

STATE OF NEVADA



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Governor

DEPARTMENT OF BUSINESS AND INDUSTRY

TERRY JOHNSON  
Director

**FINANCIAL INSTITUTIONS DIVISION**

GEORGE E. BURNS  
Commissioner

March 22, 2012

Paul D. S. Edwards  
713 Wheat Ridge Lane, Unit 203  
Las Vegas, Nevada 89149

**RE: PETITION FOR ADVISORY OPINION REGARDING ATTORNEYS ACTING AS  
COLLECTION AGENCIES**

Dear Mr. Edwards:

This letter constitutes the response by the Financial Institutions Division, State of Nevada Department of Business and Industry (hereafter the "Division") regarding your request for an advisory opinion dated September 26, 2010. The request was made pursuant to Nevada Administrative Code (NAC) 232.040, *et seq.*

**STATEMENT OF ISSUES**

Paul Edwards (hereafter "Petitioner") is requesting an advisory opinion on the following issue:

If an attorney or law firm holds themselves out as a debt collector, are they required to obtain the proper licensing to engage in any such business?

**ANALYSIS**

The Petitioner requests a determination as to when an attorney is required to be licensed as a debt collector in the State of Nevada. Generally, attorneys licensed by the State Bar of Nevada are not required to be licensed as a collection agency even though in the course of their practice they may negotiate settlement of claims, pursue payment and receive judgments. NRS 649.020(2)(g) specifically exempts attorneys from being licensed as collection agencies as follows: the term collection agency does not include "[a]ttorneys and counselors at law licensed to practice in this State, so long as they are retained by their clients to collect or to solicit or obtain payment of such clients' claims in the usual course of the practice of their profession."

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In 2007, the statute was passed as A.B. 47. The purpose of A.B. 47 was to remove additional requirements which were previously part of NRS 649.020(2)(g). Prior to the passage of A.B. 47, an attorney was exempt from licensure under NRS Chapter 649 if the collection activity was “incidental to the usual course of the practice of their profession.” The deletion of this provision as well as the clear legislative intent from the testimony indicates that attorneys whose primary practice is the collection of claims are exempt from the requirements of NRS Chapter 649. The testimony at the hearing expressed the clear intent that where legal services were provided, the State Bar Association was the appropriate regulatory body to oversee the attorney’s conduct. Hearing on Assembly Bill 47 Before the Senate Committee on Commerce and Labor, 2007 Leg. 74th Session 2 (March 13, 2007).

However, the Legislative intent was not to exempt every attorney licensed to practice in this state. If that were the intent, the additional language of “usual course in the practice of their profession” would have been deleted as well. *Mineral County v. State, Bd. Equalization*, 121 Nev. 533, 119 P.3d 706, 708 n.5 (2005) (“We disagree and conclude that had the Legislature intended to preclude county petitions of State Board decisions, it could have explicitly stated that intent.”) Therefore, language of NRS 649.020 exempts Nevada licensed attorneys from being required to obtain a license as a collection agency under NRS Chapter 649, under certain circumstances. As John Wanderer, Esq., the bill’s main supporter, stated, “An attorney who operates a collection agency would have to be licensed [under NRS Chapter 649].” Hearing on Assembly Bill 47 Before the Senate Committee on Commerce and Labor, 2007 Leg. 74th Session 2 (March 13, 2007) (parenthetical added).

Consequently, the fact that an individual who operates a collection agency is also a Nevada licensed attorney will not exempt the operation from NRS Chapter 649. The attorney must be soliciting or receiving payment of a claim for a retained legal client. Further, the attorney’s activity must be in the “usual course of the practice of their profession.” The Division requested that the Nevada Bar Association interpret this provision. On August 29, 2009, the State Bar Commission on Ethics and Professional Responsibility declined to provide a written opinion stating that the question was one of “statutory construction.”

The Division is not inclined to define the parameters of the attorney-client relationship. However, the Division interprets this provision to mean that the attorney’s activity must be related to the legal profession. As the conduct of collection may involve the legal process, it may be entirely appropriate to retain the services of an attorney even though in the end, a collection agency could have provided those services. However, the payment for legal services like all services is contractual. *Argentina Consol. Min. Co. v. Jolley Urga Wirth Woodbury & Standish*, 216 P.3d 779, 787 (Nev., 2009), citing, 7A C.J.S. Attorney & Client, §§ 419, 422 (2004) (when the attorney and client agreed to the value of the attorney’s services prior to representation, “[t]he proper form of action by which to enforce payment, generally, is by an action at law on the contract”). Consequently, if there is any question as to whether a client is intending to hire an attorney for legal representation, then that intent should be expressed in the agreement retaining those services.


As stated above, it was not the intent of A.B. 47 to exempt an attorney who owns, manages or operates a collection agency from NRS Chapter 649. Any entity which does not legally

advertise or identify itself as an attorney, law firm, or providing legal services or legal representation is not exempt under NRS 649.020(2)(g). Further, the exemption does not apply to attorneys not licensed in the State of Nevada, because they can not be regulated by the Nevada State Bar Association.

### CONCLUSION

The exemption from NRS Chapter 649 applies if the Nevada licensed attorney is identified as an attorney or law firm, and offers or performs collection services as primary or secondary part of the legal representation. The determining factor is whether or not the client intends to form an attorney-client relationship. If the attorney simply owns or manages a collection agency or where no legal services or legal representation is contracted for by the parties, the exception would not apply.

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