Some collection companies engage an attorney as an employee of the agency (often called “in-house counsel”) as a means to ensure continuous access to legal advice on day-to-day business matters. The question that frequently arises is whether in-house counsel for a collection agency can sue debtors on accounts placed for collection by clients of the agency.

The primary prohibition restricting an in-house attorney from suing a debtor on behalf of a collection agency client is the unauthorized practice of law. A collection agency cannot practice law and neither can its employees. The American Law Reports treatise on the unauthorized practice of law summarized this position as follows:

   It is equally clear, however, that a corporation cannot, either by itself or through a regularly admitted member of the bar, undertake to perform services in the nature of legal services for another between whom and such member of the bar there does not exist directly the relation of attorney and client. A corporation cannot do indirectly through an attorney employed by it what it could not do directly for another.

In addition, a number of states have specific rules that prohibit an attorney, in the capacity as in-house counsel, from representing an “outside” client. However, there are some exceptions to the extent the debts in question are owned by the agency or company that employs the attorney.

Many agencies find that developing a close working relationship with an attorney or law firm is preferable to hiring an attorney as an employee. Such arrangement with an attorney or law firm may include, in some states, subleasing office space, computers and collection software to the attorney and even subcontracting collection agency employees to work for the law firm. Please contact John Rossman at rossmanj@moss-barnett.com if you would like more information on structuring relationships with collection counsel.