1982 WL 189364 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
July 13, 1982

Re: Unauthorized Practice of Law—Collection Agencies

***1** The Honorable Dalton Sheppard
Member
House of Representatives
P. O. Box 420
Irmo, South Carolina 29063

Dear Representative Sheppard:
You requested an opinion from this office as to whether the practice by collection agencies of accepting assignments of past due accounts and filing suits for recovery in their own name in Magistrate's Court without representation of a licensed attorney would constitute the unauthorized practice of law. While my research did not disclose any South Carolina decisions on point, there are numerous decisions from other jurisdictions on this question.

Generally, it has been held that where collection agencies procure or take assignments of creditor's claims for the sole purpose of controlling the collection efforts, the assignment is deemed a mere fraud or subterfuge for the unauthorized practice of law. Annot., 27 A.L.R.3d 1166 (1969). Some courts have held that the mere assignment is per se a subterfuge to permit the collection agency to carry on the business of practicing law; other courts have found that evidence of a lack of consideration for the assignment and/or the retention by the assignor of an interest in the claim to be proof that the assignment was a mere sham. 15A Am.Jur.2d, Collection and Credit Agencies, § 8 (1976).

While the assignment form attached to your letter does not reveal the underlying business relationship between the parties, it does appear to be an attempt to circumvent the policy of the courts as to the unauthorized practice of law. In other words, since the collection agencies are prohibited from bringing an action in Magistrate's Court on behalf of a creditor, they should not be permitted to circumvent that prohibition by the subterfuge that the assignment makes them the real party in interest. In State ex rel: Frieson v. Isner, 285 S.E.2d 641, 651-2 (W.Va. 1981), the court fully described the normal collection transaction and the general rule:
Typically, the assignment is obtained by the collection agency as part of an agreement or contract with the creditor whereby collection agency promises to collect the claims of the creditor by resort to legal proceedings if necessary, to pay all court costs and to furnish all legal services. In exchange for this service, the creditor assigns the claim to the collection agency and receives the proceeds of the recovery had by the collection agency as a result of the lawsuit, with a fixed percentage retained by the collection agency as compensation for its services, and perhaps for costs. [Citations omitted.] In such instances the assignment has been held to be a sham or fraud perpetrated upon the court to allow the collection agency to avoid the prohibition on the unauthorized practice of law. [Citations omitted.]

While Section 40-5-80 of the South Carolina Code of Laws (1976) does permit a person to appear in court pro se or to represent another without fee and with permission of the court, this statute was intended to permit the appearance of a party or a non-lawyer agent for a party only on a casual, non-recurring, non-pay basis. It does not authorize laymen to engage in the practice of law free the requirements and regulations imposed by the courts upon those who wish to practice law. See, State ex rel.: Frieson v. Isner, supra. There are several law review articles dealing with the unauthorized practice of law by collection agencies which may be of interest to the South Carolina Collectors Association or their attorneys. See, Note, Unauthorized Practice of Law by

Collection Agencies, 8 West Res. L. Rev. 492 (1957); Comment, Collection Capers: Liability for Debt Collection Practices, 24 U. Chicago L. Rev. 572 (1957).

***2** I hope this information will be of assistance to you.
Very truly yours,

Richard B. Kale, Jr.
Senior Assistant Attorney General

1982 WL 189364 (S.C.A.G.)