporting agency is not "impliedly authorized in order to carry out the representation." Accordingly, Rule 1.6(a) only permits disclosure if either the client gives informed consent or the disclosure is permitted by one of the Rule 1.6(b) exceptions.

The only Rule 1.6(b) exception that might arguably apply to this situation is 1.6(b)(6), which states in pertinent part that a lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes the disclosure is necessary "to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client[.]" Comment [11] further notes that "[a] lawyer entitled to a fee is permitted by paragraph (b)(6) to prove the services rendered in an action to collect it " Comment [14] cautions, however, that "[i]n any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose."

The Committee concludes that the Rule 1.6(b)(6) exception does not permit you to report delinquent clients to credit reporting agencies. Our conclusion is guided by the distinction between undertaking direct efforts to collect from a delinquent client (for example, by bringing suit or using a collection agency), and reporting a delinquent client to a credit reporting agency. Reporting a delinquent client to a credit reporting agency does not require the lawyer to "establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client," and does not in and of itself constitute collection of a debt. Although the reporting may create pressure on the client to pay the unpaid fees due to the threat of a negative impact on the client's credit rating, this pressure comes from the coercive effect of a bad credit report and may be entirely unrelated to the merits of the claim for fees. Moreover, in contrast to a court proceeding, which provides procedural safeguards for the client, reporting a client to a credit reporting agency automatically becomes a stain on the client's credit record that may exist for many years, and long after the lawyer's ability to collect the fee has been barred by the applicable statute of limitations. Reporting a client thus has a punitive effect on the client and is beyond the permissible bounds of Rule 1.6.

Although Rule 1.6(a) in theory permits a lawyer to obtain the client's informed consent to report the client to a credit reporting agency, in practice there will be few circumstances in which a lawyer can validly obtain informed consent. '"Informed consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." Rule 1.0(e). "Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and

alternatives." Rule 1.0, comment [6]. The committee believes that informed consent under these particular circumstances would include an explanation that the lawyer is ethically precluded from reporting the client to a credit reporting agency unless the client consents.

Many other state bar associations have considered the issues raised in your inquiry, and with near uniformity, they have similarly concluded that lawyers may not report information about present or former clients to a credit bureau without the informed consent of the client. *E.g.*, Alaska Bar Ethics Op. 2000-3; State Bar of Ga. Formal Advisory Op. No. 07-1; S.C. Bar Advisory Op. 94-11; Mass. Bar Ethics Op. 00-3; Mont. Ethics Op. 001027; N.Y. State Bar Ass'n Op. 684; State Bar of Mich. Op. RI-335. *But see* Fla. Bar Op. 90-2 (permitting reporting of a delinquent former client, but only if the debt is not in dispute, and confidential information unrelated to the collection of the debt is not disclosed). We agree with the majority view.