

**PRACTICE OF LAW BOARD
STATE OF WASHINGTON**

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ADVISORY OPINION

QUESTION PRESENTED

Does a non-lawyer individual or business assigned a judgment for the purposes of collection engage in the unauthorized practice of law if he or she proceeds to enforce the judgment *pro se* against the debtor in court?

A number of *pro-se* garnishment writs have been presented in a Washington district court by individuals who are non-lawyers with "dba" business names in order to enforce and collect on judgments assigned to them by other plaintiffs [judgment creditors]. The assignees prepare the legal documents, file pleadings to enforce the judgments in their own name, and collect on the judgments. The assignees are not licensed to practice law or licensed as collection agencies. The assignees may make a payment back to the original judgment creditor.

SHORT ANSWER

An assignee, as legal owner of the judgment, may enforce a judgment *pro se* in court if the assignee is the absolute owner of the judgment. Ownership is determined by examining the written assignment and the context in which the written assignment was executed. However, if the original judgment creditor (or assignor) retains any interest in the collection of the judgment, then the assignee is engaging in the unauthorized practice of law by filing pleadings in court in to enforce the judgment.

ANALYSIS

Washington statutory law allows a judgment creditor to sell or assign a judgment claim as it would any other valuable property or asset. The assignment of the judgment claim carries to the assignee all the rights to enforce collection of the judgment enjoyed by the original judgment creditor as long as the assignment is in writing, signed by the judgment creditor, acknowledged before an officer authorized to administer oaths, and filed with the clerk of the court in which the judgment is of record. RCW 4.56.090. Enforcing the collection of a judgment involves the preparation, filing, and signing of legal documents, specifically a writ of execution, a writ of garnishment, and any applicable affidavits. RCW 6.17.020. Proceedings supplemental to execution of the judgment may also occur to assist in collection of the judgment, such as an examination of the judgment debtor. RCW 6.32.010. Services which include the preparation of

legal documents and participation in legal proceedings fall under the definition of the practice of law when done on behalf of another. GR 24(a)(1) and (2). RCW 2.48.170 prohibits non-members of the bar from engaging in the practice of law.

In Washington, a creditor may either assign a claim in such a way so as to bring about a complete sale of the claim or assign the claim solely for the purposes of collection. *DeBenedictus v. Hagan*, 77 Wn.App. 284, 890 P.2d 529 (1995). To determine whether the assignment was absolute or whether the original judgment creditor retained interest in the judgment, the court examines the written assignment and the context in which the writing was executed in order to determine the parties' intent. *Id.* at 290. An assignment for the purposes of collection transfers legal title to the claim so that the assignee can sue in his or her own name, leaving an equitable ownership in the claim to the assignor and creating a fiduciary relationship (that of principal and agent) between the assignor and assignee. *Id.* at 289-290.

An individual has the right to self representation: "The so-called *pro se* exception applies only if the layperson is acting solely on his or her own behalf." *Washington State Bar Ass'n v. Great Western Union Federal Savings and Loan Ass'n*, 91 Wn.2d 48, 586 P.2d 870 (1978). In a judgment assigned for the purposes of collection, the original judgment creditor (assignor) retains an interest in the judgment because he or she will share in any recovery. In attempting to enforce such a judgment, the assignee is preparing, filing, and signing pleadings, as well as appearing in court on behalf of not only his or her own interests, but also those of the assignor. This action is the unauthorized practice of law.

Other states have addressed this same issue.¹

Advisory opinions are issued by the Practice of Law Board under the authority of the Washington Supreme Court pursuant to General Rule 25(c)(1).

¹ Virginia State Bar Ass'n UPL Advisory Opinion 203 (2001) and 120 (1998), Georgia Bar Ass'n Standing Committee on UPL Advisory Opinion 2002-1; *Alco Collections v. Poirier*, 680 So.2d 735 (1996); *J.H. Marshall & Assoc. v. Burlison*, 313 A.2d 587 (1984); *State ex. Rel. Norvell v. Credit Bureau of Albuquerque*, 85 N.M. 521, 514 P.2d 40 (1973); *State Bar of Wisconsin v. Bonded Collections, Inc.*, 36 Wis.2d 643, 154 N.W.2d 250 (1967); *Bay Co. Bar Ass'n v. Finance Systems, Inc.*, 345 Mich. 434, 76 N.W.2d 23 (1956); *Nelson v. Smith*, 107 Utah 382, 154 P.2d 634 (1944); *Bump v. Barnett*, 235 Iowa 308, 16 N.W.2d 579 (1944); *State v. James Sanford Agency*, 3 Beeler 339, 69 S.W.2d 895(1934).