

64805-5

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**COURT OF APPEALS, DIVISION I OF THE
STATE OF WASHINGTON**

NO. 64805-5

**Jaymie J. Vacura d/b/a
WhyWait Financial Services,**

Appellant,

v.

Timothy Allen,

Respondent.

2010 MAY 28 11:37

BRIEF OF APPELLANT

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OBJECTIONS

- 1 *That WFS does not fit these circumstances because when the District Court personal sent the inquiry to the Practice of Law Board. The Practice of Law board based their decision off the presumption that these assignees were acting as pro se collection agencies; preparing, presenting, and filing legal documents in District Court were not adequately licensed and bonded as required.....* -- 24

- 2. *That WFS is charging this Assignor a fee to collect this default judgment; and WFS is in violation of unauthorized practice of law on the theory that Assignor still retains interest in the assigned default judgment, and WFS intends to argue that WFS has never charged this Assignor any fees to prepare, present, or file any legal documents in a court of law in which to collect or enforce on this default judgment.....* -- 45

- 3. *That to be an absolute owner of the default judgment, the agreed consideration for the default judgment must be paid to this Assignor in full, prior to any acting directly or indirectly on this assigned default judgment.....* -- 34

- 4. *That WFS is directly or indirectly aid or abet any unlicensed person to engage in business as a Collection Agency in this state or receiving compensation from such unlicensed person.....* -- 48

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A. ASSIGNMENT OF ERROR AND SUMMARY OF ISSUES.

1. Assignment of Error(s)

No 1. The trial court erred when it entered a Minute Order denying Plaintiff's motion for issuance of Subpoena Duces Tecum to Employment Security Department without the use of a lawyer because the assignor retains interest in the assigned debt. *CP 12, Ex P-5 at page 13, page 1 of 1*

No 2. The trial court erred when it entered an order that Pursuant to RCW 19.16.250 and the WSBA Practice of Law Board Advisory Opinion that Plaintiff is in violation of unauthorized practice of law because Plaintiff is charging a fee to collect a debt for someone who retains an interest in the assigned debt. *CP 12, Ex P-6 at page 13, page 1*

No 3. The trial court erred when it entered an order that Plaintiff is in violation under 19.16.250, Paragraph 1, directly or indirectly aid or abet any unlicensed person to engage in business as a Collection Agency in this state or receive compensation from such unlicensed person. *CP 12, Ex P-6 at page 13, page 1*

No 4. The trial court erred when it entered a order that Plaintiff is in violation under RCW 19.16.250, Paragraph 5, perform any act or acts, either directly or indirectly, constituting the practice of law. *CP 12, Ex P-6 at page 13, page 1*

2. Issues Pertaining to Assignment of Error(s):

No. 1 Plaintiff's assignment of judgment was a complete sell at the time the assignment was endorsed by the assignor and that the assignor did not intend to retain any interest or control in the said judgment after the date assigned; and that Plaintiff is vested with both legal and equitable title to the said default judgment.

No 2 Plaintiff is not charging any fees directly or indirectly to the assignor in collecting the said default judgment; and that the party's manifest intent based on the fee agreement language will support a promise to pay after the default judgment is collected.

No 3. Plaintiff has not directly or indirectly aid or abet any unlicensed person to engage in business as a Collection Agency in this state or receive any compensation from any such unlicensed person and using this section of the statute in Plaintiff's case is a complete misplacement of the statues authority because the assignor is not a licensed or unlicensed Collection Agency.

No. 4 Therefore by Plaintiff enforcing her judgment in the court of law is acting alone on her own behalf in accordance with the statute, and that does not constitute the practice of law as defined under Washington State laws.

- (1) Under Washington statute does an assignment of judgment in writing conveyed by the original creditor transfer legal title to the assignee?
- (2) Does the language of the assignment of judgment or the language of the fee agreement create any fiduciary relationship between the assignor and assignee?
- (3) Isn't the purpose behind the bond requirement under RCW 19.16.190 to ensure the assignor of his consideration for the written assignment?
- (4) Does the Court of Appeal find that Appellant is charging any fees directly or indirectly to the assignor in collecting the said judgment?
- (5) Does the Court of Appeal find that Appellant is directly or indirectly aid or abet any unlicensed person to engage in business as a Collection Agency in this state or receive compensation from such unlicensed person?
- (6) Can the assignee of this judgment represent her self in the court of law without the employing a lawyer, and motion the court for an order issuing a Subpoena Duces Tecum to Employment Security Department?

B. STATEMENT OF THE CASE

1. Relevant Facts.

This case involves the legality behind being a licensed bonded collection agency in accordance herewith Washington laws, and taking a written assignment of judgment for collections from Mr Husar hereinafter "Assignor." This appeal presents pure issues of law.

At all times herein relevant, and prior to the transactions at issue herein, Jaymie J. Vacura is a sole proprietorship collection agency known as WhyWait Financial Services (WFS) that has been licensed and bonded as a collection agency in Roy, Washington since 2004 (*CP 12 at page 3, Ex.P-1 at page 13 and Ex P-2 at page 13*).

Prior to February 21, 2007, Assignor called my office to see about collecting a default judgment that he has had since October 13, 2006 against Timothy M. Allen in the amount of \$4,025.00 (*CP 1, pages 1-3*). On February 21, 2007, Assignor and WFS both met at the Bonner Law Office and executed and delivered to WFS its form of assignment of judgment (*CP 3 at page 1 of 1*) (without restriction's), utilizing substantially the same assignment form that is under issue herein (*CP12 at pages 4-10, Ex. P-4 at page 13*) and (*RP at pages 8-10*).

Although Ex. P-4 at page 13 that is attached to (CP 12) does not contain the written consideration agreed between the parties, at the same

time Assignor and WFS did enter into a written consideration agreement for the written assignment of judgment. The agreement was that after WFS has collected the assigned default judgment; then WFS would retain 35 percent of the principle amount of the default judgment plus the accumulative interest from the date of entering the default judgment to the date of satisfaction; and then pay Assignor 65 percent of the default judgment principle as consideration for the written assignment (*RP page 5 at L's 9-10*).

2. Prior Proceedings.

WFS initiated these proceedings by filing with the King County Clerk's Office a certified copy of the transcription of prior proceedings of a adjudicated District Court matter and a case information cover sheet, and lastly, the original true copy of the assignment of judgment endorsed by Assignor then paid to the King County Clerk's Office the appropriate required filing fee CP 1-3.

Then nothing else was done by WFS until September 28, 2009, when WFS routed her motion for issuance of a subpoena through exparta channels (*CP 12, Ex P-3 at page 13*). The purpose of this subpoena was to determine if and where Timothy M. Allen was employed so that WFS could further seek a writ of garnishment addressed to that place of

employment. The trial court denied WFS motion (*CP 4*), and WFS motion for reconsideration followed.

On October 06, 2009, WFS filed the note for motion, motion for reconsideration, and the supporting affidavit requesting for such relief (*CP 5-7*). WFS motion was granted, and the hearing was set for the morning of November 09, 2009 (*CP 5*). Following oral argument, the trial court ruled against WFS findings of fact and conclusions of law and entered an order on civil motion (*CP 8, pages 1-3*) and WFS motion for revision followed.

On November 16, 2009, WFS filed the notice of hearing, motion for revision, and the supporting affidavit requesting for such relief (*CP 9-11*). Then because WFS stated in the statement of facts that the hearing was held on November 10, 2009 (*CP 10 at page 2*) instead of November 09, 2009 WFS filed an amended motion indicating the correct date of the hearing (*CP 12 at page 2*). WFS motion for revision was granted and the hearing was set for the morning of December 18, 2009 (*CP 9*). The motion hearing was held (*CP 13-14*) and following oral argument, the trial court affirmed the Commissioner's ruling and adopted the decision previously entered (*CP 15*). This appeal followed.

C. SUMMARY OF ARGUMENT.

WFS believe that this Court would have a better understanding surrounding these issues before this Court of Appeal's if a birds-eye view

was presented prior to the actual argument. WFS believe that the problems initiated from this advisory opinion that is attached to the order (*CP 12, Ex P-6 at Page 13*) and that was drafted by the Practice of Law Board State of Washington. It appears that a District Court personal made an inquiry to Practice of Law Board regarding a flooding of garnishment writs; the question asked by the personal read as follows:

“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?”

WFS position is that enforcing on her default judgment as an individual collection agency is warranted as long as the collection agency is in compliance with Washington laws. All collection agencies throughout Washington State are governed by statute. Any individual who wants to become a collection agency business in accordance with Washington laws must first meet the first two, mandatory requirements. First, WFS must apply to the Department of Licensing Master License Services for a Washington State Collection Agency License as provided herein below:

RCW 19.16.110, License required ;(2005) [1994 c 195 § 2;

The general rule is that no person shall act, assume to act, or advertise as a collection agency or out-of-state collection agency as defined in this chapter, except as authorized

by this chapter, without first having applied for and obtained a license from the director.”

Then, simultaneously WFS had to provide to the Department of Licensing Master License Services with verification of a \$5,000.00 dollar bond by a licensed bonding company, licensed in this state as provided herein below:

RCW 19.16.190, Surety bond requirements – Cash deposit or securities -

Exception ;(2005) [1994 c 195 § 5;

“The general rule, except as limited by subsection (7) of this section, each application shall, at the time of applying for a license, file with the director a surety bond in the sum of five thousand dollars. The bond shall be annually renewable on January first of each year, shall be approved by the director as to form and content, and shall be executed by the applicant as principal and by a surety company authorized to do business in this state as surety.”

Know WFS believes that she will prove to this Court of Appeal based on the preponderance of evidence filed herein the record that WFS clearly did meet the above requirements in order to become a collection agency and to be vested with the authority to enforce this default judgment.

However, it is important to point out to this Court of Appeal that WFS did not need to provide to the trial court any verification that WFS was duly licensed and bonded as a collection agency as required by statute because

this was a judgment by default; and after this Court of Appeal reads the below statute provision applicable herein this Court of Appeal will agree!

RCW 19.16.260, Licensing prerequisite to suit ;(2005) [1994 c 195 § 8;

*“The general rule is that no collection agency or out-of-state collection agency may bring or maintain an action in any court of this involving the collection of a claim of any third party without alleging and proving that he or it is duly licensed under this chapter and has satisfied the bonding requirements hereof, if applicable: **PROVIDED**, That in any case where judgment is to be entered by default, it shall not be necessary for the collection agency or out-of-state collection agency to prove such matters.”*

WFS contends that this Court of Appeal can clearly see above that because this judgment is by default; WFS did not have to provide to the trial court with the information on the motion for issuance of subpoena regarding any licensing or bonding verification; but WFS did. ***Look at the language printed on the motion for issuance of subpoena it states in part that:***

Jaymie J. Vacura d/b/a WhyWait Financial Services, and duly licensed and bonded as a Washington Collection Agency.”

This lead's WFS to her first telephonic objection that WFS does not fit these circumstances because when the District Court personal sent the inquiry to the Practice of Law Board. The Practice of Law board based

their decision off the presumption that these assignees were acting as pro se collection agencies; preparing, presenting, and filing legal documents in District Court were not adequately licensed and bonded as required.

Herein for example is what WFS is talking about, printed directly below is the presented language of facts that the District Court personal sent to the board that the advisory opinion's findings of fact and conclusions of law were based off of. **Take a look at what the District Court personal said on the inquiry:**

“The assignees are not licensed to practice law or licensed as collection agencies.”

In agreement, WFS does support the advisory opinion conclusion when it comes to assignees trying to portray as a collection agency and enforce in a court of law any matter when not adequately licensed or bonded as a collection agency because clearly that is an unauthorized practice of law. However, WFS does not fit under these circumstances because WFS is adequately and properly licensed and bonded.

Moving passed all that to legal standing of authority in a court of law so that WFS can enforce her default judgment without the fear of performing any acts of unauthorized practice of law. This legal authority is under, “action on assigned choses in action.” ***Under RCW 4.08.080, Action on assigned choses in action ;(2006) [1927 c 87 § 1;***

“The general rule is that Any assignee or assignor of any judgment, bond, specifically, book account, or other chose in action, for the payment of money, by assignment in writing, signed by the person authorized to make the same, may, by virtue of such assignment, sue and maintain an action or actions in his or her name, against the obligor or obligors, debtor or debtors, named in such judgment, bond, specialty, book account, or other chose in action, notwithstanding the assignor may have an interest in the thing assigned: PROVIDED, that any debtor may plead in defense as many defenses, counterclaims and offsets, whether they be such as have heretofore been denominated legal or equitable, or both, if held by him against the original owner, against the debt assigned,...

Now WFS intends to show this Court of Appeal that there are no other decisive factors needed considering when determining whether WFS is the real party in interest; and that the Assignor herein does not retains any interests, any controlling interests, or any fiduciary relationships interest created between the assignee and assignor at the time of contracting.

WFS intend to address those additional concerns in WFS actual argument placed below. This is just WFS bird’s eye view of WFS argument. But at this time, it would be appropriate to understand and define the real party in interest pursuant to the statute. See *Remington’s and Ballington’s Annotated Codes and Statutes, (1922) Sections 1-2721 ½, p. 245 § 179 In Whose Name Actions to be Prosecuted;*

“The general rule is that every action shall be prosecuted in the name of the real party in interest, except as is otherwise provided by law.”

In short form, the person who by substantive law has the right of action, and who is vested with legal title to this default judgment assigned, is the real party in interest. *See Washington Supreme Court Case In Re of National Association of Creditors, Inc. v. Grassley et ux. 159 Wash. 185,187; 292 P. 416 (1930):*

“The general rule in the Rem. Comp. Stat. § 179, requiring every action to be prosecuted in the name of the real party in interest, has so often been construed so as to permit the person to whom the cause of action has been assigned for the purpose of collection to maintain an action thereon, that authorities need not cited. If, by such an assignment, the assignee obtains sufficient legal title to become the real party in interest for the purpose of prosecuting the action, he also has sufficient title to prosecute the appeal.”

Know looking back at the section of **RCW 4.08.080** were the language starts with “**notwithstanding**” is more designed to protect a defendant of his or her rights under the 14th Amendment, and to prevent multiplicity of suits against the named defendant by ensure that a defendant can assert as may defenses, counterclaims through off-sets when sued upon an assigned claim or judgment, and to assure that a judgment will completely settle the

claim, and to make it possible to discharge the debt by paying the assignee with no vestigial rights of action remaining in the assignor herein.

Contradictory the Trial Court asserts that the below Provision section of **RCW 4.08.080** previously known as the **Rem. & Bal. Code, § 191** before Washington State converted the statute to the Revised Code Washington Annotated is more an assignor's preservative rights to retain ownership interests, rather than a defendants legal protective interests. The section of legal authority that WFS prefers to reiterate in hopes to better understand the purpose behind the provision language *under RCW 4.08.080, Action on assigned choses in action ;(2006) [1927 c 87 § 1;*

*“The general rule notwithstanding the assignor may have an interest in the thing assigned: **PROVIDED**, that any debtor may plead in defense as many defenses, counterclaims and offsets, whether they be such as have heretofore been denominated legal or equitable, or both, if held by him against the original owner, against the debt assigned,..”*

See, this above section of the statutory language is more a right reserved to the defendant so that he can assert as many defenses and counterclaims existing against the assignor at the time the assignment was made. *See In Re: State Ex Rel. Adjustment Co. v. Superior Court of King County; 67 Wash. 355, 356, 121 Pac. 847; (1912);*

“The same authority (Rem. & Bal. Code, § 191) which sustains the right of an assignee to sue at law in his own name also gives the right to defendant to “set forth by answer as many defenses and counterclaims as he may have, whether they be such as may heretofore been denominated legal, or equitable, or both, Rem. & Bal. Code, § 273.”

***See Remington’s and Ballington’s Annotated Codes and Statutes, (1922)
Sections 1-2721 ½, p. 275 § 273 Answer-Contents-Separate Statement of
Defenses***

“The general rule is that the defendant may set fourth by answer as many defenses and counterclaims as he may have, whether they be such as have heretofore been denominated legal or equitable, or both.”

Therefore without analyzing the additional concerns as mentioned above WFS has stepped into the shoes of the assignor if in fact this assignment assigned to WFS is a valid instrument without any subjoining interests between the assignee and assignor. ***See Estate of Jordan v. Hartford Co., 120 Wn. 2d 490, 495; 844 P.2d 403 (1993) it states in part that:***

“An assignee steps into the shoes of the assignor, and has all of the rights of the assignor. The assignee’s cause of action in direct, not derivative.”

Additionally, WFS intends to show this Court of Appeal that the assignor does not retain any interests in this default judgment assigned herein, and

that WFS is in compliance with both the presumption, and the language in the advisory opinion where the board is clarifying that a pro se who is an absolute owner of the default judgment by assignment can enforce in a court of law. ***See the language as printed in the advisory opinion on page 1 of 2;***

“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.”

And as this Court of Appeal can see WFS believes that this Washington Supreme Court case addresses and affirms the above pertaining issues placed before this appeal, and that this below referenced Supreme Court case shows that an individual; who is licensed and bonded as a Collection Agency has the legal standing to enforce this default judgment in a court of law without the use of a lawyer as long as the collection agency is not a corporate entity. ***See Washington Supreme Court Case; Washington State Bar Association v. Merchants’ Rating & Adjusting Company; 183 Wash 611, 615-616; 49 P.2d 26 (1935);***

Moving passed legal standing to WFS second telephonic objection before this Court of Appeal. This telephonic objection that WFS is talking about is where the trial court is asserting that WFS is charging the Assignor a fee to collect this default judgment and is an unauthorized practice of law

because the Assignor retains interest in the assigned default judgment, and WFS intends to argue that WFS has never charged the Assignor any fees to prepare, present, or file any legal documents in a court of law in which to collect or enforce on this default judgment, and by doing so (charging any fees), would be a direct violation of the controlling statute. *See RCW 19.16.210 ;(2006) [1971 ex.s c 253 § 12;*

“The general rule is a licensee shall within thirty days after the close of each calendar month account in writing to his or its customers for all collections made during that calendar month and pay to his or its customers the net proceeds due and payable of all collections made during that calendar month except that a licensee need not account to the customer for:

(1) Court costs recovered which were previously advanced by licensee or his or its attorney

(2) Attorney’s fees and interest or other charges incidental to the principal amount of the obligation legally and properly belonging to the licensee, ... ”

Additionally, WFS intends to show to this Court of Appeal that the parties entered into a subjoined consideration agreement that clearly protects the Assignor from being charged any additional costs or fees to collect or enforces on this default judgment against this Defendant herein. *See the*

language used in the assignees & assignors agreed consideration agreement subjoined to this assignment herein; it states in part that:

“Any additional costs encumbered will be charged to the debtor(s).”

This leads WFS to her third telephonic objection that to be an absolute owner of the default judgment, the agreed consideration for the default judgment must be paid to the Assignor in full prior to any acting directly or indirectly to collect or enforce on this assigned default judgment. The trial court's principle's are that the Assignor retains an interest in the assigned debt (default judgment) and if WFS acts either directly or indirectly to collect this assigned debt then WFS is practicing law without a license.

The trial court's theory is that because the Assignor retains an interest in the collection proceeds WFS is representing the Assignor in a court of law and that is an unauthorized practice of law. In light of that; WFS intends to show this Court of Appeal that having to pay the Assignor his agreed consideration in full prior to any performance directly or indirectly on this default judgment clearly contradicts the Washington Supreme Court Case decision cited herein. Besides, if the debts had to be paid in full there would be no reason to mandate that all collection agencies have a surety

bond prior. *See Washington State Bar Association v. Merchants' Rating & Adjusting Company; 183 Wash 611, 615-616, 49 P.2d 26 (1935);*

“, such person, partnership, association or corporation, or the person, partnership, association or corporation for whom he or it may be acting as agent, shall have on file a good and sufficient bond as hereinafter specified...”

“Nor is there any need for a specified consideration for the assignment. ‘An assignment for the purpose of collection is an assignment for a valuable consideration.’

In closing of this Summary of Argument and Moving passed the trail court's assertion that WFS is charging fees to the Assignor to collect this default judgment to WFS last and final telephonic objection that WFS is directly or indirectly aid or abet any unlicensed person to engage in business as a Collection Agency in this state or receiving compensation from such unlicensed person.

WFS intend to show this Court of Appeal that this assignment of error under paragraph one of section 250 of the controlling statute is a complete misplacement of the law makers purpose's when drafting paragraph one, and that WFS is doing no such things, and that the Assignor is not portray as any collection agency. This Assignor is the original Plaintiff, the

original assignor, and a Washington resident who assigned this default judgment to WFS to collect through valid written assignment period.

D. INTRODUCTION, THEN ARGUMENT

This case present sinless errors, and WFS believes that the errors initiated from this advisory opinion that was published by the Practice of Law Board as some type of authority figure that all King County Courts are to follow as the applicable authority, and to portray that it is applicable herein Washington. The conclusion is imposable and WFS intends to ague why using other states laws in Washington state will not work.

Throughout this argument this Court of Appeal will see WFS make several references back and forth between the *Debenedictis Case*, and the *advisory opinion (CP 12, Ex P-6 at Page 13 at pages 2-3)* and *possibly other cited cases* before this appeal.

(1) Is WFS adequately licensed and bonded as a Sole Proprietorship Collection Agency and in compliance with Washington State law?

Here is WFS argument; that these assignments of error started herein the advisory opinion (*CP 12, Ex P-6 at Page 13at pages 2-3*) and that was drafted by the Practice of Law Board State of Washington where the District Court Personal made the inquiry to the Practice of Law Board regarding the flooding of garnishment writs that where being presented

under d/b/a business names: *See advisory opinion (CP 12, Ex P-6 at Page 13 at page 2 of 3)* and; *it reads as follows below:*

“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?”

This above referenced language does not apply to WFS because *WFS* can enforce her default judgment in a court of law without any fears that *WFS* is committing an act of unauthorized practices of law. This Court will see that *WFS* is in full compliance with the Washington State laws and has a valid d/b/a Collection Agency License.

This Court of Appeal will see that for *WFS* to be in compliance; *WFS* must be licensed by the Washington State Department of Licensing Master License Services; therefore advancing forward *WFS* simply argues read the below statutory requirement to become a collection agency and then reviews the records on file (*CP 12 at page 3, Ex P-1 at Page 13*) after reviewing, this Court of Appeal must agree that *WFS* is duly licensed as a sole proprietorship collection agency under ***RCW 19.16.110, License required ;(2005) [1994 c 195 §2;***

The general rule is that no person shall act, assume to act, or advertise as a collection agency or out-of-state collection agency as

defined in this chapter, except as authorized by this chapter, without first having applied for and obtained a license from the director.”

Furthermore at the Reconsideration hearing the trial Court agreed on the record that WFS was adequately licensed. See the section of the Court of Proceeding where WFS is asking the trial court, and the trial court answered. Below here is that section of the Record of Proceedings (*RP at Page 2, L's 12-19*) where WFS is asking the trial court if they disagree that WFS is adequately licensed pursuant to the controlling statute for verification of the transcript language see herein below:

- Q. “...So we can get to the heart of what I believe would be the issues here, do you have any disagreement that I am licensed pursuant to the controlling statute?”
- A. “No”
- Q. You have no disagreement? So you agree that I'M licensed?
- A. I'M going to assume you are, yes.

Then simultaneously WFS must have provided to the Department of Licensing Department Master License Services with verification of her \$5,000.00 bond by a licensed bonding company licensed in this state. *See RCW 19.16.190, Surety bond requirements – Cash deposit or securities - Exception ;(2005) [1994 c 195 § 5;*

“The general rule, except as limited by subsection (7) of this section, each application shall, at the time of applying for a license, file with the director a surety bond in the sum of five thousand dollars. The bond shall be annually renewable on January first of each year, shall be approved by the director as to form and content, and shall be executed by the applicant as principal and by a surety company authorized to do business in this state as surety.”

And WFS, contends that this Court of Appeal will agree that WFS is also adequately bonded after reviewing (*CP 12 at page 3, Ex P-2 at Page 13*), (Affidavit of Bond) provided by the State of Washington Department of Licensing that WFS is adequately bonded as required under Washington laws. Herein below is a section of the Record of Proceedings (*RP at Page 2; L's 20-22*) where WFS is asking the trial court if they also agree that WFS is bonded, and the trial court assume that WFS is bonded. See the section of the transcription were it states the following:

Q. “Do you also agree that I am properly bonded?”

A. “I’m going to assume you are, yes.

Additionally WFS would point out to this Court of Appeal that WFS did not need to provide to the trial court any verification that WFS was duly licensed and bonded as a collection agency as required by statute because

this was a judgment by default; and after this Court of Appeal reads the below statute provision applicable herein this Court of Appeal will agree that WFS did not need to disclose any license or bonding positions. *See RCW 19.16.260, Licensing prerequisite to suit ;(2005) [1994 c 195 § 8;*

*“The general rule is that no collection agency or out-of-state collection agency may bring or maintain an action in any court of this involving the collection of a claim of any third party without alleging and proving that he or it is duly licensed under this chapter and has satisfied the bonding requirements hereof, if applicable: **PROVIDED**, That in any case where judgment is to be entered by default, it shall not be necessary for the collection agency or out-of-state collection agency to prove such matters.”*

So as this Court of Appeal can see because this judgment is by default; WFS did not have to provide to the trial court with any licensing or bonding verification. However WFS did disclose license and bonding statute to the trial court. For support of those findings sees the language printed on the motion for issuance of subpoena where it states in part that (CP 12 at pages 3-4, Ex P-3 at Page13 at page 1 of 2):

Jaymie J. Vacura d/b/a WhyWait Financial Services, and duly licensed and bonded as a Washington Collection Agency.”

First Telephonic Objection:

“That WFS does not fit these circumstances because when the District Court personal sent the inquiry to the Practice of Law Board. The Practice of Law board based their decision off the presumption that these assignees were acting as pro se collection agencies; preparing, presenting, and filing legal documents in District Court were not adequately licensed and bonded as required”

For support of WFS objection is a section of the advisory opinion printed language from the District Court personal where he or she sent a memo to the board, stating that the assignees are not licensed to practice law or licensed as collection agencies and WFS is licensed therefore this Court of Appeal should concluded that this information as printed herein below could not apply to WFS because WFS is in compliance. **See, Take a look at what the District Court personal said on the inquiry:**

“The assignees are not licensed to practice law or licensed as collection agencies.”

In agreement, WFS does support the advisory opinion conclusion when it comes to assignees trying to portray as a collection agency and enforce in a court of law any matter when not adequately licensed or bonded as a collection agency because clearly that is an unauthorized practice of law. However, WFS does not fit under these circumstances because WFS is adequately and properly licensed and bonded.

(2) Moving passed the requirement to become a collection agency to legal standing of authority in a court of law so that WFS can enforce her default judgment without the fear of performing any acts of unauthorized practice of law. This legal authority is under, “action on assigned choses in action.”

Under RCW 4.08.080, Action on assigned choses in action ;(2006)

[1927 c 87 § 1;

“The general rule is that’ ‘any assignee or assignor of any judgment, bond, specifically, book account, or other chose in action, for the payment of money, by assignment in writing, signed by the person authorized to make the same, may, by virtue of such assignment, sue and maintain an action or actions in his or her name, against the obligor or obligors, debtor or debtors, named in such judgment, bond, specialty, book account, or other chose in action, notwithstanding the assignor may have an interest in the thing assigned: PROVIDED, that any debtor may plead in defense as many defenses, counterclaims and offsets, whether they be such as have heretofore been denominated legal or equitable, or both, if held by him against the original owner, against the debt assigned,...”

See as this Court can see there are no other decisive factors needed to be considered when determining whether WFS is the real party in interest because the rule of thumb is that; the presumption is that an assignment of judgment in writing notarized by the assignor transferring title to WFS is a valid assignment according to the controlling statute. *See Wash. Rev. Code*

§ 270 (2007) where in RCW 19.16.270 the Presumption of validity of assignment it states:

“The general rule in any action brought by licensee to collect the claim of his or its customer, the assignment of the claim to licensee by his or its customer shall be conclusively presumed valid, if the assignment is filed in court with the complaint, under objection is made thereto by the debtor in a written answer or in writing five days or more to trial.”.

And WFS feels confident that after this Court of Appeal reads *Olsen v. Hagan, 102 Wash. 321, 327; 172 P. 1173 (1918), and Also, State Ex Rel. Adjustment Co. v. Superior Court of King County; 67 Wash. 355, 356-357; 121 Pac. 847 (1912)* and then reviewing WFS written assignment filed under (*CP 12 at pages 6-7, Ex P-4 at page 13*) will agree that WFS has a valid written instrument and that the only real concerns still needing to be analyzed latter on in this brief is whether or not in the language of the written assignment or the subjoining consideration agreement are there any controlling words in print between WFS and the Assignor and by doing such we can determine if the Assignor retains any interests in this default judgment placed before this court of appeal.

But first, as WFS previously mention in the introduction throughout this argument WFS will be making several references back and forth between

the *DeBenedictis Case*, and the *advisory opinion* (CP 12, Ex P-6 at Page 13 at pages 2-3); and *possibly other cited cases* before this appeal.

Lets start here at (CP 12, Ex P-6 at Page 13 at pages 2-3) at the advisory opinion. For a transcription please reference below on page 2 of 2 of the opinion language where it states in part that:

“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 solely for the purposes of collection. DeBenedictis 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”

But first, WFS disagrees with Mr. DeBenedictis that to analyze the written assignment and the context in which the writing was executed in order to determine the parties intent based on the cited authority on the first half of the page would be illogical on its face, and WFS intends to prove to this Court of Appeal that adopting the authority that *DeBenedictis Case* cites on page 290 will not follow any similarities to Washington laws and would be illogical because Idaho law completely contradicts Washington law. For example, Idaho Law, that the *DeBenedictis Case* cited on page 290 its the case of *Garren v. Saccomanno, 86 Idaho 268, 275, 385 P.2d*

396, 400 (1963) there all collection agencies are required to be licensed with the Idaho Secretary of State whereby creating fiduciary ness and leaving true ownership with the assignor, even more, in Idaho states, you are forbid from purchasing rights of any debt.....*See* Supreme Court of Idaho in re of *Manuel Garren v. Stanley Saccomanno*; 86 Idaho 268, 273, 385 P.2d 396; *it states the following Supreme Court ruling:*

Title 18 §18-1003, Purchase of Evidence of debt

“Every attorney, public officer, or licensed collector, who, either directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, with interest to bring suit thereon, is guilty of a misdemeanor.”

So in short form, according to Idaho it is a crime for anyone in Idaho to ever buy title to any debt therefore a person could never assume true ownership of the claim, and declare title. In comparison with Washington where for an assignee to have absolute ownership the assignee would have to own title. Furthermore under Idaho laws, to be licensed as a business you are required to be licensed with the Idaho Secretary of State; whereby creating a corporate entity no matter what. In comparison to Washington State laws; were we do not require that every business be licensed through the Washington Secretary of State.

However, as this Court can see below in Idaho State; collection agencies are governed by the Idaho Secretary of State under Chapter 22, Title 26;

whereby always requiring that all collection agencies would be mandated to employ an attorney to represent the corporation under section 26-2221 as referenced herein below:

26-2221. Short Title:

“This act shall be known as the “Idaho Collection Agency Act.”

Additionally, if Washington State requires that every business is to be licensed only through the Washington Secretary of State. Then this trial court would have a valid position, “asserting that WFS must employ an attorney to act on WFS behalf” because what the Supreme Court of Idaho said about authority to act upon is that. **See** Supreme Court of Idaho in re of Manuel Garren v. Stanley Saccomanno, 86 Idaho 268, 273;

“Respondent argues that under the provision of Chapter 22, Title 26, Idaho Code, appellant could not have owned the debts as a true assignee, because he was limited by such Chapter to operate as an agent merely.”

Therefore this Court of Appeal should agree after reading the referenced languages of authority cited above that Washington State could never adopt Idaho laws because that would instantly create accountability interest and a fiduciary interest between the assignee and assignor at the time of contracting. Additionally this Court of Appeal might note that if the trial court was to adopted Idaho State laws when making decision as to

whether a collection agency has standing would mandate that WFS must covert her established d/b/a business, over to a corporate entity. Then WFS would be compelled to employ an attorney to represent WFS in all matters pertaining to this default judgment. But as it stands right know based on the record (*CP 12, Ex P-1 at Page 13*) the Washington State Department of Licensing has the duty to govern WFS license and bond, and this Court of Appeal will see that WFS made record of that on the Record of Proceedings directed to the trial court that nowhere in the statute does it state that all collection agencies must employ a lawyer to enforce on this default judgment (*RP at page 7, L's 14-22*) where it states:

"I don't hire an attorney. Nowhere in the controlling statute, which is 19.16 does it mandate that a collection agency employ an attorney in order to sue or maintain suit. Nowhere in the language pursuant to RCW 4.08 section 080 is the statute pertaining to the actions, which is this statute right here, does it reference that any assigned judgment must employ an attorney to maintain an action in its own name.

(3) However WFS believes that the Court of Appeal must have noticed the contradiction in laws between the two states in the DeBenedictis Case, and that is why they chose to used **BERG v. HUDESMAN**, 115 Wn. 2d. 657, 663, 801 P. 2d 222 (1990) for guidance in determining the parties objective manifestations at the time of entering into the assignment and

subjoin consideration agreement in the Case of Berg where they say that:

“The definition of interpretation, it states in part that: The restatement definition is: “interpretation of a promise or agreement or a term thereof is the ascertainment of its meaning.” ‘As cited in Restatement (Second) of Contracts § 200 (1981). Construction of a contract determines its legal effect. “Construction ...is a process by which legal consequences are made to follow from the terms of the contract and its more or less immediate context, and from a legal policy or policies that are applicable to the situation.”

Therefore this would be the time to analyze the languages used in both the written assignment filed herein, and the language printed in the subjoin consideration agreement entered between Assignor and WFS herein. But we’ll start here at the transcription of the language of the filed written assignment of judgment as attached to (CP 12, Ex P-4 at Page 13);

KNOW ALL MEN BY THESE PRESENTS, that for valuable consideration, I/we do hereby sell, assign and transfer to Jaymie I. Vacura d/b/a WhyWait Financial Services the judgment in the sum of \$ 4,025.00 entered on 10/13/2006 in the above cause, for collection’s use and benefits, hereby authorizing Jaymie J. Vacura d/b/a WhyWait Financial Services to collect and enforce payment thereof in its own name, or otherwise, but at its own cost and charges, and covenanting that the sum of \$4,025.00 with interest from 10/13/06 to present is due thereon; and further assign all rights to all interest, fees, charges or other amounts now existing or arising in the future regarding said judgment.”

Additionally, WFS has printed a transcription of the language as printed in the parties consideration agreement and asking that this Court of Appeal allows this crucial piece of evidence to disprove any assignor retainership;

however WFS contends that any references that the consideration for this assignment must be paid in full to the assignor prior to any acting on this default judgment, is moot in determining absolute ownership because the general rule is that an assignment in writing is an assignment for value, and this Court of Appeal will agree with WFS after reading the supportive case law further down this brief that clearly states that no consideration for the assignment is required at the time of transferring title to WFS. Besides, that is the purpose behind the bonding requirement as previously argued in the beginning of this argument herein and will be reiterated again with supportive case law further down. However, let's first move forward and complete the retained control interest issues by examining the printed parties' consideration agreement so that this Court of Appeal will be able to determine if Assignor has any retained interest in the assigned. Further more to really examine the context of the consideration agreement WFS turn to Restatement, Contracts to define what words of promises are as defined in § 2 (1) of the Restatement, Contracts (1932) Cited from *Plumbing Shop, Inc. v. Pitts*, 67 Wn.2d 514, 517, 408 P.2d 382 (1965);

“A promise is an undertaking, however expressed, either that something shall happen or that something shall not happen, in the future.”

WFS contend that this Court will see that there are no word that retains interest or control in the agreement printed directly below here between Assignor and WFS.

“This is a binding contract, between Jaymie J. Vacura d/b/a WhyWait Financial Services and Scott A. Husar; After, WhyWait Financial Services have/has collected the assigned judgment from Timothy M. Allen; then WhyWait Financial Services will deduct the agreed contingency fee of 35% from the total judgment collected and disburse to the assignor (Scott A. Husar) his agreed upon percentage (65%), within 14 days from date fully collected. This judgment was encumbered from money’s due and owing. Any additional costs encumbered will be charged to the debtor(s).”

“This, contract, will be governed by the laws of the state of Washington, and if litigation is enforced, then Pierce County will have jurisdiction over this matter.”

Therefore WFS feels confident that this Court of Appeal after having examined the written assignment in contexts, and as defined above that there are no words of control or any retainership interest created between the Assignor and WFS. Additionally WFS feels confident that this Court of Appeal after having examined the parties consideration agreement found that the words “*After*” and “*Then*” as printed herein the parties consideration agreement are clear wordings of promise, and if they were

words of contingency they would be words like “*If*” and “*Then*” therefore WFS feels that after this Court of Appeal reflects back on both of those issues will agree that WFS is the absolute owner vested with legal title. Unlike the referenced DeBenedictis Case where Mr. DeBenedictis has created not only a controlling interest but a principal agent relationship as well when Mr. DeBenedictis wrote in the written assignment that he will be accountable to Mr. Novak for the principle amount. *See DeBenedictis v. Hagan, 77 Wn.App.284, 291; 890 P.2d 529(1995);*

“The third sentence of the printed form says that DeBenedictis will be “accountable” to Novak for the “principal amount” of Novak’s claim. It clearly contemplates that Novak was to continue to own the claim and its proceeds, for if that were not true, there would be no reason for DeBenedictis to be “accountable” to Novak”

(4) This leads WFS to her third telephonic objection that to be an absolute owner of the default judgment, the agreed consideration for the default judgment must be paid to this Assignor in full prior to any acting directly or indirectly to collect or enforce on this assigned default judgment.

Third Telephonic Objection:

“That to be an absolute owner of the default judgment, the agreed consideration for the default judgment must be paid to this Assignor in full prior to any acting directly or indirectly to collect or enforce on this assigned default judgment”

The trial court's bases are that this Assignor retains an interest in the assigned debt (default judgment) and if WFS acts either directly or indirectly to collect this assigned debt then WFS is practicing law without a license. The trial court has a theory that because this Assignor retains an interest in the collection proceeds WFS is representing the Assignor in a court of law and that is an unauthorized practice of law. In light of that, WFS intends to prove to the Court of Appeal that having to pay this Assignor his agreed consideration in full prior to any performance directly or indirectly on this default judgment clearly contradicts the Washington Supreme Court Case decision cited herein. Besides, if the debts had to be paid in full there would be no reason to mandate that all collection agencies have a surety bond prior. ***See Washington State Bar Association v. Merchants' Rating & Adjusting Company; 183 Wash 611, 615-616;***

“, such person, partnership, association or corporation, or the person, partnership, association or corporation for whom he or it may be acting as agent, shall have on file a good and sufficient bond as hereinafter specified...”

“Nor is there any need for a specified consideration for the assignment. ‘An assignment for the purpose of collection is an assignment for a valuable consideration.’

Additionally this Court of Appeal will agree after reading the Washington Supreme Court Cases cited herein below in addition to reflecting back on WFS previous argument starting on page 31-32 that no consideration is required because an assignment in writing is an assignment for value and based the facts that WFS made reference to those facts on the record to the trial court that no consideration is required at the time of transferring of title and reading the record of proceeding in proof of those facts see (*RP at page 9, L's 9-19*) would have to agree that no consideration for the assignment at the time of transferring is required. See: *S. Yamamoto v. Puget Sound Lumber Co., 84 Wash. 411, 412, 146 P. 861 (1915)*; where the Supreme Court of Washington are concurring that no consideration is required and assignee becomes vested with the legal title to the claims assigned. Also See *McDaniel v. Pressler, 3 Wash. 636, 638; 29 P. 209 (1892)*; where an Washington Supreme Court are affirming similarities as well;

“There were no proofs of value at the time they were destroyed; and that no consideration was shown for any of the assignments.”

‘As to the objection of a what of consideration for the assignments, there was no need of any express consideration. The assignment being in writing, the assignee became vested with the legal title to the claims assigned, and could maintain an action thereon in his own name,

notwithstanding each assignor may retain an interest in his particular claim. Rem. & Bal. Code, § 191;”

(5) So as this Court of Appeal can see no consideration for the assignment at the time of title transfer is required, the assignment being in writing is consideration. Therefore this would be the appropriate time to clear up another important issue before this Court of Appeal; where the trial court asserts that the below Provision section of RCW 4.08.080; previously, was the Rem. & Bal. Code, § 191 was more an assignor’s preservative rights to retain ownership interests; rather than, a defendants legal protective right interest. What WFS is talking about is the section of the authority under action on assigned choses in action: ***See RCW 4.08.080, Action on assigned choses in action ;(2006) [1927 c 87 § 1;***

“notwithstanding the assignor may have an interest in the thing assigned: PROVIDED, that any debtor may plead in defense as many defenses, counterclaims and offsets, whether they be such as have heretofore been denominated legal or equitable, or both, if held by him against the original owner, against the debt assigned,…”

Therefore WFS argues that the about section of RCW 4.08.080 as printed above reads as a whole section, one complete part, not two individual parts i.e., “*notwithstanding the assignor may have an interest in the thing assigned*” being one part, and “*PROVIDED, that any debtor may plead in*

defense as many defenses, counterclaims and offsets, whether they be such as have heretofore been denominated legal or equitable, or both, if held by him against the original owner, against the debt assigned,...” being a second individual part to that same statute. The word “**provided**” is the key joining word and therefore the retained interest that the assignor may have is based on whether the defendant has any defenses to assert against this Assignor. However there are none because this matter has been fully adjudicated; additionally, this judgment in question herein is by default therefore this Respondent has waived all rights to the second half of RCW 4.08.080 as cited above. But in reiterating the dual purposes behind RCW 4.08.080; the first half of section 080 is to transfer legal title to the assigned claim; the second half of section 080 is to protect a defendant of his or her rights under the 14th Amendment as cited herein by WFS from the Rev Code. Wash. (2008) Volume 0 published on March 13, 2008 printed herein below:

Amendment XIV

“§ 1 CITIZENSHIP RIGHTS NOT TO BE ABRIDGED BY STATES, All persons born or naturalized in the United States, and subject to jurisdiction thereof, are citizens of the United States and to the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any

person of life, liberty, or property, without due process of law; nor deny to any person without its jurisdiction the equal protection of the laws.”

Whereby giving this Respondent herein a chance to prevent multiplicity of suits against this Respondent, by ensure that a defendant can assert as may defenses, counterclaims through off-sets when sued upon an assigned claim or judgment, and to assure that a judgment will completely settle the claim, and to make it possible to discharge the debt by paying the assignee with no vestigial rights of action remaining in the assignor. *See State Ex. Rel. Alaska Pac. Etc. Co. v. Supr Ct., 113 Wash. 439, 444; 194 P. 412 (1920); also see In Re: State Ex Rel. Adjustment Co. v. Superior Court of King County; 67 Wash. 355, 356-357, 121 Pac. 847; (1912);*

“The same authority (Rem. & Bal. Code, § 191) which sustains the right of an assignee to sue at law in his own name also gives the right to defendant to ‘set fourth by answer as many defenses and counterclaims as he may have, whether they be such as may have heretofore been dominated legal or equitable, or both. ‘Rem. & Bal. Code, § 273...To state the rule is to suggest its reason, for if it were otherwise, or as contended by relator, it would operate to cut off equitable defenses entirely”

See Remington's and Ballington's Annotated Codes and Statutes, (1922)

Sections 1-2721 ½, p. 275 § 273 Answer-Contents-Separate Statement of Defenses

“The general rule is that the defendant may set fourth by answer as many defenses and counterclaims as he may have, whether they be such as have heretofore been denominated legal or equitable, or both.”

Therefore this Court of Appeal must agree with WFS after reading the above language, and reading the previously cited Washington cases that the above section of the statutory language is not only to transfer legal title, it is also reserved to the defendant's 14th Amendment rights so that he or she can assert as many defenses and counterclaims existing against (6) the assignor at the time the assignment was made; as well as transferring of legal title, and therefore WFS has stepped into the shoes of the assignor if in fact this assignment assigned to WFS is a valid instrument without any subjoining interests between WFS and this Assignor, and there are not any. ***See Estate of Jordan v. Hartford Co., 120 Wn. 2d 490, 495; 844 P.2d 403 (1993)*** were it states in part that:

“An assignee steps into the shoes of the assignor, and has all of the rights of the assignor. The assignee's cause of action in direct, not derivative.”

Therefore, WFS has proved to this Court of Appeal that this assignor after the time of transfer did not retain any interests in the default judgment assigned herein and that WFS is in compliance with both the presumption, and the language in the advisory opinion where the board is clarifying that a pro se who is an absolute owner of the default judgment by assignment can enforce in a court of law and becomes the real party in interest. See *Remington's and Ballington's Annotated Codes and Statutes, (1922) Sections 1-2721 ½, p. 245 § 179 In Whose Name Actions to be Prosecuted;*

“The general rule is that every action shall be prosecuted in the name of the real party in interest, except as is otherwise provided by law.”

So in short, the person who by substantive law has the right of action, and who is vested with legal title to this default judgment assigned, is the real party in interest. See *Washington Supreme Court Case In Re of National Association of Creditors, Inc. v. Grassley et ux. 159 Wash. 185,187; 292 P. 416 (1930):*

“The general rule in the Rem. Comp. Stat. § 179, requiring every action to be prosecuted in the name of the real party in interest, has so often been construed so as to permit the person to whom the cause of action has been assigned for the purpose of collection to maintain an action thereon, that authorities need not cited. If, by such an assignment, the

assignee obtains sufficient legal title to become the real party in interest for the purpose of prosecuting the action, he also has sufficient title to prosecute the appeal.”

Therefore this would be an excellent time to show this Court of Appeal the language as printed in the advisory opinion on page 1 of 2;

“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.”

So as WFS previously mentioned she intended to prove to this Court of Appeal that Washington Supreme Court addressed and affirmed the above pertaining issues placed, and referenced herein where the Supreme Court showed that an individual; who is licensed and bonded as a Collection Agency has the legal standing in which to enforce this default judgment in a court of law without the use of a lawyer as long as the collection agency is not a corporate entity. *See Washington Supreme Court Case; Washington State Bar Association v. Merchants’ Rating & Adjusting Company; 183 Wash 611, 615-616; 49 P.2d 26 (1935);* Know let WFS start by saying that the trial court disagrees with WFS using this above Supreme Court case to support WFS positions (*RP at pages 10-11, L’s 16-25, 1-4*) because WFS is an individual, and the above case is a corporation. But it is for those very reasons that WFS tried to argue on the record of proceedings (*RP at page 10, L’s 10–25, and at page 11, L 1*) the facts that

this is a perfect case to use because the Washington Supreme Court Judge throughout the ruling was being broad enough to include throughout the ruling all types of collection agencies businesses, and when the judge made reference to the facts that, “where the assignee is a corporation, it is compelled to have some natural person to act for it making the collection and in bringing and maintaining suits, where necessary.” Because this case showed this Court of Appeal that it is not mandatory that all types of collection agency must employ an attorney in order to enforce on his or her claim or judgment in a court of law. Otherwise there would have been no reason for this Supreme Court Judge to make any references to the word “where” (*RP at page 11; L 1*) unless not always is a collection agency (d/b/a) required to have a lawyer acting on its behalf and this Washington Supreme Court Case makes references throughout the embody to both corporate statues as well as pro se d/b/a business statues like referenced below and covers all of the major issues before this appeal additionally denying WFS to act on in a court of law is a violation of WFS 1st and 14th Amendment Rights under the United States Constitution of America:

“, such person, partnership, association or corporation, or the person, partnership, association or corporation for whom he or it may be acting as agent, shall have on file a

good and sufficient bond as hereinafter specified...”

“That is, upon complying with the condition imposed, a person, firm, association, or copartnership may conduct a collection agency...”

“Section 191 is not only plain, but time and again it has been accepted as it appears upon its face...”

“This court has uniformly held that an assignee of an account or chose in action could maintain a suit in his own name, although such an assignment is made for the purpose of collection only, ...”

“This statute and Rem. Sev. Stat. § 179, requiring actions to be prosecuted in the name of the real party in interest, are in accord National Ass’s of Creditors v. Grassley, 159 Wash. 185, 292 P. 416...”

“Nor is there any need for a specified consideration for the assignment. ‘An assignment for the purpose of collection is an assignment for a valuable consideration.’

“...The assignments being in writing, the assignee becomes vested with the legal title to the claim assigned, and could maintain an action thereon in his own name, ...”

“Thus, under the statute, it is lawful for a creditor to assign an account for collection and for the assignee to sue in his own name. Where the assignee is a corporation, it is compelled to have some natural person to act for it in making the collection and in

bringing and maintaining suits, where necessary.”

Second Telephonic Objection:

“that WFS is charging this Assignor a fee to collect this default judgment and is an unauthorized practice of law because this Assignor retains interest in the assigned default judgment, and WFS intends to argue that WFS has never charged this Assignor any fees to prepare, present, or file any legal documents in a court of law in which to collect or enforce on this default judgment”

(7) Moving forward know to WFS second telephonic objection before this Court of Appeal. This telephonic objection that WFS is talking about is where the trial court is asserting that WFS is charging this Assignor a fee to collect this default judgment and is an unauthorized practice of law because this Assignor retains interest in the assigned default judgment based on a Washington Corporate Case where a layperson was selecting an preparing conveying document and the layperson was charging a fee to do such duties for the corporation, then the layperson charges the borrower for such services. *See State Bar Association v. Great Western Union Federal Savings and Loan Association, 91 Wn.2d 48, 56, 586 P2d 870 (1978)*; This case could never have any relevancy to WFS for the simple fact that this business is a corporation and WFS is a d/b/a, the general rule is that only an attorney could advice and prepare any legal document for a

corporation. But for WFS, this case just confirmed that a layperson can stand and act on its own behalf in a court of law without the fear of committing unauthorized practice of law violations. *See in the above cited case, the findings of fact and conclusions of law where as follows:*

“[6] Ordinary, only those persons who are licensed to practice law in this state may do so without liability for unauthorized practice. Moreover, both the legislature and this court have recognized that a person may appear and act in any court as his own attorney without threat of sanction for unauthorized practice. Additionally, we have recognized that a party to a legal document may select, prepare or draft that document without fear of liability for unauthorized practice. This exception to our general prohibition against the practice of law by laypersons is analogous to the “pro se” exception for court proceedings. Both exceptions are founded upon belief that a layperson may desire to act On own behalf with respect to His legal rights and obligations without the benefit of counsel.”

Even more WFS argues that WFS has never charged this Assignor any fees to prepare, present, or file any legal documents in a court of law in which to collect or enforce on this default judgment, and by doing so (charging any fees), would be a direct violation of the controlling statute.

See RCW 19.16.210 ;(2006) [1971 ex.s c 253 § 12;

“The general rule is a licensee shall within thirty days after the close of each calendar month account in writing to his or its

customers for all collections made during that calendar month and pay to his or its customers the net proceeds due and payable of all collections made during that calendar month except that a licensee need not account to the customer for:

(1) Court costs recovered which were previously advanced by licensee or his or its attorney

(2) Attorney's fees and interest or other charges incidental to the principal amount of the obligation legally and properly belonging to the licensee, ..."

Additionally, WFS intends to show to this Court of Appeal that the parties entered into a subjoined consideration agreement that clearly protects this Assignor from being charged any additional costs or fees to collect or enforces on this default judgment against this Defendant herein. ***See the language used in the assignees & assignors agreed consideration agreement subjoined to this assignment herein; it states in part that:***

"Any additional costs encumbered will be charged to the debtor(s)."

Therefore this Court of Appeal has no evidence of any fees being charged this Assignor and after reading the above protective clause as printed in the parties' consideration agreement and the written assignment this Court must find that WFS falls under the pro se exception doctrine. ***See RCW***

2.48.190; Qualifications on admission to practice; (2007) [1987 c 202 §

107;

*“Provided That any person may appear and conduct his own case in any action or proceeding brought by or against him or her, or ...” See **Americus v. McGinnis, 128 Wash. 28, 31, 221 P. 987 (1924);***

“It seems manifest to us that in the enactment of Rem. Comp. Stat., § 339, the legislature had this doctrine in mind, and when it said “the plaintiff... may... address the court and the jury upon the law and the facts,” it intended to and granted an absolute right which cannot be denied by rule of court, and which may be exercised without permission.”

Fourth Telephonic Objection:

“That WFS is directly or indirectly aid or abet any unlicensed person to engage in business as a Collection Agency in this state or receiving compensation from such unlicensed person.”

(8) In closing of this Argument and Moving passed the trail court’s assertion that WFS is charging fees to this Assignor to collect this default judgment herein to WFS final telephonic objection that WFS is directly or indirectly aid or abet any unlicensed person to engage in business as a Collection Agency in this state or receiving compensation from such unlicensed person. That’s hog wash WFS intend to prove to this Court of

Appeal that this assignment of error under paragraph one of section 250 of the controlling statute is a complete misplacement (thought) of the law makers purpose when drafting paragraph; **RCW 19.16.250 (1)**

“Directly or indirectly aid or abet any unlicensed person to engage in business as a collection agency in this state or receive compensation from such unlicensed person: PROVIDED, That nothing in this chapter shall prevent a licensee from accepting, as forwarder, claims for collection from a collection agency or attorney whose place of business is outside the state.”

Once again this Court of Appeal has no such evidence that WFS is doing any such thing, and that this Assignor is not portray as any collection agency. This Assignor is the original Plaintiff, the original assignor, and a Washington resident who assigned this default judgment to WFS to collect through valid written assignment period.

E. CONCLUSION

For the reasons stated above, the decision of the trial court should be reversed. Further more WFS should be able to enforce on this default judgment and be granted her requested subpoena duces tecum without the use of an attorney, and without the fear of committing any unauthorized practice of law violations by proceedings this matter in a court of law.

DATED this 28th day of May, 2010.

Respectfully submitted,
WHYWAIT FINANCIAL SERVICES

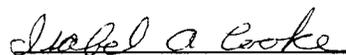

Jaymie J. Vacura, Appellant, Pro Se
For WhyWait Financial Services

CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington that on this date I filed with the Court of Appeals, Division I, and served via U.S. mail, postage prepaid, a copy of the foregoing Brief of Appellant, on the following parties of record:

- (1) Timothy M. Allen
18515 182nd Avenue NE
Woodinville, WA. 98072
Named Respondent in this matter.
- (2) Scott A. Husar
Shelby L. Husar
16925 SE 254th PL.
Covington, WA. 98042
Named Assignor in this matter.

Signed at Tacoma, Washington on the 28 day of May, 2010.


Isabel Cooke