

**Commission on the Unauthorized Practice of Law**  
**Assignee with a contingency fee arrangement**  
**acting as a *pro se* litigant to collect on a judgment**  
**Advisory Opinion 2013-002**

The Commission on Unauthorized Practice of Law (“Commission”) received a request for an advisory opinion related to assignees of judgments acting as *pro se* litigants. This opinion is issued pursuant to Neb. Ct. R. 3-1012(D).

Does an individual commit unauthorized practice of law where he or she purchases a judgment on a contingency fee basis and takes legal action as a *pro se* litigant to collect the judgment?

Our answer is yes.

**Facts**

The Commission has been advised that there are individuals in Nebraska who purchase judgments from litigants using a contingency fee arrangement and then seek to enforce those judgments on a *pro se* basis in lieu of representation by a lawyer.

For example, one individual conducts a business the individual refers to as “civil judgment enforcement”. The services are described on a website as follows:

“We purchase your judgment in its entirety. We cover all the costs and expenses incurred in locating the judgment debtor and enforcing the judgment. We make our money only from the judgment debtor, at no cost to you. . . [W]e neither charge an application fee nor require you to cover any expenses. We purchase the judgment from you for a percentage of the award amount. We bear all expenses and legal costs incurred in the enforcement process. We are currently purchasing judgments awarded in Nebraska.”

An application is provided that requires the applicant to provide the following information about the judgment: case number, amount of judgment, amount collected to date, the state and county where the judgment was issued and the date of the judgment. Additionally the application contains questions regarding the judgment debtor.

There is a disclaimer on the application which states:

“The content of this website should not be construed as legal advice. The owners of this website cannot provide legal advice regarding the enforcement of civil judgments. It is recommended that you seek professional legal counsel before entering into any agreement that you do not fully understand. All information sent to us through this website is done so on a non-confidential basis and does not create an attorney-client relationship.”

There is an FAQ section on the website that explains how the process works:

“First, we complete an agreement detailing the specifics of the purchase of your judgment. If acceptable, you will then assign the judgment to us making us the *assignee of record*. Once we have filed the assignment documents with the court we will have the legal right to investigate the judgment debtor and proceed with the process of enforcement. *You will receive your money based on the agreement we have reached.*” (Emphasis added.)

The FAQ section also explains why not to use an attorney to enforce a judgment:

“You can, (use an attorney) if you are willing to put down an up-front retainer fee and pay the attorney \$100 or more per hour, whether or not they are able to recover anything at all. When we enforce the judgment, we pay you and there are no up-front costs.”

Another FAQ regarding whether it is possible to enforce judgments in other states is answered:

“In most cases, yes. Especially if the judgment debtor answered your complaint or made an appearance in court. If the judgment debtor didn’t appear, the judgment is called a default judgment which is considered a weaker judgment. Each of us have the right to confront our accusers and to defend against legal claims. So, if the debtor is able to show the court that he was not properly notified, or served in the wrong capacity, he can file a motion asking the court to set aside the judgment. Overcoming this hurdle can be one of the most difficult in any enforcement effort. Especially when done across state lines.”

Once the judgment enforcer assumes the status of “assignee” to a claim, the assignee takes legal action to collect the judgment. The following are examples of steps taken by this individual:

- 1) Motion to terminate attorney of record and to vacate any previous assignment
- 2) Interrogatories

- 3) Praecipe and Affidavit for garnishee summons
- 4) Notice of Appeal
- 5) Requests for Service
- 6) Plaintiff's Claim and Notice to Defendant

### Analysis

According to Neb. Ct. R. §3-1001:

The "practice of law," or "to practice law," is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person which require the knowledge, judgment, and skill of a person trained as a lawyer. This includes, but is not limited to, the following:

- (A) Giving advice or counsel to another entity or person as to the legal rights of that entity or person or the legal rights of others for compensation, direct or indirect, where a relationship of trust or reliance exists between the party giving such advice or counsel and the party to whom it is given.
- (B) Selection, drafting, or completion, for another entity or person, of legal documents which affect the legal rights of the entity or person.
- (C) Representation of another entity or person in a court, in a formal administrative adjudicative proceeding or other formal dispute resolution process, or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.
- (D) Negotiation of legal rights or responsibilities on behalf of another entity or person.
- (E) Holding oneself out to another as being entitled to practice law as defined herein.

When an individual purchases a judgment in a contingency fee arrangement and seeks to enforce that judgment on a *pro se* basis instead of hiring a lawyer, the purchaser is not representing only himself or herself but also is necessarily representing the seller of that judgment. The seller of that judgment is dependent on the knowledge, judgment and skill of the purchaser for at least the portion of his or her compensation for the judgment. Where the purchaser is not represented by a lawyer, this constitutes the unauthorized practice of law under Neb. Ct. R. §3-1001. This is true whether the purchaser is seeking to enforce the judgment in court, which is prohibited by Neb. Ct. R. §3-1001(C) or negotiating with the judgment debtor to enforce the judgment outside of court, which is prohibited by Neb. Ct. R. §3-1001(D).

The existence of a contingency fee arrangement is an important element of this conclusion. If instead of paying the seller based on a percentage of the recovery the judgment purchaser paid the seller a fixed fee established in advance of the sale, there would not be unauthorized practice of law because the purchaser would not be representing another person or entity. In that case, no other person or entity is dependent on the purchaser's knowledge, judgment and skill for the amount of their compensation and the purchaser is truly representing himself or herself *pro se*. For example, there is no unauthorized practice of law if the purchaser pays the seller ten dollars for a hundred dollar judgment and that amount is fixed in advance regardless of the purchaser's success in collecting the judgment. However, there is unauthorized practice of law if the purchaser seeking to collect on that judgment without a lawyer pays some percentage of the recovery to the seller.

This situation is distinguishable from the holding in *Archer v. Musick* 25 N.W.2d 908 (Neb. 1947). In *Archer*, the Nebraska Supreme Court was construing Neb. Rev. Stat. § 25-304 which provided "assignees of choses in action assigned for the purpose of collection may sue on any claim assigned in writing." In *Archer*, the plaintiff was allowed to join the assigned claims of thirty-nine co-workers to his own and sue in his own name against their employer. It should be noted that the litigation focused on whether Mr. Archer could sue in his own name for the thirty-nine additional claims, and not whether Archer had the right to litigate *pro se*. Mr. Archer employed an attorney to represent his claim, and the residual interests in the assignments made to him by his thirty-nine co-workers. On these facts, *Archer* is not inconsistent with the UPL rules requiring an attorney to represent the interests of another. A similar distinction was made in *Back Acres Pure Trust v Fahnlander*, 443 N.W.2d 604 (Neb 1989) in which the Nebraska Supreme Court held that even though a trustee was a proper person to sue on behalf of a trust, a trustee may not represent the trust *pro se* because the trustee would be representing interests of others and would therefore be engaged in the unauthorized practice of law. See also the analysis of this issue in 77 Nebraska Law Review 365, Collection Agencies and the Unauthorized Practice of Law: The Divorce of Function from Form in *Alco Collections, Inc. v. Poirier*, 680 So.2d 735 (La Ct. App. 1996).

### **Conclusion**

For the foregoing reasons, an individual who purchases a judgment on a contingency fee basis and does not hire an attorney to enforce the judgment is engaging in the unauthorized practice of law.