

November 10, 1961

Letter Opinion No. 61-147-L

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ARIZONA ATTORNEY GENERAL

C
Honorable Fred O. Wilson
County Attorney
Navajo County Courthouse
Holbrook, Arizona

Dear Sir:

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In your letter of April 10, 1961, you pose the following questions:

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1. May a licensed collection agency maintain an action in its own name representing itself in proper person, alleging an obligation due it by a defendant and alleging a legal assignment in substantially the form attached hereto?
 2. Does such procedure on the part of a collection agency constitute the unlawful practice of law by such collection agency, and if so, what action should be taken by the justice of the peace?
 3. When such an action is filed and is not defended by the named defendant, what is the responsibility of the justice of the peace when the admission is made by the plaintiff that there has been no money consideration paid for the assignment pleaded and proved?

No. 1

A licensed collection agency which is a corporation may not appear in court through one of its officers or directors. This matter has been previously covered in Attorney General's opinion No. 61-68. In the case of a collection agency which is not a corporation but either a single proprietorship or a partnership or some other business firm, it still may not appear in court in proper person to collect a sum due to it by virtue of an assignment. Such an assignment is not a true assignment, but is merely a limited agency relationship.

It must be understood that a collection agency maintaining an action in court based upon a legal assignment is actually

representing the original creditor in this action. To permit a collection agency to appear in court on behalf of the original creditor by virtue of a mere assignment would be to permit the unlawful practice of law by an unlicensed person. The agency maintaining a collection action has an interest in the proceeds to be collected merely to the extent of its fee. The proceeds of any action legally belong to the creditor who assigns such claim to the collection agency. The collection agency in appearing in court is actually representing the creditor. This is unlawful. Only a licensed attorney may appear in court on behalf of another. In support of this position we quote from State v. Merchants' Credit Service, 66 P.2d 337, 104 Mont. 76:

"We hold that the defendant corporation under these assignments, so far as accounts and claims other than negotiable promissory notes are concerned, is not the real party in interest and therefore not entitled to sue on such assigned claims, and that, when so suing, it was not representing itself, but its assignors."

Also see Brown v. Ginn, 64 N.E. 123, 66 Ohio St. 316.

No. 2

Any collection agency appearing in court on an assignment to collect funds which will be ultimately disbursed to another, less the collection agency's fee, is unlawfully practicing law. A justice of the peace should not permit such persons to appear in court. The justice of the peace is perfectly within his rights to refuse to accept any papers filed by the agency or any appearance in court by the collection agency.

No. 3

In the case of a default judgment all facts well pleaded are deemed proven. There is no necessity for the justice of the peace to question the consideration for any assignment. Whether there has been good or valuable consideration for the assignment is of no importance to the court in awarding a default judgment. The court must, of course, determine the amount of damages, but there is no necessity for the court to go further.

Very truly yours,

ROBERT W. PICKRELL
The Attorney General

BARRY LEVERANT
Assistant Attorney General

BL:lmh-Enc.

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**AFFIDAVIT
and
ASSIGNMENT**

State of _____ }
County of _____ } ss.

_____ being first duly sworn, deposes and says that he is
_____ of the firm of _____ which is a
_____ composed of _____

doing business in the County and State aforesaid, and that the attached statement of account against _____

_____, designated as Exhibit "A" by the Notary, is correctly copied from the books of original

entry of _____, that the charges were made in said books

at or about the time of their respective dates, that the charges are for goods, wares and merchandises sold and delivered or services rendered and performed as appears from the attached statement, that the charges are correct and the account is just

and true as stated, and there is now due and owing the sum of _____ Dollars,

(\$ _____), with lawful interest thereon, that no part has been paid or in any manner settled, and that there are no deductions or offsets of any kind, except as herein specified and credited, and that for valuable consideration, receipt

whereof is hereby acknowledged, this said account in the sum of _____ Dollars, (\$ _____),

is hereby assigned, transferred and set over unto _____ with full power and authority to do and perform all acts necessary for the collection, settlement, adjustment, compromise or satisfaction of said claim, either in the name of the undersigned or in _____ name.

Witness this _____ day of _____, A. D. 19 _____.

(Individual name here) _____

(Firm name here) _____

Subscribed and sworn to before me this _____ day of _____

A. D. 19 _____.

In testimony whereof, I have hereunto set my hand and official seal the day and year aforesaid.

Notary Public.

