

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-26
Issued: January 1979

Question: Whether a non-attorney debt collector who periodically examines his or her collection records and decides which of the debtors' accounts are to be garnished and when such garnishment should take place is engaged in the unauthorized practice of law?

Answer: No.

OPINION

We are aware of nothing which would prohibit a debt collector from sifting through its files, making a determination of which debts might be collectible by garnishment, and referring those particular debts to an attorney for garnishment proceedings, at the same time advising the attorney of the date when the garnishment would most likely be effective.

The party requesting this opinion states that her office had been relying upon a decision dated February 11, 1977, by Judge Anderson in the Jefferson Circuit Court, No. CR 215,650, wherein certain threats of legal action, including execution, were made by a collection agency to further the collection of alleged indebtedness.

Judge Anderson in that instance enjoined the collection agency from "sending any notices to debtors which threatened legal action if debtor does not pay debt and wherein there is an interpretation or conclusion of law therein." No appeal was taken.

In his opinion, Judge Anderson cites KBA U-13 which states:

The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel, or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities or business relations of one requiring the service.

Also cited was 7 Am. Jur. 2d, Attorney at Law, § 80, which provides:

The collector infringes on the field reserved to the legal profession when he undertakes to give legal advice or to threaten debtor with legal proceedings.

See also 15 Am. Jur. 2d, § 6, p. 194.

Judge Anderson rightly concludes that the threat of litigation or execution constituted a legal determination as to legal proceedings and that, when conducted by a non attorney, constituted the unauthorized practice of law.

It is our opinion that any debt collector may conduct a search of its records, or any public records, and supply its findings to an attorney, including a recommendation as to suit, garnishment, or any other opinion it may have. It may not, however, be engaged in the giving of legal opinions or any related activities such as outlined above.

The finding herein should be coupled with the contents of KBA U-13. The debt collector, unlicensed to practice law, is limited to making recommendations to its attorney, who would then make a final determination as to who is the legally liable party, and the advisability of suit.

Note to Reader

This unauthorized practice opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). Note that the Rule provides in part: "Both informal and formal opinions shall be advisory only."