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NO. 63628-6-I

COURT OF APPEALS, STATE OF WASHINGTON
DIVISION I

BRENT CARTER, a natural person, and OAK HARBOR
CHIROPRACTIC HEALTH CENTER, P.S., a Washington Professional
Services Corporation,

Appellants.

v.

SUTTELL AND ASSOCIATES, P.S. d/b/a SUTTELL AND
ASSOCIATES; CITI USA a/k/a CITIUSA, an unknown entity;
CITIGROUP INC., a regular corporation, and its wholly owned
subsidiaries CITIBANK SOUTH DAKOTA, a National Banking
Association; and CITICORP CREDIT SERVICES, INC. (USA), a regular
corporation,

Respondents.

BRIEF OF RESPONDENT SUTTELL & HAMMER, P.S.

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A. INTRODUCTION

Brent Carter and Oak Harbor Chiropractic Health Center, P.S. (“Plaintiff” unless otherwise indicated) come before this court presenting a recitation of facts that is remarkably incomplete. Plaintiff fails to tell this court that the challenged conduct of Respondent Suttell & Hammer, P.S. occurred more than three years prior to the filing of this action, and Plaintiff conducted no discovery at all while the action was pending in King County Superior Court. Plaintiff appeals the summary judgment dismissal of his claims, based on self-serving arguments that the Washington Collection Agency Act and the Washington Consumer Protection Act apply to Suttell & Hammer, while ignoring statutory definitions and reported case decisions that say exactly the opposite. Suttell & Hammer is a Washington law firm engaged in the collection of debts, and it is not a “collection agency,” no matter how hard Plaintiff attempts to paint that picture.

This is a nuisance lawsuit that never should have been filed. The record demonstrates that Plaintiff’s theories of the case are untenable. This court should affirm the dismissal of Suttell & Hammer.

B. ASSIGNMENTS OF ERROR

Assignments of Error

Respondent Suttell & Hammer, P.S. does not assign error to the

rulings of the King County Superior Court.

Issues Pertaining to Assignments of Error

Whether Suttell & Hammer, P.S. was properly dismissed as a party to the action, when:

1. Plaintiff conducted no discovery at all and has no testimony verifying his subjective belief regarding Suttell & Hammer's law practice;
2. Contrary to Plaintiff's argument, the alleged violations of the Washington Collection Agency Act, abuse of process, and wrongful garnishment all occurred more than three years prior to the filing of this action, and no event acts to toll the statute of limitations;
3. Contrary to Plaintiff's argument, the relevant definitions from the Washington Collection Agency Act exempt lawyers from the regulated conduct of "collection agency" and "out-of-state collection agency," thus making Plaintiff's characterization of Suttell & Hammer as a collection agency without legal support;
4. Contrary to Plaintiff's argument, Washington decisional law regarding the Washington Consumer Protection Act, beginning with *Short v. Demopolis*, exempts lawyers engaged in law practice from the regulated conduct of Washington businesses under the Act (with an exception not pertinent here), thus making Plaintiff's characterization of Suttell & Hammer as a collection agency irrelevant; and

5. Oak Harbor Chiropractic Health Center, P.S. was dissolved as a corporation five months prior to the filing of this action, and it was never reinstated.

C. STATEMENT OF THE CASE

1. Suttell & Hammer successfully pursued garnishment proceedings in Island County Superior Court.

The genesis of this action was a collection proceeding filed in Island County Superior Court by Suttell & Hammer. The law firm was retained to collect amounts owed by Plaintiff to Citibank South Dakota, N.A. In 2003 and 2004, Plaintiff was sued at least three times in Island County. In those years, Plaintiff practiced as a chiropractor in Oak Harbor, Washington.

Citibank South Dakota's collection action of which Plaintiff complains was filed on February 23, 2004 (Island County Cause No. 04-2-00139-5). CP 156-58. Citibank South Dakota obtained a judgment against Mr. Carter on October 18, 2004. CP 160-61. Thereafter, Suttell & Hammer filed applications for writs of garnishment to collect the judgment amount, and submitted supporting declarations of attorney Catherine M. Kelley on November 18, 2004, and attorney William G. Suttell on November 29, 2004. CP 165-66, 170-71. The writs of garnishment were issued on November 18 and December 1, 2004. CP

167-69, 172-74. Suttell & Hammer filed a Release of Writ of Garnishment to garnishee defendant Pacific Northwest Bank on December 23, 2004. CP 175-76. Suttell & Hammer filed a Full Satisfaction of Judgment on January 18, 2005. CP 178-79.

2. Plaintiff subsequently sued Suttell & Hammer for allegedly improper collection activity.

Plaintiff Brent Carter first filed suit against Suttell & Hammer, P.S. on November 30, 2005, in the U.S. District Court for the Western District of Washington. That action, *Carter v. Suttell & Associates*, W. D. Wash. Cause No. CV05-1990 MJP, was dismissed by the federal court under Fed. R. Civ. P. 41(b) for failure to prosecute on April 5, 2006. *See* Appendix, Tab 1.

Mr. Carter filed this action in King County Superior Court, *pro se*, for himself and on behalf of Oak Harbor Chiropractic Health Center, P.S. on the last day of 2007. The latter entity was not represented by counsel for the first several months of this action.

Plaintiff's complaint alleges several claims, including violations of the Washington Collection Agency Act ("WCAA"), abuse of process, violations of the Washington Consumer Protection Act ("CPA"), and wrongful garnishment. CP 3-16. Plaintiff identified Suttell & Hammer, P.S. as being a law firm, and its principal, William G. Suttell, as being an

attorney for Citibank. CP 4. Plaintiff incorrectly alleged that Suttell & Hammer was required to be licensed as a collection agency pursuant to the WCAA. CP 6. Plaintiff further alleged that Suttell & Hammer initiated a collection action in Island County Superior Court against him, and filed a motion for summary judgment against him. CP 5. Plaintiff specifically alleged that Mr. Suttell and Catherine M. Kelley, attorneys at Suttell & Hammer, filed declarations in support of applications for writs of garnishment on December 1, 2004, and November 18, 2004, respectively. CP 7. Plaintiff alleged that the declarations were incorrect, and filed to “pressure him to pay the judgments.” CP 7-8. Plaintiff confusingly alleged that Suttell & Hammer participated in a scheme to securitize credit card receivables, so that collection of amounts owed to Citibank was improper, because Citibank no longer owned the debt incurred by Plaintiff. CP 10-14.

Suttell & Hammer filed an answer to Plaintiff’s complaint denying liability on all causes of action and asserting the statute of limitations as one of several affirmative defenses. CP 34-37. Suttell & Hammer specifically alleged that Plaintiff’s action was frivolous. CP 37.

3. Plaintiff Oak Harbor Chiropractic Health Center is defunct and not a proper party.

Oak Harbor Chiropractic Health Center, P.S. did not exist after

August 1, 2007. The Washington Secretary of State administratively dissolved the corporation for failure to file annual reports. *See* Appendix, Tab 2.

Oak Harbor Chiropractic Health Center, P.S. was not a corporation when Plaintiff sued on December 31, 2007. There is no evidence that Brent Carter acted to reinstate Oak Harbor Chiropractic Health Center, P.S. as a corporation at any time after this action was filed.

4. The Citibank Defendants and Suttell & Hammer both obtained orders of dismissal in King County Superior Court.

a. The Citibank Defendants were dismissed in 2008.

On January 25, 2008, the Citibank Defendants filed a motion to dismiss all of Plaintiff's claims pursuant to CR 12. CP 29-30, 17-28. Plaintiff did not oppose the motion.

On February 15, 2008, the trial court entered an order dismissing the Citibank Defendants as parties to the action. CP 31, 32-33.

On March 12, 2008, Suttell & Hammer, P.S. filed its answer to Plaintiff's complaint. CP 34-37.

On June 30, 2008, the trial court issued an order to show cause for non-compliance with the scheduling order. CP 38-40.

On July 23, 2008, attorney Jason Anderson filed a notice of appearance for Plaintiffs Brent Carter and Oak Harbor Chiropractic Health

Center, P.S. CP 41-42.

On August 8, 2008, Mr. Anderson apparently obtained an *ex parte* order to show cause why the trial court's February 15, 2008 order dismissing the Citibank Defendants should not be vacated. CP 45-46.

On August 21, 2008, Plaintiff filed a motion to vacate the order dismissing the Citibank Defendants. CP 484-86, 49-58. Plaintiff filed a declaration admitting that he did not respond to the Citibank Defendants' motion to dismiss because he was not checking his mail while out of the country. CP 73-74. The Citibank Defendants opposed Plaintiff's motion, noting it was "untimely attempt to revive claims that have already been determined to be without merit." CP 121-31.

On August 28, 2008, the trial court denied Plaintiff's motion to vacate the order dismissing the Citibank Defendants and entered a final judgment as to those defendants. CP 488-89, 151-52.

Lee Smart, P.S., Inc. substituted as counsel on behalf of Suttell & Hammer, P.S. on September 16, 2008.

b. Suttell & Hammer obtained dismissal on summary judgment in 2009.

On January 12, 2009, Suttell & Hammer filed its Disclosure of Possible Primary Witnesses under King County Local Rule 26. CP 412-16.

Suttell & Hammer filed its motion for summary judgment under CR 56(c) on February 6, 2009. CP 443-45, 183-96, 153-82. Suttell & Hammer showed that the WCAA exempted attorneys in the applicable statutory definitions. CP 186-87. Suttell & Hammer further showed that Plaintiff's WCAA, abuse of process, and wrongful garnishment claims were filed after the applicable statute of limitations. CP 187-90. Suttell & Hammer then showed that Plaintiff's CPA claim was subject to dismissal because the Act's decisional law exempts attorneys engaged in professional activities for their clients. CP 190. Suttell & Hammer finally showed that its affirmative defenses of *res judicata*, laches, and waiver all applied to bar Plaintiff's claims. CP 194-96.

On February 23, 2009, the day Plaintiff's summary judgment opposition pleadings were due, Plaintiff's counsel moved to extend the hearing date on Suttell & Hammer's motion for summary judgment. Plaintiff did not seek relief under CR 56(f). Over Suttell & Hammer's objections, CP 417-23, 424-30, 431-38, the trial court granted Plaintiff's motion. CP 441-42.

Plaintiff did not file his substantive opposition to the Suttell & Hammer motion for summary judgment until March 4, 2009. CP 266-76, 197-265.

The discovery cutoff in this action occurred on April 27, 2009. By

that date, Plaintiff had conducted no discovery, and had not filed a Disclosure of Possible Primary Witnesses under King County Local Rule 26, in violation of the trial court's scheduling order. CP 462-63.

On April 27, 2009, Suttell & Hammer moved to strike inadmissible documents and factual averments submitted by Plaintiff in opposition to the motion for summary judgment. Suttell & Hammer showed that Plaintiff's evidence failed to comply with ER 402, ER 602, and ER 802 in multiple instances, and that there was an overall lack of sworn testimony based upon personal knowledge. CP 446-56, 289-400, 480-82.

Also on April 27, 2009, Suttell & Hammer moved to file a supplemental brief and declaration in support of its motion for summary judgment. CP 457-61, 286-88, 401-07. Plaintiff did not oppose this motion.

On April 28, 2009, Suttell & Hammer moved to exclude all trial witnesses for Plaintiff, and any evidence of claimed damages, based on Plaintiff's failure to comply with King County Local Rule 26 and the trial court's scheduling order. CP 471-78, 462-70.

On May 8, 2009, the trial court held a hearing on all of Suttell & Hammer's pending motions. The trial court granted Suttell & Hammer's motion for summary judgment. CP 483, 408-11. Because Plaintiff's counsel admitted at the hearing that he had no evidence to back several of

Plaintiff's allegations, the trial court dismissed Plaintiff's action with prejudice. No written order was entered on the Suttell & Hammer motion to strike, or the motion to exclude witnesses and evidence of damages.

Plaintiff filed this appeal on June 8, 2009.

D. SUMMARY OF ARGUMENT

Plaintiff Brent Carter states no claim against Suttell & Hammer, P.S. for numerous reasons, including (1) there is no admissible evidence supporting Mr. Carter's supposition that Suttell & Hammer is a "collection agency," (2) the applicable definitions of the Washington Collection Agency Act specifically exempt attorneys from the regulated classes of "collection agencies" and "out-of-state collection agencies," (3) Washington's decisional law shows that a CPA claim does not lie against attorneys engaged in the practice of law, and (4) the acts of the Suttell & Hammer attorneys Plaintiff complains of all occurred more than three years before the filing of this action, resulting in claims that are time-barred. Summary judgment of dismissal was proper, and this court should affirm that decision. This action should never have been filed, and counsel for Plaintiff comes very, very close to making frivolous arguments before this court.

Plaintiff Oak Harbor Chiropractic Health Center, P.S. states no claim against any defendant because it was dissolved as a corporation five

months prior to the filing of this action, and Washington law clearly states that dissolved corporations may not bring civil actions.

E. ARGUMENT

1. The standard of review on summary judgment supports the trial court's dismissal of Suttell & Hammer.

When reviewing an order granting summary judgment, the appellate court engages in the same inquiry as the trial court. In summary judgment proceedings, all facts and reasonable inferences are to be considered in the light most favorable to the nonmoving party, and all questions of law are reviewed de novo. *Barr v. Day*, 124 Wn.2d 318, 324, 879 P.2d 912 (1994). Once a party moving for summary judgment makes an initial showing that there is no genuine issue of material fact, the nonmoving party must demonstrate the existence of such an issue by setting forth specific facts which go beyond mere unsupported allegations. *Tokarz v. Frontier Fed. Sav. and Loan Assn.*, 33 Wn. App. 456, 466, 656 P.2d 1089 (1982).

The appellate court may reverse summary judgment only if the evidence could lead reasonable persons to reach more than one conclusion. On the other hand, it must affirm if there is no genuine issue as to any material fact and the moving party is entitled to judgment as matter of law. *Soproni v. Polygon Apt. Partners*, 137 Wn.2d 319, 325,

971 P.2d 500 (1999). Alternatively, this court may affirm the dismissal on any basis established in the record. *LaMon v. Butler*, 112 Wn.2d 193, 200-01, 770 P.2d 1027 (1989).

Here, Plaintiff's WCAA and CPA claims, and all subsidiary claims, were properly dismissed as set forth below.

2. The challenged conduct of Suttell & Hammer, P.S. occurred more than three years before the action was filed.

Plaintiff's WCAA, abuse of process, and wrongful garnishment claims are all based on the filing, in November 2004, of the Suttell and Kelley declarations in support of applications for writs of garnishment. CP 165-66, 170-71. It is undisputed that this action was not filed until December 31, 2007. More than three years passed before Plaintiff filed this action, and the referenced claims are time-barred.

Suttell & Hammer disputes that the declarations filed in Island County support any of Plaintiff's claims. It is not necessary for the court to analyze the content of the Island County pleadings, however, because the WCAA, abuse of process, and wrongful garnishment claims all were filed too late. Under established Washington law, the statute of limitations is three years for each of the referenced claims. RCW 4.16.080(2); *Nave v. City of Seattle*, 68 Wn.2d 721, 724, 415 P.2d 93 (1966) (abuse of process action; "statute begins to run against such an action from the

termination of the acts which constitute the abuse complained of”); *Watkins v. Peterson Enterprises, Inc.*, 57 F. Supp. 2d 1102, 1110 n.6 (E.D. Wash. 1999) (concluding WCAA claims are subject to three-year statute of limitations); *G. W. Const. Corp. v. Professional Serv. Ind., Inc.*, 70 Wn. App. 360, 366-67, 853 P.2d 484 (1993) (“Under RCW 4.16.080, a plaintiff must commence a lawsuit within 3 years from the date its cause of action accrues”); *Westway Const., Inc. v. Benton County*, 136 Wn. App. 859, 868, 151 P.3d 1005 (2006) (amended complaint raising new claim not filed until four years after the alleged tortious conduct; new claim barred by statute of limitations).

Plaintiff argues that the statute of limitations is extended until the time that Suttell & Hammer filed a Full Satisfaction of Judgment in Island County. App. Br. at 8, n.2; 9; 22. This argument plainly ignores settled Washington law that the limitations period begins to run when Plaintiff has knowledge of the predicate facts leading to a cause of action. *Cawdrey v. Hanson Baker Ludlow Drumheller, P.S.*, 129 Wn. App. 810, 817, 120 P.3d 605 (2005), *rev. den.*, 157 Wn.2d 1004 (2006) (for the limitations period to begin, a plaintiff need only be aware of the facts underlying the claim); *Easter v. American West Financial*, 381 F.3d 948, 963-64 (9th Cir. 2004) (cause of action accrues when the plaintiff knows or should know all the facts giving rise to the cause of action). The filing

of a satisfaction of judgment does not alter the calculation of the limitations period, nor is it a tortious act separately causing injury to Plaintiff. Predictably, Plaintiff does not show any facts supporting his argument that the limitations period did not begin to run until the Island County action was completed. However, the filing of his federal court lawsuit against Suttell & Hammer shows that he was aware of sufficient predicate facts to initiate an action no later than November 30, 2005. Waiting more than two years to re-file in King County Superior Court, when the gravamen of Plaintiff's claim was the content of the Suttell and Kelley declarations, CP 7, resulted in expiration of the statute of limitations.

3. The definitions of the WCAA clearly show that law firms are not subject to the Act, and Plaintiff's effort to characterize Suttell & Hammer, P.S. as a "collection agency" cannot be supported by admissible evidence.

a. Suttell & Hammer is not relying on a repealed section of the WCAA.

Plaintiff argues that Suttell & Hammer obtained summary judgment by relying upon a "repealed" section of the Collection Agency Act. App. Br. at 19. Plaintiff did not make this argument to the trial court, and the argument is clearly based on a typographical error in Suttell & Hammer's motion for summary judgment. CP 186-87.

Suttell & Hammer relies upon, and has always relied upon, the

definitions appearing in RCW 19.16.100(3)(c), and language from that statute was obviously quoted in Suttell & Hammer’s motion for summary judgment. According to the publication *The Laws Relating to Collection Agencies*, issued by the Washington State Department of Licensing, the definitions in RCW 19.16.100 were most recently passed by the Legislature in 2002 and remain effective today. *See* Appendix, Tab 3 at 5-6. Plaintiff cannot show that Suttell & Hammer intentionally argued, and the trial court relied upon, a repealed statute in the underlying summary judgment hearing.

b. The relevant definition in the WCAA clearly exempts “lawyers” from the regulated conduct in the Act.

Plaintiff admits that Suttell & Hammer is a law firm. App. Br. at 21. Plaintiff has also cited the effective provision of the WCAA, RCW 19.16.100(3)(c), which exempts attorneys from the ambit of the Act. CP 270-71.

As set forth in the WCAA, RCW 19.16.100(3)(c) states in pertinent part:

(3) “Collection agency” does not mean and does not include:

...

(c) Any person whose collection activities are carried on in his, her, or its true name and are confined and are directly related to the operation of

a business other than that of a collection agency,
such as but not limited to:

. . . lawyers.

Plaintiff makes absolutely no showing that this definition does not apply to all of the matters alleged in his complaint. Further, the statutory definition does not say “lawyers, except those performing collection law activities,” “lawyers, except those with credit card company clients,” or “lawyers, except those working on Sundays.”

Further, no Washington court has issued a reported decision indicating that collection law firms are subject to the WCAA and should be treated in the same manner as “collection agencies” within the meaning of RCW 19.16.100(3)(c). Suttell & Hammer notes that such a holding would be to add requirements not found in the Act, and comprise a clear invasion of the province of the legislative branch. Plaintiff’s argument that Suttell & Hammer is a “collection agency,” App. Br. at 21, lacks a factual basis under Washington’s evidence rules, and is merely unsupported argument insufficient to defeat summary judgment. ER 602 (“A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge”); *Grimwood v. Univ. of Puget Sound*, 110 Wn.2d 355, 359-60, 753 P.2d 517 (1988) (finding lack of any factual basis for plaintiff’s claim of age discrimination; “does the affidavit state material facts, and, if so, would

those facts be admissible in evidence at trial? If the contents of an affidavit do not satisfy both standards, the affidavit fails to raise a genuine issue for trial, and summary judgment is appropriate”).

c. Plaintiff's subjective interpretation of a letter is insufficient evidence to convince any court that Suttell & Hammer is a "collection agency."

Plaintiff also advances the ridiculous argument that Suttell & Hammer is a “collection agency” based on a letter sent by Dennis Nissen, on law firm letterhead, seeking payment of Plaintiff’s debts. App. Br. at 18. According to Plaintiff, his subjective characterization of the letter and Mr. Nissen’s job title of “collection manager” is sufficient to actually make Suttell & Hammer a “collection agency” requiring a state license from the Department of Licensing, and also sufficient evidence to survive Suttell & Hammer’s motion for summary judgment. Plaintiff’s supposition about the nature of Mr. Nissen’s work and job title is insufficient to create a genuine issue of material fact, especially as Plaintiff did not depose Mr. Nissen, and did not take testimony from Suttell & Hammer under CR 30(b)(6). Had he done so, Plaintiff would have discovered that Mr. Nissen was employed at a law firm and not a collection agency.¹ Unilateral declarations that a debt collector is liable

¹ Suttell & Hammer believes Plaintiff did not seek this testimony in order to avoid destroying his characterization that the law firm actually is a “collection agency.”

based upon unsupported legal theories have been rejected by the appellate courts. *See Pettit v. Retrieval Masters Creditors Bureau*, 211 F.3d 1057, 1059 (7th Cir. 2000) (rejecting plaintiff's supposition as establishing liability under the FDCPA; "We also reject her argument that her own subjective belief that all debt collectors are credit bureaus results in liability for Retrieval Masters"); *McMillan v. Collection Professionals, Inc.*, 455 F.3d 754, 758 (7th Cir. 2006) ("as a matter of law, we shall not entertain a plaintiff's bizarre, peculiar, or idiosyncratic interpretation of a collection letter"); *Discover Bank v. Ray*, 139 Wn. App. 723, 727, 162 P.3d 1131 (2007) (plaintiff alleged violations of the FDCPA; "There is no support for Mr. Ray's allegations that Discover Bank violated the Act").

4. Washington's decisional law exempting claims against attorneys engaged in law practice bars Plaintiff's claims under the CPA.

Plaintiff's counsel asserts that Suttell & Hammer's argument for dismissal of the CPA claim has been "entirely eclipsed" by the Washington Supreme Court's decision in *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 204 P.3d 885 (2009). App. Br. at 23-25. Plaintiff's argument rests entirely on the erroneous position that Suttell & Hammer, P.S. is a "collection agency," regulated under the WCAA and CPA. This Court is reminded there is no evidentiary basis, based upon personal knowledge, that Suttell & Hammer is not a law firm. Plaintiff cannot

obtain, and did not introduce, any such evidence to the trial court.

A good starting point is the language of *Panag* itself, from which Plaintiff merely offers wholesale quotations. Plaintiff does not quote the relevant language of *Panag* that goes to the issue in this appeal:

Attorneys who engage in bona fide collection activities on behalf of their clients have no need to fear suit. Moreover, this court has concluded that the CPA has no application to the performance of legal services.

Panag, 166 Wn.2d at 56, n.14. This court should ponder why Plaintiff's complaint alleges that Suttell & Hammer is a law firm employed as attorneys for Citibank, CP 4, yet he continues to advance the self-serving argument that Suttell & Hammer is a "collection agency." Plaintiff states no viable claim under the CPA against Suttell & Hammer.

The Washington Supreme Court decided more than 25 years ago that a CPA claim, based on the professional services of attorneys, did not lie. *Short v. Demopolis*, 103 Wn.2d 52, 61-62, 691 P.2d 163 (1984) ("claims . . . directed to the competence of and strategy employed by plaintiffs' lawyers, . . . amount to allegations of negligence or malpractice and are exempt from the CPA"). This holding was reaffirmed by the same court a mere 10 months ago in *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 604, 200 P.3d 695 (2009) (malpractice action against dentist performing bone grafting procedure; "Dr. Mosquera-Lacy used her

judgment and skills as a periodontist to finish the procedure. This is not actionable under the CPA”). *See also Ramos v. Arnold*, 141 Wn. App. 11, 20, 169 P.3d 482 (2007) (claims directed at the competence of and strategies employed by a professional amount to allegations of negligence and are exempt from the CPA); *Brotherson v. Professional Basketball Club*, 604 F. Supp. 2d 1276, 1296 (W.D. Wash. 2009) (granting motion for summary judgment on CPA claim; “To show damages, however, [plaintiffs] must show a CPA injury from which damages could flow. The court finds that they have failed to do so”); *Kessler v. Loftus*, 994 F. Supp. 240, 242 (D. Vt. 1997) (applying consumer protection acts to the actions of attorneys, “many jurisdictions differentiate between the commercial, entrepreneurial aspects of law and the legal, advisory, analytical aspects of law, holding that their unfair trade practices acts apply only to the former”).

The one exception applicable to attorneys under the CPA, regarding the entrepreneurial aspects of the practice of law, is not alleged in this action. *Short*, 103 Wn.2d at 61 (“how the price of legal services is determined, billed, and collected and the way a law firm obtains, retains, and dismisses clients” is subject to the CPA). The conduct of Suttell & Hammer which underlies Plaintiff’s complaint, e.g. the alleged filing of “misleading declarations to obtain a garnishment,” CP 8, is squarely

within the practice of law and exempt from the CPA under *Short and Michael*. See *Panag*, 166 Wn.2d at 56, n.14; CP 403-04. Plaintiff makes no cogent argument to the contrary.

5. Oak Harbor Chiropractic Health Center, P.S. cannot be a plaintiff in this action.

Plaintiff's counsel asserts that Oak Harbor Chiropractic Health Center may pursue claims in this action, because "no mention" is made of it as an entity. App. Br. at 26, 27.

It is undisputed that Oak Harbor Chiropractic Health Center was dissolved as a corporation on August 1, 2007. See Appendix, Tab 2. This civil action was not filed until December 31, 2007.

It is well established that a dissolved corporation may not pursue claims in a civil action. See *Maple Court Seattle Condo. Assn. v. Roosevelt LLC*, 139 Wn. App. 257, 262, 160 P.3d 1068 (2007) ("Dissolved business corporations are prohibited from affirmatively maintaining an action"); *Pacesetter Real Estate v. Fasules*, 53 Wn. App. 463, 472, 767 P.2d 961 (1989) (corporation's failure to apply for reinstatement within the time permitted results in irrevocable dissolution; failure to comply results in lack of standing to bring action); *Follett v. Clark*, 19 Wn.2d 518, 521, 143 P.2d 536 (1943) (corporation dissolved by secretary of state for nonpayment of annual license fees may be sued, but

corporation in such plight cannot affirmatively maintain an action); *see also Chadwick Farms Owners Assn. v. FHC, LLC*, 166 Wn.2d 178, 199, 207 P.3d 1251 (2009) (administratively dissolved limited liability company has two years in which to wind up, including prosecuting an action). Here, Oak Harbor Chiropractic Health Center was never a proper party, and it cannot maintain claims in this action.²

6. To the extent the court believes the record is incomplete, it should remand for entry of additional orders by the trial court.

To the extent this court believes that the record does not adequately show support for the dismissal of Suttell & Hammer, it should order remand to the trial court for the limited purpose of entry of more explicit orders granting the Suttell & Hammer, P.S. motion for summary judgment, motion to strike, and motion to exclude witnesses and evidence of claimed damages. Plaintiff cannot obtain evidence to defeat dismissal of any of his claims, and there is no good reason the Citibank Defendants or Suttell & Hammer should be forced to incur additional, needless expense in defense of this lawsuit. The policy of Washington's court rules is to "secure the just, speedy, and inexpensive determination of every action," CR 1, and this action should be treated no differently.

² Plaintiff may argue that Oak Harbor Chiropractic Health Center should be allowed to proceed as a party because it could be reinstated. Such an argument fails because more than two years has passed since the corporation was dissolved.

F. CONCLUSION

For the foregoing reasons, this court should affirm the dismissal of Plaintiff's claims. The claims against Suttell & Hammer under the WCAA and for abuse of process and wrongful garnishment are time-barred. Plaintiff also cannot show that Suttell & Hammer is a "collection agency," and the law firm is clearly exempt from the WCAA according to its definitions. Similarly, Suttell & Hammer is a law firm engaged in the collection of debts, and the exemption for attorneys under the CPA also clearly applies. Oak Harbor Chiropractic Health Center, P.S. cannot pursue claims in this action because it was dissolved as a corporation before the action was filed, and it was never reinstated. None of Plaintiff's claims against Suttell & Hammer, P.S. were viable, and dismissal by the trial court was proper.

RESPECTFULLY SUBMITTED this 24th day of December, 2009.

LEE SMART, P.S., INC.

By: William R. Kiendl

Joel E. Wright, WSBA No. 8625
William R. Kiendl, WSBA No. 23169
Of Attorneys for Respondent
Suttell & Hammer, P.S.

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that I caused service of the foregoing brief on each and every attorney of record herein:

VIA FEDEX

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DATED this 30th day of December, 2009, at Seattle, Washington.



Rondi Susort, Legal Assistant

APPENDIX

1. Docket report from *Carter v. Suttell & Associates*, W. D. Wash. Cause No. CV05-1990 MJP, filed November 30, 2005.
2. Certificate of Administrative Dissolution of Oak Harbor Chiropractic Health Center, P.S. dated August 1, 2007.
3. Washington State Department of Licensing publication, *The Laws Relating to Collection Agencies*.

CLOSED, JURYDEMAND

U.S. District Court
United States District Court for the Western District of Washington (Seattle)
CIVIL DOCKET FOR CASE #: 2:05-cv-01990-MJP

Carter v. Suttell & Associates
Assigned to: Judge Marsha J. Pechman
Cause: 15:1692 Fair Debt Collection Act

Date Filed: 11/30/2005
Date Terminated: 04/05/2006
Jury Demand: Plaintiff
Nature of Suit: 371 Truth in Lending
Jurisdiction: Federal Question

Plaintiff**Brent Carter**

represented by **Jason E Anderson**
1825 NW 65TH
SEATTLE, WA 98117
206-706-2882
Email: jellisanderson@justice.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant**Suttell & Associates**

represented by **William George Suttell**
SUTTELL & ASSOCIATES
7525 SE 24TH ST
STE 310
MERCER ISLAND, WA 98040
206-236-3100
Email: Bill@SuttellLaw.com
ATTORNEY TO BE NOTICED

| Date Filed | # | Docket Text |
|-------------------|----------|---|
| 11/30/2005 | <u>1</u> | COMPLAINT against defendant Suttell & Associates (Summons issued in blank) (Receipt # 320609), filed by Brent Carter. (Attachments: (1) Civil Cover Sheet)(MKB) (Entered: 12/05/2005) |
| 01/03/2006 | <u>2</u> | ORDER REGARDING INITIAL DISCLOSURES, JOINT STATUS REPORT AND EARLY SETTLEMENT FRCP 26f Conference Deadline is 1/31/2006.Initial Disclosure Deadline is 2/7/2006. Joint Status Report due by 2/14/2006; by Judge Marsha J. Pechman. (RP,) (Entered: 01/03/2006) |
| 02/27/2006 | <u>3</u> | MINUTE ORDER Joint Status Report due by 3/13/2006; by Judge Marsha J. Pechman. (RP,) (Entered: 02/27/2006) |

| | | |
|------------|----------|--|
| 03/01/2006 | <u>4</u> | PRAECIPE TO ISSUE SUMMONS (and issued) by Plaintiff Brent Carter. (LT,) (Entered: 03/01/2006) |
| 03/22/2006 | <u>5</u> | ORDER TO SHOW CAUSE Show Cause Response due by 4/3/2006. by Judge Marsha J. Pechman. (RP,) (Entered: 03/22/2006) |
| 03/23/2006 | <u>6</u> | NOTICE of Appearance by attorney William George Suttell on behalf of Defendant Suttell & Associates (Suttell, William) (Entered: 03/23/2006) |
| 04/05/2006 | <u>7</u> | ORDER OF DISMISSAL: Having received no JSR report from the parties and no response to the Show Cause Order and consistent with previous warnings to the parties in this matter and with Fed. R. Civ. P. 41(b), the Court hereby DISMISSES this case without prejudice for failure to prosecute. Signed by Judge Marsha J. Pechman. (RP,) (Entered: 04/05/2006) |
| 04/06/2006 | <u>8</u> | JUDGMENT BY COURT - IT IS ORDERED AND ADJUDGED: Having received no JSR report from the parties and no response to the Show Cause Order and consistent with the Court's previous warning to the parties in this matter and with Fed. R. Civ. P.41(b), the Court hereby DISMISSES this case without prejudice for failure to prosecute. (MD,) (Entered: 04/06/2006) |

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STATE of WASHINGTON



SECRETARY of STATE

Corporation Name:

OAK HARBOR CHIROPRACTIC HEALTH CENTER, P.S.
c/o BRENT A CARTER D C
1051 NE 7TH AVE
OAK HARBOR WA 98277

U.B.I. Number:
601 788 926

CERTIFICATE OF ADMINISTRATIVE DISSOLUTION

In accordance with RCW 23B.14.210, the above corporation is hereby administratively
dissolved as of August 01, 2007.

This action was taken due to the failure of the corporation to file an annual list of
officers/license renewal within the time set forth by law.

A copy of this certificate is on file in this office:

Corporations Division
Office of the Secretary of State
PO Box 40234
Olympia, Washington 98504-0234
(360) 753-7115

*Given under my hand and the seal of the State
of Washington at Olympia, the State Capital.*

Sam Reed, Secretary of State

The Laws Relating to Collection Agencies

19.16 RCW
308-29 WAC

The Uniform Regulation of Business and Professions Act

18.235 RCW

Collection Agency Licensing Board
PO Box 9034
Olympia, WA 98507-9034
Telephone: (360) 664-1389
Fax: (360) 570-7875
E-mail: collect@dol.wa.gov
Web site: dol.wa.gov/mls/colfront.htm



The Department of Licensing has a policy of providing equal access to its services. If you need special accommodation, please call (360) 664-1389 or TTY (360) 664-8885.

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All Collection Agencies or Out-of-State Collection Agencies soliciting claims for collection and/or contacting Washington State residents must follow these rules.

**The Uniform Regulation of Business and Professions Act
(URBP) (RCW 18.235) Index D -- Page 26**

Effective January 1, 2003, all business and professions licensed by the Department of Licensing are required to follow this Act, which includes Collection Agencies and Out-of-State Collection Agencies.

The intent of the URBP is to consolidate disciplinary procedures for the licensed businesses and professions licensed under the Business and Professions Division of the Department of Licensing by providing standardized procedures for the regulation of businesses and professions and the enforcement of laws. The purpose is to assure the public of the adequacy of business and professional competence and conduct.

COLLECTION AGENCIES

Chapter 19.16 RCW

| Revised Code of Washington | | Related Washington Administrative Codes | |
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| 19.16.180 | Assignability of license or branch office certificate. | 308-29-060 | What are the licensees' obligations when transferring an interest in a collection agency? |
| 19.16.190 | Surety bond requirements—Cash deposit or securities—Exception. | | |
| 19.16.200 | Action on bond, cash deposit or securities. | | |
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| 19.16.260 | Licensing prerequisite to suit. | | |
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| 19.16.280 | Board created—Composition of board—Qualification of members. | | |
| 19.16.290 | Board—Initial members—Terms—Oath—Removal. | | |
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RCW 19.16.100 Definitions.

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

- (1) "Person" includes individual, firm, partnership, trust, joint venture, association, or corporation.
- (2) "Collection agency" means and includes:
 - (a) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person;
 - (b) Any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims even though the forms direct the debtor to make payment to the creditor and even though the forms may be or are actually used by the creditor himself or herself in his or her own name;
 - (c) Any person who in attempting to collect or in collecting his or her own claim uses a fictitious name or any name other than his or her own which would indicate to the debtor that a third person is collecting or attempting to collect such claim.
- (3) "Collection agency" does not mean and does not include:
 - (a) Any individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a licensee under this chapter, if said individual is an employee of the licensee;
 - (b) Any individual collecting or attempting to collect claims for not more than one employer, if all the collection efforts are carried on in the name of the employer and if the individual is an employee of the employer;
 - (c) Any person whose collection activities are carried on in his, her, or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to: Trust companies; savings and loan associations; building and loan associations; abstract companies doing an escrow business; real estate brokers; property management companies collecting assessments, charges, or fines on behalf of condominium unit owners associations, associations of apartment owners, or homeowners' associations; public officers acting in their official capacities; persons acting under court order; lawyers; insurance companies; credit unions; loan or finance companies; mortgage banks; and banks;
 - (d) Any person who on behalf of another person prepares or mails monthly or periodic statements of accounts due if all payments are made to that other person and no other collection efforts are made by the person preparing the statements of account;
 - (e) An "out-of-state collection agency" as defined in this chapter; or
 - (f) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of the person is not the collection of debts.
- (4) "Out-of-state collection agency" means a person whose activities within this state are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission, from the person's location in another state on behalf of clients located outside of this state, but does not include any person who is excluded from the

- (c) Has had any judgment entered against him or it under the provisions of RCW 19.86.080 or 19.86.090 involving a violation or violations of RCW 19.86.020 and two years have not elapsed since the entry of the final judgment: PROVIDED, That in no event shall a license be issued unless the terms of such judgment, if any, have been fully complied with: PROVIDED FURTHER, That said judgment shall not be grounds for denial, suspension, nonrenewal, or revocation of a license unless the judgment arises out of and is based on acts of the applicant, owner, officer, director, managing employee, or licensee while acting for or as a collection agency or an out-of-state collection agency;
- (d) Has petitioned for bankruptcy, and two years have not elapsed since the filing of the petition;
- (e) Shall be insolvent in the sense that the person's liabilities exceed the person's assets or in the sense that the person cannot meet obligations as they mature;
- (f) Has failed to pay any civil, monetary penalty assessed in accordance with RCW 19.16.351 within ten days after the assessment becomes final;
- (g) Has failed to comply with, or violated any provisions of this chapter or any rule or regulation issued pursuant to this chapter, and two years have not elapsed since the occurrence of said noncompliance or violation; or
- (h) Has been found by a court of competent jurisdiction to have violated the federal fair debt collection practices act, 15 U.S.C. Sec. 1692 et seq., or the Washington state consumer protection act, chapter 19.86 RCW, and two years have not elapsed since that finding.

Except as otherwise provided in this section, any person who is engaged in the collection agency

(2008)

business as of January 1, 1972, shall, upon filing the application, paying the fees, and filing the surety bond or cash deposit or other negotiable security in lieu of bond required by this chapter, be issued a license under this chapter.

The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [2002 c 86 § 266; 1997 c 58 § 847; 1994 c 195 § 3; 1977 ex.s. c 194 § 1; 1973 1st ex.s. c 20 § 1; 1971 ex.s. c 253 § 3.]

NOTES:

Effective dates -- 2002 c 86: See note following RCW 18.08.340.

Part headings not law -- Severability -- 2002 c 86: See RCW 18.235.902 and 18.235.903.

Short title -- Part headings, captions, table of contents not law -- Exemptions and waivers from federal law -- Conflict with federal requirements -- Severability -- 1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates -- Intent -- 1997 c 58: See notes following RCW 74.20A.320.

RCW 19.16.130 License--Application--Form--Contents.

Every application for a license shall be in writing, under oath, and in the form prescribed by the director.

Every application shall contain such relevant information as the director may require. The applicant shall furnish the director with such evidence as the director may reasonably require to establish that the requirements and qualifications for

January first, a penalty for late payment in an amount determined by the director as provided in RCW 43.24.086 shall be assessed. If the fee and the penalty are not paid by January thirty-first, it will be necessary for the licensee to apply for a new branch office certificate: PROVIDED, That no such new branch office certificate shall be issued unless and until all fees and penalties previously accrued under this section have been paid. [1985 c 7 § 82; 1975 1st ex.s. c 30 § 91; 1971 ex.s. c 253 § 6.]

RCW 19.16.160 License and branch office certificate--Form--Contents--Display.

Each license and branch office certificate, when issued, shall be in the form and size prescribed by the director and shall state in addition to any other matter required by the director:

- (1) The name of the licensee;
- (2) The name under which the licensee will do business;
- (3) The address at which the collection agency business is to be conducted; and
- (4) The number and expiration date of the license or branch office certificate.

A licensee shall display his or its license in a conspicuous place in his or its principal place of business and, if he or it conducts a branch office, the branch office certificate shall be conspicuously displayed in the branch office.

Concurrently with or prior to engaging in any activity as a collection agency, as defined in this chapter, any person shall furnish to his or its client or customer the number indicated on the collection agency license issued to him pursuant to this section. [1973 1st ex.s. c 20 § 2; 1971 ex.s. c 253 § 7.]

RCW 19.16.170 Procedure upon change of name or business location.

Whenever a licensee shall contemplate a change of his or its trade name or a change in the location of his or its principal place of business or branch

office, he or it shall give written notice of such proposed change to the director. The director shall approve the proposed change and issue a new license or a branch office certificate, as the case may be, reflecting the change. [1971 ex.s. c 253 § 8.]

RCW 19.16.180 Assignability of license or branch office certificate.

- (1) Except as provided in subsection (2) of this section, a license or branch office certificate granted under this chapter is not assignable or transferable.
- (2) Upon the death of an individual licensee, the director shall have the right to transfer the license and any branch office certificate of the decedent to the personal representative of his estate for the period of the unexpired term of the license and such additional time, not to exceed one year from the date of death of the licensee, as said personal representative may need in order to settle the deceased's estate or sell the collection agency. [1971 ex.s. c 253 § 9.]

RCW 19.16.190 Surety bond requirements--Cash deposit or securities--Exception.

- (1) Except as limited by subsection (7) of this section, each applicant 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. Such bond shall run to the state of Washington as obligee for the benefit of the state and conditioned that the licensee shall faithfully and truly perform all agreements entered into with the licensee's clients or customers and shall, within thirty days after the close of each calendar month, account to and pay to his client or customer the net

The director shall maintain a record, available for public inspection, of all suits commenced under this chapter upon surety bonds, or the cash or other security deposited in lieu thereof.

In the event of a judgment being entered against the deposit or security referred to in RCW 19.16.190(2), the director shall, upon receipt of a certified copy of a final judgment, pay said judgment from the amount of the deposit or security. [1971 ex.s. c 253 § 11.]

RCW 19.16.210 Accounting and payments by licensee to customer.

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, if such charges are retained by the licensee after the principal amount of the obligation has been accounted for and remitted to the customer. When the net proceeds are less than ten dollars at the end of any calendar month, payments may be deferred for a period not to exceed three months. [1971 ex.s. c 253 § 12.]

RCW 19.16.220 Accounting and payments by customer to licensee.

Every customer of a licensee shall, within thirty days after the close of each calendar month, account and pay to his or its collection agency all sums owing to the collection agency for payments received by the customer during that calendar month on claims in the hands of the collection agency. If a

customer fails to pay a licensee any sums due under this section, the licensee shall, in addition to other remedies provided by law, have the right to offset any moneys due the licensee under this section against any moneys due customer under RCW 19.16.210. [1971 ex.s. c 253 § 13.]

RCW 19.16.230 Licensee--Business office--Records to be kept.

- (1) Every licensee required to keep and maintain records pursuant to this section, other than an out-of-state collection agency, shall establish and maintain a regular active business office in the state of Washington for the purpose of conducting his or its collection agency business. Said office must be open to the public during reasonable stated business hours, and must be managed by a resident of the state of Washington.
- (2) Every licensee shall keep a record of all sums collected by him or it and all disbursements made by him or it. All such records shall be kept at the business office referred to in subsection (1) of this section, unless the licensee is an out-of-state collection agency, in which case the record shall be kept at the business office listed on the licensee's license.
- (3) Licensees shall maintain and preserve accounting records of collections and payments to customers for a period of four years from the date of the last entry thereon. [1994 c 195 § 6; 1987 c 85 § 1; 1973 1st ex.s. c 20 § 3; 1971 ex.s. c 253 § 14.]

RCW 19.16.240 Licensee--Trust fund account--Exception.

Each licensee, other than an out-of-state collection agency, shall at all times maintain a separate bank account in this state in which all moneys collected by the licensee shall be deposited except that negotiable instruments received may be forwarded directly to a customer. Moneys received must be deposited within ten days after posting to the book

federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collection agency business.

- (5) Perform any act or acts, either directly or indirectly, constituting the practice of law.
- (6) Advertise for sale or threaten to advertise for sale any claim as a means of endeavoring to enforce payment thereof or agreeing to do so for the purpose of soliciting claims, except where the licensee has acquired claims as an assignee for the benefit of creditors or where the licensee is acting under court order.
- (7) Use any name while engaged in the making of a demand for any claim other than the name set forth on his or its current license issued hereunder.
- (8) Give or send to any debtor or cause to be given or sent to any debtor, any notice, letter, message, or form which represents or implies that a claim exists unless it shall indicate in clear and legible type:
 - (a) The name of the licensee and the city, street, and number at which he is licensed to do business;
 - (b) The name of the original creditor to whom the debtor owed the claim if such name is known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain the name of such person and provide this name to the debtor;
 - (c) If the notice, letter, message, or form is the first notice to the debtor or if the licensee is attempting to collect a different amount than indicated in his or its first notice to the debtor, an itemization of the claim asserted must be made including:
 - (i) Amount owing on the original obligation at the time it was received by the licensee for collection or by assignment;
 - (ii) Interest or service charge, collection costs, or late payment charges, if any, added to

the original obligation by the original creditor, customer or assignor before it was received by the licensee for collection, if such information is known by the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain information on such items and provide this information to the debtor;

- (iii) Interest or service charge, if any, added by the licensee or customer or assignor after the obligation was received by the licensee for collection;
 - (iv) Collection costs, if any, that the licensee is attempting to collect;
 - (v) Attorneys' fees, if any, that the licensee is attempting to collect on his or its behalf or on the behalf of a customer or assignor;
 - (vi) Any other charge or fee that the licensee is attempting to collect on his or its own behalf or on the behalf of a customer or assignor.
- (9) Communicate or threaten to communicate, the existence of a claim to a person other than one who might be reasonably expected to be liable on the claim in any manner other than through proper legal action, process, or proceedings except under the following conditions:
 - (a) A licensee or employee of a licensee may inform a credit reporting bureau of the existence of a claim: PROVIDED, That if the licensee or employee of a licensee reports a claim to a credit reporting bureau, the licensee shall upon receipt of written notice from the debtor that any part of the claim is disputed, forward a copy of such written notice to the credit reporting bureau;
 - (b) A licensee or employee in collecting or attempting to collect a claim may communicate the existence of a claim to a debtor's employer if the claim has been reduced to a judgment;

- (c) It is made with the debtor or spouse at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m.
- (13) Communicate with the debtor through use of forms or instruments that simulate the form or appearance of judicial process, the form or appearance of government documents, or the simulation of a form or appearance of a telegraphic or emergency message.
- (14) Communicate with the debtor and represent or imply that the existing obligation of the debtor may be or has been increased by the addition of attorney fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation of such debtor.
- (15) Threaten to take any action against the debtor which the licensee cannot legally take at the time the threat is made.
- (16) Send any telegram or make any telephone calls to a debtor or concerning a debt or for the purpose of demanding payment of a claim or seeking information about a debtor, for which the charges are payable by the addressee or by the person to whom the call is made.
- (17) In any manner convey the impression that the licensee is vouched for, bonded to or by, or is an instrumentality of the state of Washington or any agency or department thereof.
- (18) Collect or attempt to collect in addition to the principal amount of a claim any sum other than allowable interest, collection costs or handling fees expressly authorized by statute, and, in the case of suit, attorney's fees and taxable court costs. A licensee may collect or attempt to collect collection costs and fees, including contingent collection fees, as authorized by a written agreement or contract, between the licensee's client and the debtor, in the collection of a commercial claim. The amount charged to the debtor for collection services shall not exceed thirty-five percent of the commercial claim.
- (19) Procure from a debtor or collect or attempt to collect on any written note, contract, stipulation, promise or acknowledgment under which a debtor may be required to pay any sum other than principal, allowable interest, except as noted in subsection (18) of this section, and, in the case of suit, attorney's fees and taxable court costs.
- (20) Upon notification by a debtor that the debtor disputes all debts arising from a series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, initiate oral contact with a debtor more than one time in an attempt to collect from the debtor debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments when:
- (a) Within the previous one hundred eighty days, in response to the licensee's attempt to collect the initial debt assigned to the licensee and arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, the debtor in writing notified the licensee that the debtor's checkbook or other series of preprinted written instruments was stolen or fraudulently created;
 - (b) the licensee has received from the debtor a certified copy of a police report referencing the theft or fraudulent creation of the checkbook, automated clearinghouse transactions on a demand deposit account, or series of preprinted written instruments;
 - (c) in the written notification to the licensee or in the police report, the debtor identified the financial institution where the account was maintained, the account number, the magnetic ink character recognition number, the full bank routing and transit number, and the check numbers of the

RCW 19.16.260 Licensing prerequisite to suit.

No collection agency or out-of-state collection agency may bring or maintain an action in any court of this state 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.

A copy of the current collection agency license or out-of-state collection agency license, certified by the director to be a true and correct copy of the original, shall be prima facie evidence of the licensing and bonding of such collection agency or out-of-state collection agency as required by this chapter. [1994 c 195 § 8; 1971 ex.s. c 253 § 17.]

RCW 19.16.270 Presumption of validity of assignment.

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, unless objection is made thereto by the debtor in a written answer or in writing five days or more prior to trial. [1971 ex.s. c 253 § 18.]

RCW 19.16.280 Board created--Composition of board--Qualification of members.

There is hereby created a board to be known and designated as the "Washington state collection agency board". The board shall consist of five members, one of whom shall be the director and the other four shall be appointed by the governor. The director may delegate his duties as a board member to a designee from his department. The director or his designee shall be the executive officer of the board and its chairman.

At least two but no more than two members of the board shall be licensees hereunder. Each of the licensee members of the board shall be actively engaged in the collection agency business at the time of his appointment and must continue to be so engaged and continue to be licensed under this chapter during the term of his appointment or he will be deemed to have resigned his position: PROVIDED, That no individual may be a licensee member of the board unless he has been actively engaged as either an owner or executive employee or a combination of both of a collection agency business in this state for a period of not less than five years immediately prior to his appointment.

No board member shall be employed by or have any interest in, directly or indirectly, as owner, partner, officer, director, agent, stockholder, or attorney, any collection agency in which any other board member is employed by or has such an interest. No member of the board other than the director or his designee shall hold any other elective or appointive state or federal office. [1971 ex.s. c 253 § 19.]

RCW 19.16.290 Board--Initial members--Terms--Oath--Removal.

The initial members of the board shall be named by the governor within thirty days after January 1, 1972. At the first meeting of the board, the members appointed by the governor shall determine by lot the period of time from January 1, 1972 that each of them shall serve, one for one year; one for two years; one for three years; and one for four years. In the event of a vacancy on the board, the governor shall appoint a successor for the unexpired Term.

Each member appointed by the governor shall qualify by taking the usual oath of a state officer, which shall be filed with the secretary of state, and each member shall hold office for the term of his appointment and until his successor is appointed and qualified. Any member of the board other than the director or his designee may be removed by the governor for neglect of duty, misconduct,

necessary for the welfare of the state, the welfare of the public, and the welfare and progress of the collection agency business.

- (3) Upon request of the director, confer and advise in matters relating to the administering of this chapter.
- (4) May consider and make appropriate recommendations to the director in all matters referred to the board.
- (5) Upon request of the director, confer with and advise the director in the preparation of any rules to be adopted, amended, or repealed.
- (6) May assist the director in the collection of such information and data as the director may deem necessary to the proper administration of this chapter. [2002 c 86 § 267; 1977 ex.s. c 194 § 2; 1973 1st ex.s. c 20 § 8.]

NOTES:

Effective dates -- 2002 c 86: See note following RCW 18.08.340.

Part headings not law -- Severability -- 2002 c 86: See RCW 18.235.902 and 18.235.903.

RCW 19.16.390 Personal service of process outside state.

Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprehends. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185. A holder of an out-of-state collection agency license is deemed to have appointed the director or the director's designee to be the licensee's true and lawful agent upon whom may be served any legal process against that licensee arising or growing out of any violation of this chapter. [1994 c 195 § 9; 1971 ex.s. c 253 § 30.]

RCW 19.16.410 Rules, orders, decisions, etc.

The board may adopt rules, make specific decisions, orders, and rulings, including therein demands and findings, and take other necessary action for the implementation and enforcement of the board's duties under this chapter. [2007 c 256 § 4; 1971 ex.s. c 253 § 32.]

RCW 19.16.420 Copy of this chapter, rules and regulations available to licensee.

On or about the first day of February in each year, the director shall cause to be made available at reasonable expense to a licensee a copy of this chapter, a copy of the current rules and regulations of the director, and board, and such other materials as the director or board prescribe. [1971 ex.s. c 253 § 33.]

RCW 19.16.430 Violations--Operating agency without a license--Penalty--Return of fees or compensation.

- (1) Any person who knowingly operates as a collection agency or out-of-state collection agency without a license or knowingly aids and abets such violation is punishable by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year or both.
- (2) Any person who operates as a collection agency or out-of-state collection agency in the state of Washington without a valid license issued pursuant to this chapter shall not charge or receive any fee or compensation on any moneys received or collected while operating without a license or on any moneys received or collected while operating with a license but received or collected as a result of his or its acts as a collection agency or out-of-state collection agency while not licensed hereunder. All such moneys collected or received shall be forthwith returned to the owners of the accounts on which the moneys were paid. [1994 c 195 § 10; 1973 1st ex.s. c 20 § 6; 1971 ex.s. c 253 § 34.]

- (b) Any governmental entity as described in (a) of this subsection using a collection agency may add a reasonable fee, payable by the debtor, to the outstanding debt for the collection agency fee incurred or to be incurred. The amount to be paid for collection services shall be left to the agreement of the governmental entity and its collection agency or agencies, but a contingent fee of up to fifty percent of the first one hundred thousand dollars of the unpaid debt per account and up to thirty-five percent of the unpaid debt over one hundred thousand dollars per account is reasonable, and a minimum fee of the full amount of the debt up to one hundred dollars per account is reasonable. Any fee agreement entered into by a governmental entity is presumptively reasonable.
- (2) No debt may be assigned to a collection agency unless:
- (a) there has been an attempt to advise the debtor
 - (i) of the existence of the debt and
 - (ii) that the debt may be assigned to a collection agency for collection if the debt is not paid, and
 - (b) least thirty days have elapsed from the time notice was attempted.
- (3) Collection agencies assigned debts under this section shall have only those remedies and powers which would be available to them as assignees of private creditors.
- (4) For purposes of this section, the term debt shall include fines and other debts, including the fee required under subsection (1)(b) of this section. [1997 c 387 § 1; 1982 c 65 § 1.]

NOTES:

Interest rate: RCW 43.17.240.

RCW 19.16.510 Uniform regulation of business and professions act.

The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 268.]

NOTES:

Effective dates – 2002 c 86: See note following RCW 18.08.340.

Part headings not law – Severability – 2002 c 86: See RCW 18.235.902 and 18.235.903.

RCW 19.16.900 Provisions cumulative-- Violation of RCW 19.16.250 deemed civil.

The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law: PROVIDED, That the violation of RCW 19.16.250 shall be construed as exclusively civil and not penal in nature. [1971 ex.s. c 253 § 40.]

RCW 19.16.910 Severability--1971 ex.s. c 253.

If any section or provision of this act shall be adjudged to be invalid or unconstitutional such adjudication shall not affect the validity of the act as a whole, or any section, provisions, or part thereof not adjudged invalid or unconstitutional. [1971 ex.s. c 253 § 41.]

RCW 19.16.920 Provisions exclusive--Authority of political subdivisions to levy business and occupation taxes not affected.

- (1) The provisions of this chapter relating to the licensing and regulation of collection agencies and out-of-state collection agencies shall be exclusive and no county, city, or other political subdivision of this state shall enact any laws or rules and regulations licensing or regulating collection agencies.

COLLECTION AGENCIES AND REPOSSESSION SERVICES

Chapter 308-29 WAC

| Washington Administrative Code | Related Revised Codes of Washington |
|---|--|
| 308-29-010 Definitions. | 19.16.100 Definitions. |
| 308-29-020 Financial statement. | 19.16.245 Financial statement. |
| 308-29-025 What records must a licensee maintain at the licensed location? | 19.16.230 Licensee—Business office—Records to be kept. |
| 308-29-030 Do licensees have to notify the director of changes in ownership, officers, directors, or managing employees? | |
| 308-29-045 Collection agency fees. | 19.16.140 License—Application—Fees—Exemptions. |
| 308-29-050 Are licensees required to notify the director of lawsuits, judgments, etc., involving the licensee or its employees? | 19.16.120 Denial, revocation, suspension of, or refusal to renew; license—Civil penalty—Grounds. |
| 308-29-060 What are the licensees' obligations when transferring an interest in a collection agency? | 19.16.180 Assignability of license or branch office certificate. |
| 308-29-070 Disclosure of rate of interest. | 19.16.250(8)(c) Prohibited practices. |
| 308-29-080 Does a collection agency have to notify the credit reporting agency when the debt is satisfied? | 19.16.250(9)(a) Prohibited practices. |
| 308-29-090 Brief adjudicative proceedings – When they can be used. | |
| 308-29-110 Conduct of brief adjudicative proceedings. | |
| 308-29-120 Appeal process for brief adjudicative proceedings. | |
| 308-29-130 Objections to brief adjudicative proceedings and conversion to formal adjudicative hearings. | |

Disposition of Sections Formerly Codified in this Chapter:

- 308-29-040** Collection agency—Fees. [Statutory Authority: RCW 43.24.085, 80-14-022 (Order 356), § 308-29-040, filed 9/25/80; Order PL 221, § 308-29-040, filed 11/5/75.] Repealed by 83-17-031 (Order PL 442), filed 8/10/83. Statutory Authority: 1983 c 168 § 12. Later promulgation, see WAC 308-29-045.
- 308-29-100** Preliminary record in brief adjudicative proceedings. [Statutory Authority: RCW 19.16.410]. 01-11-132, § 308-29-100, filed 5/22/01, effective 6/22/01.] Repealed by 07-17-145, filed 8/21/07, effective 9/21/07. Statutory Authority: RCW 19.16.410.

electronically or on other retrievable medium); and

- (d) Collection agreements authorizing the licensee to collect debts or a schedule listing all fees or charges to be charged to the debtor or client.

Accuracy, accessibility and retention of records:

All required records shall be accurately posted, kept up-to-date and kept at the address where the collection agent is licensed to do business. Such records shall be retained and available for inspection by the director or the director's authorized representative during normal business hours. The collection agency shall provide copies of required records upon demand by the director or the director's authorized representative.

(3) Licensee's responsibilities:

- (a) The licensee shall be responsible for the custody, safety and the accuracy of entries in all required records. The licensee retains this responsibility even though another person or persons assume the duties of preparation, custody or recording.
- (b) The licensee shall obtain copies of the Collection Agency Act (chapter 19.16 RCW) and the rules implementing the act (chapter 308-29 WAC) and be knowledgeable of these laws and rules in their most recent version.
- (c) The licensee must ensure accessibility of the licensed location and records to the director or the director's representative.

(4) Administration of trust funds and client property:

- (a) A licensee who receives funds or moneys from any debtor, client or customer shall hold the funds or moneys in trust for the purposes of the agreement and shall not utilize such funds or moneys for the benefit of the licensee or any person not entitled to such benefit.

- (b) All funds or moneys received shall be deposited into a federally insured banking institution.

- (c) The trust bank account will be in the licensee's name and identified as a trust account.

- (d) Preauthorization of regular disbursements or deductions on an ongoing basis by financial institutions is not permitted for multiclient accounts.

- (e) When a contract between the licensee and client expires, terminates, or is no longer in existence, the licensee shall give a closing statement to the client summarizing all receipts and payments since the last statement and shall return all instruments and client property to the client within thirty days after written demand from the client, or as specified in the client contract.

[Statutory Authority: [RCW 19.16.410]. 01-11-132, § 308-29-025, filed 5/22/01, effective 6/22/01.]

WAC 308-29-030 Do licensees have to notify the director of changes in ownership, officers, directors, or managing employees?

- (1) Each licensee shall notify the director in writing:
- (a) Within ten business days of any change in its ownership;
- (b) Within ten business days of any change in officers, directors, or managing employees of each office location.

The notification shall consist of reporting the individual's name, position, address and effective date of change.

- (2) If requested by the department, each licensee shall notify the department in writing of any additional information regarding the change or changes in subsection (1) of this section within ten days after the mailing of the request.

- (3) The instrument by which the interest is transferred shall be in writing, and shall indicate:
- (a) That the license or branch office certificate granted under chapter 19.16 RCW is not assignable or transferable, that the transfer of the licensee's interest in the business does not include such license or certificate, that the transferee of the interest must apply for a license and/or certificate in accordance with the law, and that the transferee of the interest must not act, assume to act, or advertise as a collection agency or out-of-state collection agency as defined in chapter 19.16 RCW, without first having applied for and obtained a license under that chapter;
 - (b) Which party to the transaction bears responsibility for payment to clients of amounts due them between the date the instrument is executed and the effective date of the transfer;
 - (c) Which party to the transaction bears responsibility for maintaining and preserving the records of the collection agency or out-of-state collection agency as prescribed in RCW 19.16.230 and these rules;
 - (d) Whether the transfer of interest includes the right to use the business name or trade name of the collection agency or out-of-state collection agency; and
 - (e) Which party to the transaction bears responsibility for providing written notice of the transfer to the clients of the collection agency who have open accounts with the collection agency or out-of-state collection agency.
- (4) The licensee must provide the director a copy of the instrument transferring the licensee's interest signed by all parties to the transaction and shall indicate the effective date of the transfer.

[Statutory Authority: [RCW 19.16.410]. 01-11-132 § 308-29-060, filed 5/22/01, effective 6/22/01; 87-11-064 (Order PM

653), § 308-29-060, filed 5/20/87; 86-14-051 (Order PM 602), § 308-29-060, filed 6/27/86; 79-06-084 (Order PL-306), § 308-29-060, filed 6/1/79.]

WAC 308-29-070 Disclosure of rate of interest.

Whenever a collection agency is required pursuant to RCW 19.16.250 (8)(c) to disclose to the debtor that interest charges are being added to the original obligation, the collection agency must also disclose to the debtor the rate of interest. The rate of interest cannot exceed the legal maximum rate established in chapter 19.52 RCW.

[Statutory Authority: [RCW 19.16.410]. 01-11-132, § 308-29-070, filed 5/22/01, effective 6/22/01; 87-11-064 (Order PM 653), § 308-29-070, filed 5/20/87; 86-14-051 (Order PM 602), § 308-29-070, filed 6/27/86.]

WAC 308-29-080 Does a collection agency have to notify the credit reporting agency when the debt is satisfied?

If a collection agency informs a credit-reporting agency of the existence of a claim, the collection agency shall promptly notify the credit-reporting agency that the claim has been satisfied. In the absence of other applicable law, "promptly" shall mean within forty-five days after satisfaction of the claim.

[Statutory Authority: [RCW 19.16.410]. 01-11-132, § 308-29-080, filed 5/22/01, effective 6/22/01; 87-11-064 (Order PM 653), § 308-29-080, filed 5/20/87; 86-14-051 (Order PM 602), § 308-29-080, filed 6/27/86.]

WAC 308-29-090 Brief adjudicative proceedings – When they can be used.

- (1) The board adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings conducted at the discretion of the board. Brief adjudicative proceedings can be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an

overturns the brief adjudicative proceeding decision. The board's decision, also called an order, is mailed to you. This section does not apply to brief adjudicative proceedings conducted by the board through WAC 308-29-090(2).

Statutory Authority: [RCW 19.16.410]. 07-17-145, § 308-29-120, filed 8/21/07, effective 9/21/07; 01-11-132, § 308-29-120, filed 5/22/01, effective 6/22/01.]

WAC 308-29-130 Objections to brief adjudicative proceedings and conversion to formal adjudicative hearings.

- (1) At least five days before the scheduled brief adjudicative proceeding, any party to the proceeding, including the board, may file a written objection to resolution of a matter by a brief adjudicative proceeding and may request that a matter be converted to a formal adjudicative hearing. Upon receiving a timely written objection, the presiding officer shall determine whether the matter should be converted. Regardless of whether any party files a timely objection, the presiding officer may convert any brief adjudicative proceeding to a formal adjudicative hearing whenever it appears that a brief adjudicative proceeding is insufficient to determine the issues pending before the board.
- (2) In determining whether to convert a proceeding, the presiding officer may consider the following factors:
 - (a) Whether witness testimony will aid the presiding officer in resolving contested issues of fact;
 - (b) Whether the legal or factual issues are sufficiently complex to warrant a formal adjudicative proceeding, including whether there are multiple issues of fact or law;
 - (c) Whether a brief adjudicative proceeding will establish an adequate record for further board or judicial review;
 - (d) Whether the legal issues involved in the proceeding present questions of legal

significance or are being raised for the first time before the board;

- (e) Whether conversion of the proceeding will cause unnecessary delay in resolving the issues; and
- (f) Any other factors that the presiding officer deems relevant in reaching a determination.

[Statutory Authority: [RCW 19.16.410]. 07-17-145, § 308-29-130, filed 8/21/07, effective 9/21/07.]

UNIFORM REGULATION OF BUSINESS AND PROFESSIONS

Index Chapter 18.235

SECTIONS

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- (vi) Court reporters under chapter 18.145 RCW;
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 - (viii) Employment agencies under chapter 19.31 RCW;
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 - (xi) Notaries public under chapter 42.44 RCW;
 - (xii) Private investigators under chapter 18.165 RCW;
 - (xiii) Professional boxing, martial arts, and wrestling under chapter 67.08 RCW;
 - (xiv) Real estate appraisers under chapter 18.140 RCW;
 - (xv) Real estate brokers and salespersons under chapters 18.85 and 18.86 RCW;
 - (xvi) Security guards under chapter 18.170 RCW;
 - (xvii) Sellers of travel under chapter 19.138 RCW;
 - (xviii) Timeshares and timeshare salespersons under chapter 64.36 RCW; and
 - (xix) Whitewater river outfitters under chapter 79A.60 RCW.
- (b) The boards and commissions having authority under this chapter are as follows:
- (i) The state board of registration for architects established in chapter 18.08 RCW;
 - (ii) The cemetery board established in chapter 68.05 RCW;
 - (iii) The Washington state collection agency board established in chapter 19.16 RCW;
 - (iv) The state board of registration for professional engineers and land surveyors established in chapter 18.43 RCW governing licenses issued under chapters 18.43 and 18.210 RCW;

- (v) The state board of funeral directors and embalmers established in chapter 18.39 RCW;
 - (vi) The state board of registration for landscape architects established in chapter 18.96 RCW; and
 - (vii) The state geologist licensing board established in chapter 18.220 RCW.
- (3) In addition to the authority to discipline license holders, the disciplinary authority may grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered under RCW 18.235.110 by the disciplinary authority. [2007 c 256 § 12; 2002 c 86 § 103.]

NOTES:

Effective date -- 2006 c 219: See note following RCW 46.82.285.

RCW 18.235.030 Disciplinary authority -- Powers.

The disciplinary authority has the power to:

- (1) Adopt, amend, and rescind rules as necessary to carry out the purposes of this chapter, including, but not limited to, rules regarding standards of professional conduct and practice;
- (2) Investigate complaints or reports of unprofessional conduct and hold hearings as provided in this chapter;
- (3) Issue subpoenas and administer oaths in connection with any investigation, hearing, or proceeding held under this chapter;
- (4) Take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;

- (3) To establish fees to be paid for witnesses, expert witnesses, and consultants used in any investigation or adjudicative proceedings as authorized by RCW 34.05.446. [2007 c 256 § 13; 2002 c 86 § 105.]

RCW 18.235.050 Statement of charges -- Hearing.

- (1) If the disciplinary authority determines, upon investigation, that there is reason to believe that a license holder or applicant for a license has violated RCW 18.235.130 or has not met a minimum eligibility criteria for licensure, the disciplinary authority may prepare and serve the license holder or applicant a statement of charge, charges, or intent to deny. A notice that the license holder or applicant may request a hearing to contest the charge, charges, or intent to deny must accompany the statement. The license holder or applicant must file a request for a hearing with the disciplinary authority within twenty days after being served the statement of charges or statement of intent to deny. The failure to request a hearing constitutes a default, whereupon the disciplinary authority may enter a decision on the facts available to it.
- (2) If a license holder or applicant for a license requests a hearing, the disciplinary authority must fix the time of the hearing as soon as convenient, but not earlier than thirty days after the service of charge, charges, or intent to deny. The disciplinary authority may hold a hearing sooner than thirty days only if the disciplinary authority has issued a summary suspension or summary restriction. [2007 c 256 § 14; 2002 c 86 § 106.]

RCW 18.235.060 Procedures governing adjudicative proceedings.

The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the administrative procedure act, govern all hearings before the disciplinary authority. The disciplinary authority has, in addition to the powers and duties

set forth in this chapter, all of the powers and duties under chapter 34.05 RCW, which include, without limitation, all powers relating to the administration of oaths, the receipt of evidence, the issuance and enforcing of subpoenas, and the taking of depositions. [2002 c 86 § 107.]

RCW 18.235.070 Previous denial, revocation, or suspension of license.

The department shall not issue a license to any person whose license has been previously denied, revoked, or suspended by the disciplinary authority for that profession or business, except in conformity with the terms and conditions of the certificate or order of denial, revocation, or suspension, or in conformity with any order of reinstatement issued by the disciplinary authority, or in accordance with the final judgment in any proceeding for review instituted under this chapter. [2002 c 86 § 108.]

RCW 18.235.080 Orders.

An order pursuant to proceedings authorized by this chapter, after due notice and findings in accordance with this chapter and chapter 34.05 RCW, or an order of summary suspension entered under this chapter, takes effect immediately upon its being served. The final order, if appealed to the court, may not be stayed pending the appeal unless the disciplinary authority or court to which the appeal is taken enters an order staying the order of the disciplinary authority, which stay shall provide for terms necessary to protect the public. [2007 c 256 § 15; 2002 c 86 § 109.]

RCW 18.235.090 Appeal

A person who has been disciplined or has been denied a license by a disciplinary authority may appeal the decision as provided in chapter 34.05 RCW. [2007 c 256 § 16; 2002 c 86 § 110.]

may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement is in addition to any other rights the disciplinary authority may have as to any licensee ordered to pay a fine but may not be construed to limit a licensee's ability to seek judicial review under RCW 18.235.090. In any action for enforcement of an order of payment of a fine, the disciplinary authority's order is conclusive proof of the validity of the order of a fine and the terms of payment. [2002 c 86 § 113.]

RCW 18.235.130 Unprofessional conduct -- Acts or conditions that constitute.

The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

- (1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession or operation of the person's business, whether the act constitutes a crime or not. At the disciplinary hearing a certified copy of a final holding of any court of competent jurisdiction is conclusive evidence of the conduct of the license holder or applicant upon which a conviction or the final holding is based. Upon a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Except as specifically provided by law, nothing in this subsection abrogates the provisions of chapter 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;

- (2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement thereof;
- (3) Advertising that is false, deceptive, or misleading;
- (4) Incompetence, negligence, or malpractice that results in harm or damage to another that creates an unreasonable risk of harm or damage to another;
- (5) The suspension, revocation, or restriction of a license to engage in any business or profession by competent authority in any state, federal, or foreign jurisdiction. A certified copy of the order, stipulation, or agreement is conclusive evidence of the revocation, suspension, or restriction;
- (6) Failure to cooperate with the disciplinary authority in the course of an investigation, audit, or inspection authorized by law by:
 - (a) Not furnishing any papers or documents requested by the disciplinary authority;
 - (b) Not furnishing in writing an explanation covering the matter contained in a complaint when requested by the disciplinary authority;
 - (c) Not responding to a subpoena issued by the disciplinary authority, whether or not the recipient of the subpoena is the accused in the proceeding; or
 - (d) Not providing authorized access, during regular business hours, to representatives of the disciplinary authority conducting an investigation, inspection, or audit at facilities utilized by the license holder or applicant;
- (7) Failure to comply with an order issued by the disciplinary authority;
- (8) Violating any of the provisions of this chapter or the chapters specified in RCW 18.235.020(2) or any rules made by the disciplinary authority under the chapters specified in RCW 18.235.020(2);

- (4) The person to whom such a notice is issued may request an adjudicative proceeding to contest the allegations. The notice shall include a brief, plain statement of the alleged unlicensed activities, act, or practice constituting a violation of this chapter or the chapters specified in RCW 18.235.020(2) or a rule adopted or order issued under those chapters. The request for hearing must be filed within twenty days after service of the notice of intent to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the disciplinary authority may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter 34.05 RCW.
- (5) If the disciplinary authority makes a final determination that a person has engaged or is engaging in unlicensed practice or other act or practice constituting a violation of this chapter or the chapters specified in RCW 18.235.020(2) or a rule adopted or order issued under those chapters, the disciplinary authority may issue a permanent cease and desist order. In addition, the disciplinary authority may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in the unlicensed practice of a profession or operation of a business for which a license is required by one or more of the chapters specified in RCW 18.235.020. The proceeds of such a fine shall be deposited in the related program account.
- (6) The disciplinary authority may issue a temporary cease and desist order if a person is engaged or is about to engage in unlicensed practice or other act or practice constituting a violation of this chapter or the chapters specified in RCW 18.235.020(2) or a rule adopted or order issued under those chapters if the disciplinary authority makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. A temporary cease and desist order shall remain in effect until further order of the disciplinary authority. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the disciplinary authority may enter a permanent cease and desist order, which may include a civil fine.
- (7) The cease and desist order is conclusive proof of unlicensed practice or other act or practice constituting a violation of this chapter or the chapters specified in RCW 18.235.020(2) or a rule adopted or order issued under those chapters and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order or civil fine may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW.
- (8) The attorney general, a county prosecuting attorney, the director, a board or commission, or any person may, in accordance with the laws of this state governing injunctions, maintain an action in the name of the state of Washington to enjoin any person practicing a profession or business without a license for which a license is required by the chapters specified in RCW 18.235.020. All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be deposited in the related program account.
- (9) The civil remedies in this section do not limit the ability to pursue criminal prosecution as authorized in any of the acts specified in RCW 18.235.020 nor do the civil remedies limit any criminal sanctions. [2007 c 256 § 20; 2002 c 86 § 116.]

**RCW 18.235.160 Violation of injunction --
Contempt of court -- Civil penalty.**

A person or business that violates an injunction issued under this chapter may be found in contempt of court under RCW 7.21.010. Upon a finding by a court of competent jurisdiction that the person or

RCW 18.235.902 Part headings not law -- 2002 c 86.

Part headings used in this act are not any part of the law. [2002 c 86 § 402.]

RCW 18.235.903 Severability -- 2002 c 86.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2002 c 86 § 404.]