

# Introduction to Representing Consumers Abused by Debt Collectors

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National Elder Rights Training Project for the National Legal Resource Center.  
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## Presenter – Robert J. Hobbs



- Has specialized in consumer credit issues, with particular attention to fair debt collection practices, in his more than 30 years at the National Consumer Law Center, Inc. (NCLC).
- He is Deputy Director of NCLC; a former member of the Consumer Advisory Council to the Federal Reserve Board; a founder, former Director and Treasurer of the National Association of Consumer Advocates, Inc.
- He writes NCLC's popular treatise Fair Debt Collection (6th Ed.); the bimonthly newsletter, NCLC REPORTS, on fair debt collection and repossession; and The Practice of Consumer Law (2nd Ed. 2006); and he edits NCLC's annual volume Consumer Law Pleadings.
- He testified on and proposed amendments adopted as part of the Fair Debt Collection Practices Act and the Truth in Lending Act, and participated in the drafting of NCLC's Model Consumer Credit Code (1974).
- He was the designated consumer representative in two Federal Trade Commission rulemakings to regulate creditor remedies and to preserve consumers' claims and defenses.

## Presenter – Claudia Wilner



- Senior Staff Attorney with the Neighborhood Economic Development Advocacy Project (NEDAP) in New York City.
- She directs NEDAP's Consumer Law Project, which provides legal representation, advice, self-help materials, and referrals to low-income individuals in the areas of debt collection, credit reporting, and unfair lending practices.
- She has brought groundbreaking litigation and led successful policy reform efforts to curb abusive debt collection practices in New York.
- She is a member of the Civil Court Committee of the Association of the Bar of the City of New York and the New York City Civil Court's Consumer Services Advisory Committee.



# Presenter – Robert W. Murphy

- Is in private practice in Fort Lauderdale, Florida, focusing on consumer class action litigation.
- He presently serves as an adjunct professor of law at the University of Florida College of Law in Gainesville Florida.
- He is a past chair of the Consumer Protection Law Committee of The Florida Bar and is a Board Member for the National Association of Consumer Advocates.
- Mr. Murphy has been lead counsel in a wide variety of state-wide, regional and national consumer class actions throughout the United States.
- In 2003, Mr. Murphy obtained the first contested certified class under the Florida Retail Installment Sales Act as reported in *Brown v. SCI Funeral Services of Florida*, 212 F.R.D.602 (S.D. Fla. 2003), which was described in the South Florida Business Review as one of the most significant cases in South Florida in 2003.
- E-mail [rphyu@aol.com](mailto:rphyu@aol.com).



# Introduction to Representing Consumers Abused by Debt Collectors

## Part 1

### FDCPA Claims For Deceptive Debt Collection Letters

Robert Hobbs  
National Consumer Law Center  
Author, Fair Debt Collection (7<sup>th</sup> Ed. 2011)



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# Poll #1: Who Are You?

- 1) Legal Aid Attorney.
- 2) NACA Attorney.
- 3) Debt collection professional.
- 4) Government worker.
- 5) Other type of lawyer, counselor or advocate.

.



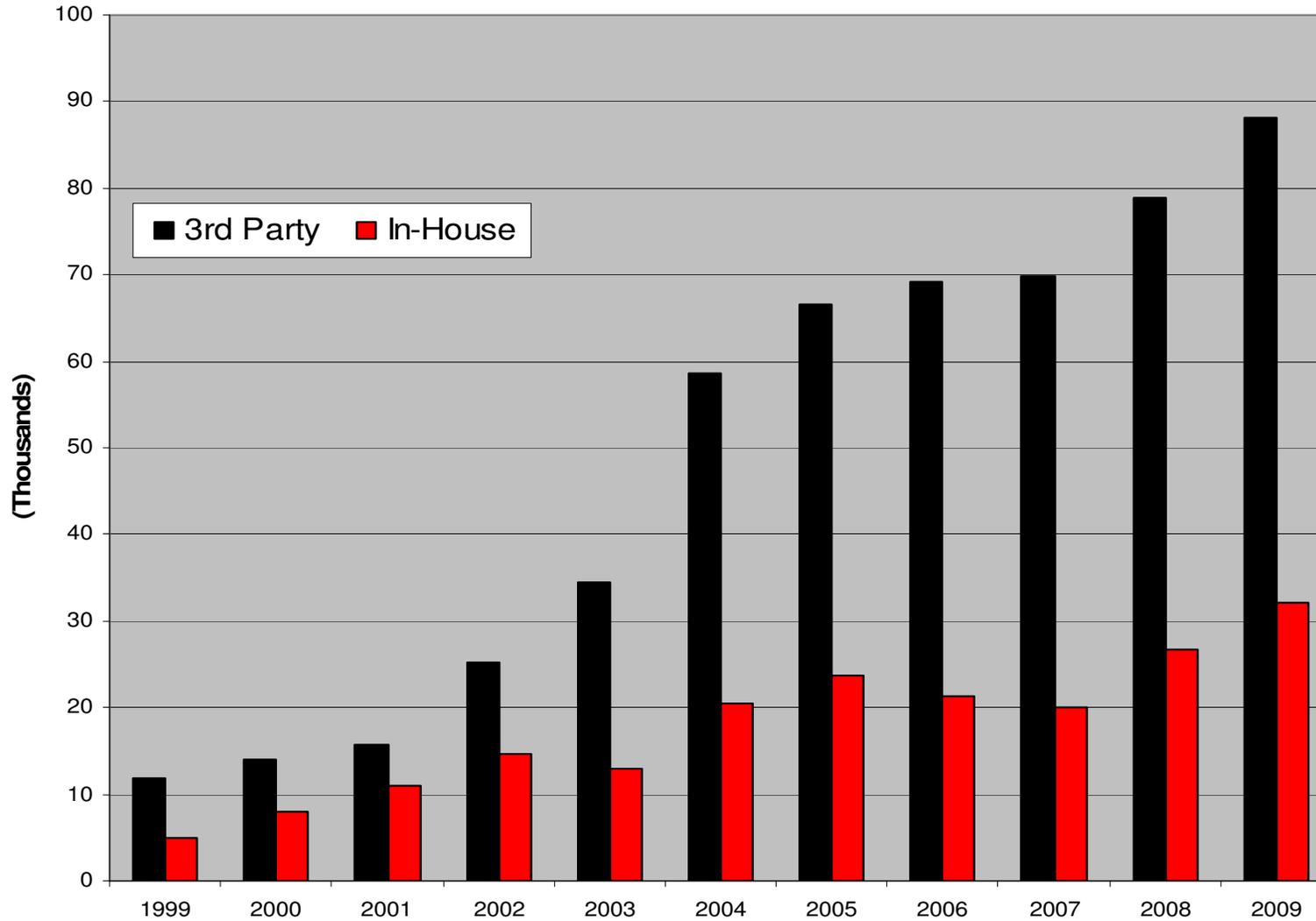
# Introduction to Representing Consumers Abused by Debt Collectors

## Three parts to this webinar:

- **FDCPA Claims For Deceptive Debt Collection Letters,**  
Bob Hobbs
- **Developing a Debt Collection Harassment Case,** Bob  
Murphy
- **Developing a Debt Collection Class Action,** Claudia Wilner



## Consumer Complaints About Collections Reported to FTC



Source: FTC Annual Reports on the FDCPA, 2000-2010  
<http://www.ftc.gov/reports/index.shtm>

## Introduction to Representing Consumers Abused by Debt Collectors

- There is a lot of law on fair debt collection practices, and we can only cover a few illustrative types of claims.
- At the end of my presentation I will recommend additional resources to dig deeper into this area of the law.
- A good starting point is NCLC's *Fair Debt Collection* treatise—now 1124 pages



# Introduction to Representing Consumers Abused by Debt Collectors

- Law available to consumers includes:
  - Fair Debt Collection Practices Act (FDCPA)
  - State Debt Collection Statutes
  - State Unfair and Deceptive Acts and Practices Acts (UDAP) (general state consumer protection statutes)
  - State tort law
    - Intentional Infliction of Mental Distress
    - Invasion of Privacy
    - Etc.



## Introduction to FDCPA, 15 U.S.C. § 1692

- Protects consumers not businesses
- Covers (if regularly collecting debts)
  - collection agencies
  - debt buyers
  - collection lawyers
- Excludes creditors (look to state protections)
- Written with both very broad and very specific requirements
- Remedies
  - Actual damages
  - Statutory damages up to \$1000
  - Reasonable attorney fees

# FDCPA Claims For Deceptive Debt Collection Letters

## 15 U.S.C. § 1692e

### **False or misleading representations**

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

...(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.



REDACTED DEBT COLLECTION LETTER  
(LAW FIRM LETTERHEAD REMOVED)

March 25, 2005

[REDACTED]

Re: Past Due Account with Southwest Anesthesia Consultants  
Total Amount Due: \$92.40

Dear [REDACTED]

Southwest Anesthesia Consultants has retained me to collect from you the entire balance past due on your account, which as of March 23, 2005, was \$92.40.

If you want to resolve this matter without a lawsuit, you must, within one week of the date of this letter, either pay Southwest Anesthesia Consultants the \$92.40 that you owe (unless already paid) or call and work out arrangements for payment with my office. If you do neither of these things, I will be entitled to file a lawsuit against you for the collection of this debt when the week is over.

Federal law gives you thirty (30) days after you receive this letter to dispute the validity of the debt or any part of it. If you do not dispute it within that period, I will assume that it is valid. If you do dispute it, by notifying me in writing to that effect, I will, as required by the law, obtain and mail to you proof of the debt.

The law does not require me to wait until the end of the thirty-day period before suing you to collect this debt. If, however, you request proof of the debt within the thirty-day period that begins with your receipt of this letter, the law requires me to suspend my efforts (through litigation or otherwise) to collect the debt until I mail the requested information to you.

Please be advised that this correspondence is an attempt to collect a debt, and any information will be used for that purpose.

Very truly yours, 

JAK/jls

REDACTED DEBT COLLECTION LETTER  
(LAW FIRM LETTERHEAD REMOVED)

7

[REDACTED]  
[REDACTED]  
[REDACTED]

Re: Past Due Account with Southwest Anesthesia Consultants  
Total Amount Due: \$92.40

Dear [REDACTED]

Southwest Anesthesia Consultants has retained me to collect from you the entire balance past due on your account, which as of March 23, 2005, was \$92.40.

If you want to resolve this matter without a lawsuit, you must, within one week of the date of this letter, either pay Southwest Anesthesia Consultants the \$92.40 that you owe (unless already paid) or call and work out arrangements for payment with my office. If you do neither of these things, I will be entitled to file a lawsuit against you for the collection of this debt when the week is over.

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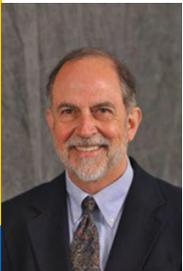
Please be advised that this correspondence is an attempt to collect a debt, and any information will be used for that purpose.

Very truly yours, 

JAK/jls

REDACTED DEBT COLLECTION LETTER  
(LAW FIRM LETTERHEAD REMOVED)

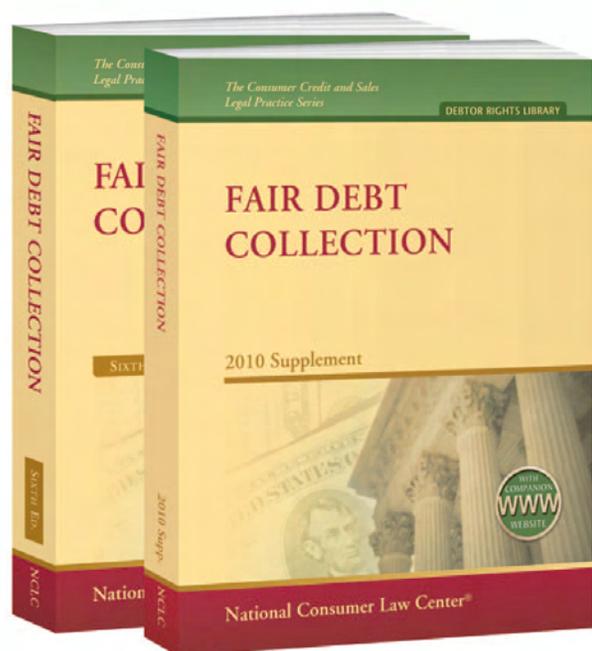
If you want to resolve this matter without a lawsuit, you must, within one week of the date of this letter, either pay Southwest Anesthesia Consultants the \$92.40 that you owe (unless already paid) or call and work out arrangements for payment with my office. If you do neither of these things, I will be entitled to file a lawsuit against you for the collection of this debt when the week is over.



- *Is this a threat of suit?*
- *Is it false?*

# For More Information on Legal Remedies to Fight Debt Collector Abuses

See NCLC's *Fair Debt Collection* and *Guide to Surviving Debt*:



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## Excerpt from NCLC's *Fair Debt Collection* p. 207 (6<sup>th</sup> Ed. 2008)

### *Consumer Protections and Rights Under the FDCPA*

### § 5.5.2.11.1

#### 5.5.2.11 Threat of Suit May Be Deceptive

##### *5.5.2.11.1 Misrepresenting imminence of suit, or intent or authority to sue*

Collection letters and conversations frequently contain deceptive threats of suit violating 15 U.S.C. § 1692e and 1692e(10) and, depending on the circumstances, 15 U.S.C. §§ 1692e(4) and (5). The threat of suit may be deceptive, because suit is:

- Not intended by the collector when the threat was made,<sup>487</sup>
- Not as imminent as represented,<sup>488</sup>

<sup>487</sup> See summaries of the following cases in Appx. K.2.4.2, *infra*: *Brown v. Card Serv. Cir.*, 464 F.3d 450 (3d Cir. 2006); *United States v. National Fin. Servs., Inc.*, 98 F.3d 131 (4th Cir. 1996); *Pipiles v. Credit Bureau, Inc.*, 886 F.2d 22 (2d Cir. 1989); *Crossley v. Lieberman*, 868 F.2d 566 (3d Cir. 1989); *Baker v. G.C. Servs. Corp.*, 677 F.2d 775 (9th Cir. 1982); *Grismore v.*

- Beyond the collector's contractual authority at the time made,<sup>489</sup> or
- Beyond the collector's legal authority.<sup>490</sup>

(E.D.N.Y. June 29, 2007); *Drennan v. Van Ru Credit Corp.*, 950 F. Supp. 858 (N.D. Ill. 1996); *Finch v. Silverstein*, 1996 WL 467251 (N.D. Ill. Aug. 13, 1996); *Newman v. CheckRite California, Inc.*, 912 F. Supp. 1354 (E.D. Cal. 1995); *In re Belile*, 209 B.R. 658 (Bankr. E.D. Pa. 1997); FTC Official Staff Commentary § 807(5), 6, *discussed in* § 3.2.6, *supra*, *reprinted at* Appx. C, *infra*; *Michael*, FTC Informal Staff Letter (Aug. 15, 1988); *Schorr*, FTC Informal Staff Letter (July 27, 1981); *Jones*, FTC Informal Staff Letter (Nov. 20, 1979); *McGrath*, FTC Informal Staff Letter (July 12, 1979); *Guiltry*, FTC Informal Staff Letter (July 2, 1979); *Rummel*, FTC Informal Staff Letter (May 16, 1978); *Britt*, FTC Informal Staff Letter (Jan. 20, 1978); Appx. K.2.4.3, *infra*. See also the summaries of the following cases in Appx. K.2.4.2, *infra*: *United States v. First Fed. Credit Control, Inc.*, 1982 U.S. Dist. LEXIS 17964 (N.D. Ohio Mar. 11, 1982); *infra*. But see summaries of the following cases in Appx. K.2.4.2, *infra*: *Laster v. Cole*, 2000 U.S. Dist. LEXIS 3771 (E.D.N.Y. Mar. 20, 2000); *Baker v. Citibank (South Dakota) N.A.*, 13 F. Supp. 2d 1037 (S.D. Cal. 1998);



## FDCPA Claims For Deceptive Debt Collection Letters

This is a FDCPA claim that could win in some courts and lose in others:

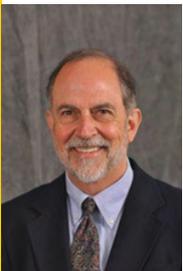
- *Brown v. Card Serv. Ctr.*, 464 F.3d 450 (3d Cir. 2006). The complaint stated a claim for using misleading means in violation of § 1692e where the collector’s letter stated that nonpayment “could” result in an attorney referral and suit being filed but the consumer alleged that in fact the collector had no intention of making such a referral.



# FDCPA Claims For Deceptive Debt Collection Letters

## BUT SEE:

- *Owsley v. Coldata, Inc.*, 2004 WL 1690178 (5th Cir. July 29, 2004) (unpublished). Statement in dunning letter that her account was “scheduled to be returned to [her] creditor who may [*inter alia*] . . . Secure advice of counsel regarding appropriate steps to be taken to enforce payment,” although suggesting that the collector had counsel on retainer and that the stakes might be raised in the future, would not lead a recipient to believe that legal action was imminent.



## **FDCPA Claims For Deceptive Debt Collection Letters**

This would be a good case for talking to an experienced NACA attorney about co-counseling:

- Does this attorney sue on this small a debt?
- How do the local courts respond to suits against lawyers?
- Does this lawyer regularly collect consumer debts bringing him within the FDCPA's coverage?

**Search for co-counsel with the lawyer directory at [www.naca.net](http://www.naca.net)**

**REDACTED DEBT COLLECTION LETTER**  
(LAW FIRM LETTERHEAD REMOVED)

March 25, 2005

[REDACTED]  
[REDACTED]  
[REDACTED]

Re: Past Due Account with Southwest Anesthesia Consultants  
Total Amount Due: \$92.40

Dear [REDACTED]

Southwest Anesthesia Consultants has retained me to collect from you the entire balance past due on your account, which as of March 23, 2005, was \$92.40.

If you want to resolve this matter without a lawsuit, you must, within one week of the date of this letter, either pay Southwest Anesthesia Consultants the \$92.40 that you owe (unless already paid) or call and work out arrangements for payment with my office. If you do neither of these things, I will be entitled to file a lawsuit against you for the collection of this debt when the week is over.

Federal law gives you thirty (30) days after you receive this letter to dispute the validity of the debt or any part of it. If you do not dispute it within that period, I will assume that it is valid. If you do dispute it, by notifying me in writing to that effect, I will, as required by the law, obtain and mail to you proof of the debt.

The law does not require me to wait until the end of the thirty-day period before suing you to collect this debt. If, however, you request proof of the debt within the thirty-day period that begins with your receipt of this letter, the law requires me to suspend my efforts (through litigation or otherwise) to collect the debt until I mail the requested information to you.

Please be advised that this correspondence is an attempt to collect a debt, and any information will be used for that purpose.

Very truly yours, 

JAK/jls

REDACTED DEBT COLLECTION LETTER  
(LAW FIRM LETTERHEAD REMOVED)

Southwest Anesthesia Consultants has retained me to collect from you the entire balance past due on your account, which as of March 23, 2005, was \$92.50...If you want to resolve this matter without a lawsuit...”

Is this a threat to sue on a time barred debt?



§ 5.5.2.12.3

*Fair Debt Collection*

*5.5.2.12.3 Filing a time-barred suit is deceptive*

The first case to address the issue, *Kimber v. Federal Financial Corp.*,<sup>578</sup> held in a well-reasoned opinion that it is unfair under the FDCPA to file a time-barred collection suit against a consumer and deceptive to threaten to file such a suit. That decision was adopted by an Eighth Circuit decision.<sup>579</sup> The court found strong legal and ethical policies existed against filing suits after the statute of limitations had expired when the collector had no reason to believe the statute of limitations had been tolled. These policies were strengthened by the FDCPA's purpose to protect even unsophisticated consumers who might pay a time-barred claim rather than assert the defense.

For these reasons, the practice was unconscionable and unfair, violating 15 U.S.C. § 1692f. The threat to file the collection suit violated the prohibition in 15 U.S.C. § 1692e against deception, since the suit itself misrepresented the legal status of the debt by implying that the collector would prevail.

The statute of limitations may be that of the forum state, but in some states the statute may be designated by the choice of law clause in the underlying contract or credit card agreement.<sup>580</sup> State statutes of limitations may have different standards for when the statute begins to run or is tolled.<sup>581</sup> Within a single state, different statutes of limitation may arguably apply to a claim on a debt against a consumer.<sup>582</sup>

Where the collector requests payment on a time-barred debt without threatening suit, the courts have generally

found the request not to be deceptive because most statutes of limitation bar the remedy of suit but do not extinguish the debt.<sup>583</sup> The courts reached this result despite the collector's suppression of the fact that the debt was time barred and that a payment could restart the statute of limitations. On the other hand, where a state's statute of limitations extinguished the debt, it was deceptive to seek its payment.<sup>584</sup>

*5.5.2.12.4 Legislative history*

Early bills leading to the Act generally proscribed only "false or misleading" collection methods.<sup>585</sup> The Senate added the provision prohibiting "deceptive" representations

<sup>578</sup> 668 F. Supp. 1480 (M.D. Ala. 1987).

<sup>579</sup> *Freyermuth v. Credit Bureau Servs., Inc.*, 248 F.3d 767 (8th Cir. 2001) (FDCPA prohibits threats to sue or suit on time-barred debts, but debt collector may ask for payment on time-barred debts). *See also* *Larsen v. JBC Legal Group, P.C.*, 533 F. Supp. 2d 290 (E.D.N.Y. 2008); *Martsoff v. JBC Legal Group, P.C.*, 2008 WL 275719 (M.D. Pa. Jan. 30, 2008); *Rawson v. Credigy Receivables, Inc.*, 2006 WL 418665 (N.D. Ill. Feb. 16, 2006);

<sup>583</sup> *See Freyermuth v. Credit Bureau Servs., Inc.*, 248 F.3d 767 (8th Cir. 2001) (collection attempts did not violate the FDCPA when they were not accompanied by a threat of suit); *Brewer v. Portfolio Recovery Assocs.*, 2007 WL 3025077 (W.D. Ky. Oct. 15, 2007); *Gervais v. Riddle & Assoc., P.C.*, 363 F. Supp. 2d 345 (D. Conn. 2005) (debt collector may seek voluntary payment on time-barred debt as long as there is no threat of legal action), *aff'd in part, rev'd in part*, 479 F. Supp. 2d 270 (D. Conn. 2007); *Murray v. CCB Credit Servs., Inc.*, 2004 WL 2943656 (N.D. Ill. Dec. 15, 2004) (debt collector's mere dunning of the consumer in an attempt to collect a time-barred debt did not violate the FDCPA since the running of the statute of limitations would only bar defendant from collecting through the courts, but it does not extinguish plaintiff's debt or the right to seek payment without the use or threat to use litigation); *Walker v. Cash Flow Consultants, Inc.*, 200 F.R.D. 613 (N.D. Ill. 2001) (granting collector's motion to dismiss absent an express or implied threat of litigation where state law barred the remedy but did not extinguish the debt); *Reese v. Arrow Fin. Servs., Inc.*, 202 F.R.D. 83 (D. Conn. July 23, 2001) (issue was not briefed); *Griffith v. Capital One Bank*, 2001 U.S. Dist. LEXIS 21953 (S.D. Ill. July 23, 2001) (reporting of the time-barred claim to a credit reporting agency was not deceptive as the debt was still owed, although the consumer had a defense to its collection in court); *Johnson v. Capital One Bank*, 2000 WL 1279661, at

## “Kimber” violation

- *Kimber v. Federal Financial Corp.*, 668 F. Supp. 1480 (M.D. Ala. 1987), leading case.
- Followed and distinguished by *Freyermouth v. Credit Bureau Services, Inc.*, 248 F.3d 767 (8<sup>th</sup> Cir. 2001) (Debt collector may ask for payment on time barred debt but may not threaten to sue.).
- Statute of limitations may appear to be a simple legal issue but may become very complicated if the contract contains a choice of law provision, see NCLC’s *Collection Actions* §§ 3.5.3.1, 3.5.3.2 (2<sup>nd</sup> Ed. 2011).

# Questions??

You can type in questions in the Questions box on the control panel for the webinar, and we will address several of them in a minute or two.

Please limit your questions to the FDCPA and illustrations given at this time. There will be two segments for other questions following this segment.

# Resources Available for Fair Debt Collection Suits

Prior Webinar Available Free on [www.nclc.org](http://www.nclc.org) :

## Stopping Debt Collection Harassment and Responding to Debt Collection Suits (May 2009)



Robert J. Hobbs  
National Consumer Law Center.

Michelle A. Weinberg  
Legal Assistance Foundation of Metropolitan Chicago

Support from the Administration on Aging

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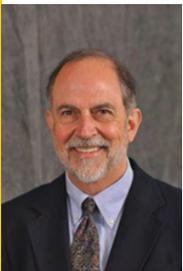
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## The Consumer Rights Litigation Conference *and* The Consumer Class Action Symposium

November 3-6, 2011 in Chicago



**Ideas      Insight      Inspiration**



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## NCLC REPORTS

Debt Collection and Repossessions Edition

Volume 29  
May/June 2011

Developments and Ideas For the Practice of Consumer Law

### In This Issue

- Fifth Circuit muddles short limitations period for cell phone, long distance debts
- Debt collector voicemail messages for consumers often violate the FDCPA
- FTC hosts discussion on use of e-mail in collections
- National Mortgage Training Conference, Boston, July 14 & 15
- Registration and information available for November Consumer Rights Litigation Conference

### Fifth Circuit: Two Year Federal Limitations Period Inapplicable to Cell Phone Debt

The Fifth Circuit has just held in *Castro v. Cellco, Inc.*,<sup>1</sup> that the Federal Communications Act's short two-year statute of limitations does not apply to cell phone debts—even though 47 U.S.C. § 415(a) states that: "All actions at law by carriers for recovery of their lawful charges . . . shall be begun within two years from the time the cause of action accrues, and not after." The "carriers" referenced in this provision include cell phone, interstate and foreign communications operators.<sup>2</sup>

If this two year limitations period applies, many consumer cell phone and long distance debt collections will be outside the applicable limitations period. While the federal limitation does not apply to state-regulated local phone charges, local telephone bills often include charges for long distance or cell phone service, which the collector will have to segregate out and only collect on the local phone charges. This may impose an impossible burden on a debt buyer with limited access to the original monthly billing statements.

### Fifth Circuit Interpretation of the Federal Limitations Period

The Fifth Circuit recognized that there was a direct conflict between Texas' four-year limitations period and the federal two year period to collect cell phone charges, and that the federal period supersedes the state period, if applicable. But the Fifth Circuit avoided federal preemption by finding that the collector was not seeking "lawful charges"—the federal act applies the two-year period to actions "by carriers for recovery of their lawful charges."<sup>3</sup>

<sup>1</sup> 634 F.3d 779 (5th Cir. 2011).

<sup>2</sup> 47 U.S.C. § 153(19); 47 U.S.C. § 332(c)(1)(A) establishes when cell phone services are not treated as carriers. It states that mobile services shall be treated as carriers except for those provisions of subchapter II in which the Federal Communications Commission specifies through regulation that the provision is inapplicable to such mobile services. Subchapter II includes only 47 U.S.C. §§ 201–276, 47 U.S.C. § 415(a) creating the two-year limitations period in *Schubert v. IV*. As a result, cell phone services are treated as carriers for purposes of the statute of limitations.

<sup>3</sup> 47 U.S.C. § 415(a).

The court found two possible interpretations of "lawful charges." One was based upon the ordinary meaning of the phrase, which would encompass a carrier's charges whether tariffed or not. The other interpretation is that in this context "lawful" means "tariffed." Because cell phone charges are not set pursuant to a federally filed tariff, such an interpretation would exclude cell phone charges from the federal limitations period. The Fifth Circuit opted for this interpretation, because then there would be no conflict with state law, and Congress must clearly specify when it wants to preempt the "historic policy powers of the states." Therefore the federal limitations period does not apply.

This holding is open to much criticism. In the context of commercial litigation, courts find no problem applying the two-year federal limitations period.<sup>4</sup> Moreover, Congress has no trouble using the term tariffed when it wishes to limit a communications statute just to tariffed charges. Tariffed and lawful are two different things, and it is hard to see how a collector can seek charges that are not "lawful."

Not does the Fifth Circuit focus on the language that the federal limitations period applies to "all actions at law by carriers for recovery of their lawful charges." The term "all" implies a broad scope.

### Debt Collector Voicemail Messages Left for Consumers Often Violate the FDCPA

Recent judicial decisions applying the plain language of the Fair Debt Collection Practices Act (FDCPA) put into question many debt collectors' regular practices when leaving voicemail messages for consumers. An amicus brief filed by an association of 700 debt collection attorneys recently stated that the *Kohy* decision, discussed below as restricting unidentified voicemail messages, could "severely" curtail "the efficacy of a multi-billion dollar debt collection industry that is vital to the economy."<sup>5</sup> ACA International, the collection agency trade association, recommends that the FDCPA be amended to permit debt collection voicemails on shared machines.<sup>6</sup>

The FDCPA strongly protects consumer's privacy interests. 15 U.S.C. § 1692c(b) strictly limits third party contacts, section 1692d(6) requires meaningful identification when a debt collector telephones a consumer, and section 1692e(1) requires disclosure to consumers that the caller is a debt col-

<sup>4</sup> *Global Crossing Bandwidth, Inc. v. Lucent Telecommunications, Inc.*, 652 F. Supp.2d 224 (W.D.N.Y. 2009); *MFS Int'l v. Int'l Telecom Ltd.*, 50 F. Supp.2d 517 (S.D.N.Y. 1999).

<sup>5</sup> *Brief of National Assoc. of Retail Collection Attorneys as Amicus Curiae*, *Kohy v. ARS National Services, Inc.*, No. 10 80234 (9th Cir. Jan. 9, 2011).

<sup>6</sup> *The Path Forward: ACA International's Blueprint for Modernizing America's Consumer Debt Collection System*, available at [www.acainternational.org](http://www.acainternational.org).

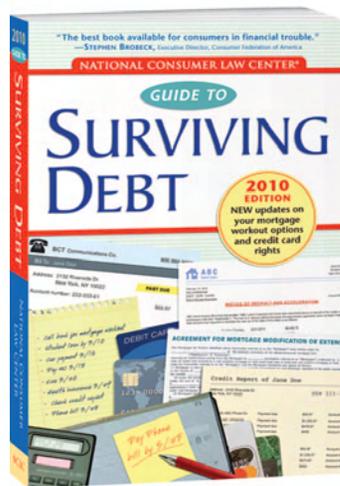
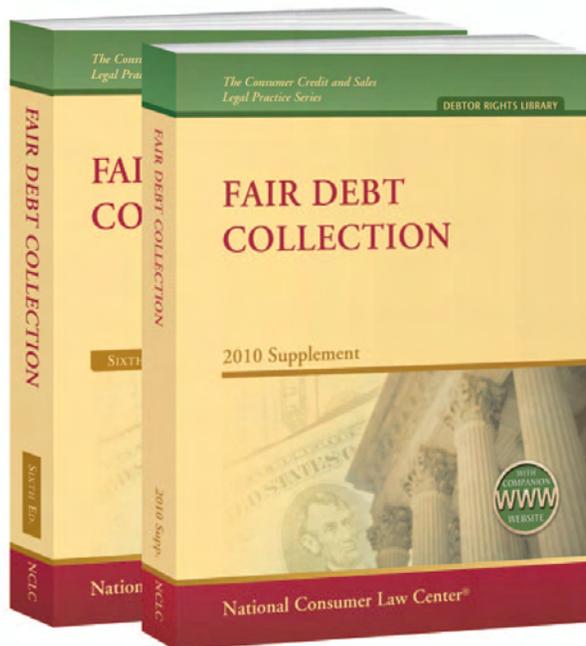
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# For More Information on Legal Remedies to Fight Debt Collector Abuses

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## FDCPA Claims For Deceptive Debt Collection Letters

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# Developing a Debt Collection Class Action

Claudia Wilner  
Senior Staff Attorney, NEDAP  
212-680-5100 | [claudia@nedap.org](mailto:claudia@nedap.org)

## What is a class action?

- A lawsuit brought by an individual or individuals on behalf of a group of people who have the same interest and have suffered the same injury.
- The claims must be subject to common proof.
- Governed by Federal Rule of Civil Procedure (FRCP) 23.

## Why File FDCPA Class Actions?

- **Class actions have more impact**
  - Debt collectors take them more seriously
  - Damage awards are higher → more deterrence
  - Opportunity to obtain relief for more people
  - Opportunity to negotiate settlements that include consent decrees to change behavior
- **Opportunity to earn more attorney's fees**
  - Potentially good source of funding for legal services programs or for riskier litigation in other areas
- **Build relationships with NACA lawyers in your area who would be excited to cocounsel cases with you**

## Structure of FRCP 23

- **FRCP 23(a) sets forth four prerequisites that must be present in every class action:**
  - Numerosity
  - Commonality
  - Typicality
  - Adequacy
- **FRCP 23(b) sets forth four types of class actions that can be certified. FDCPA claims usually fall under Rule 23(b)(3), which additionally requires:**
  - Predominance
  - Superiority
- **Plaintiff must establish each of these elements with evidence from the record**

## Numerosity - FRCP 23(a)(1)

- “The class is so numerous that joinder of all members is impracticable.”
- There is no specific number, but Newberg states that numerosity should be presumed at 40 members.
- Plaintiff may need to conduct discovery to ascertain the size of the class – e.g., if class is based on a letter violation, Plaintiff would need to know the number of letters that went out.

## Commonality - FRCP 23(a)(2)

- “There are questions of law and fact common to the class.”
  - One common question is enough.
  - But the common question(s) must be so central to the plaintiffs’ claims that answering the question(s) will resolve each person’s claim in one stroke
- Recent Supreme Court decision: *Wal-Mart Stores, Inc. v. Dukes*
  - Nationwide class alleging discrimination against female employees.
  - Plaintiffs alleged that Wal-Mart had an official policy of allowing lower level employees complete discretion over hiring and employment decisions, and that these employees exercised their discretion in a discriminatory manner.
  - Evidence of discrimination included: (a) statistical evidence of pay and promotion disparities; (b) testimony of individual women employees; (c) a report by a sociologist.
  - USSC held that Plaintiffs could not establish “even a single common question” because they could not identify a common mode of exercising discretion that pervaded the entire company.
    - Stores were located in 50 states, subject to different regional policies
    - Class members held different types of jobs
    - Different types of employment decisions were involved

## Typicality - FRCP 23(a)(3)

- “The claims or defenses of the representative parties are typical of the claims or defenses of the class.”
  - Named plaintiff’s claim should essentially be the same as class members’ claims
    - Claims should arise from the same course of conduct
    - Claims should be based on the same legal theory
  - It is OK if there are differences in the amount of damages between named plaintiffs and unnamed class members

## Adequacy - FRCP 23(a)(4) & 23(g)

- “The representative parties will fairly and adequately protect the interests of the class”
- Adequacy of class representative
  - Class representatives interest must be aligned with the interests of the class as a whole (overlaps with typicality analysis)
  - Class representative need not have a sophisticated understanding of the law
- Adequacy of class counsel – see FRCP 23(g)
  - In appointing counsel, court must consider several factors, including counsel’s experience handling class actions, expertise in the subject matter, and resources (including financial resources) to conduct the litigation vigorously.
  - Inexperienced litigators, or those from non-profits, must associate with an experienced class action firm
  - Contact NACA or NCLC for referral

## Requirements of FRCP 23(b)(3)

- **Predominance** – that the common questions of law or fact predominate over questions affecting only individual class members
  - Cases based on standard forms generally will meet predominance requirement
  - Cases based on fraud, misrepresentation, and deception are difficult because reliance is an inherently individual issue
  - As long as common questions predominate as to liability, it is OK if class members do not have the same damages.
    - But note that there must be a fair and efficient way of determining how to apportion damages without having a series of mini-trials.
- **Superiority** – that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.
  - The class action may be more efficient than multiple individual actions
  - Class members may not vindicate their rights individually, because they are unaware of their rights, lack access to attorneys, or the case may only be economically viable as a class action

## Class Actions Under the FDCPA

- FDCPA specifically contemplates class actions – see 15 U.S.C. 1692k
- **Remedies include:**
  - Actual damages
  - Statutory damages of \$1000 per defendant (for class reps)
  - Class statutory damages, capped at \$500,000 or 1% of the defendant's net worth
  - Attorney's fees
- **Most class actions under the FDCPA are for statutory damages only, as it can be difficult to pursue actual damages on a class basis**
  - Exception if actual damages can be readily determined from defendant's own records – e.g., Defendants routinely charged an unlawful fee
- **No injunctive or declaratory relief under the FDCPA**

## Claims Suitable for Class Treatment

- **Claims based on form collection letters, legal pleadings, or other uniform collection practices.**
  - E.g., debt collector sent a form collection letter stating that it would assume debt is valid unless debtor disputed debt “in writing” – FDCPA does not require a written dispute. *Camacho v. Bridgeport Financial Inc.*, 430 F.3d 1078 (9<sup>th</sup> Cir. 2005).
  - E.g., debt collector filed suit seeking \$250 penalty for bounced checks, but maximum penalty allowed by state law was \$15 – violation of § 1692(f)(1). *Johnson v. Riddle*, 305 F.3d 1107 (10<sup>th</sup> Cir. 2002).
  - E.g., in a state where statute of limitations was 5 years for oral contracts and 10 years for written contracts, debt collectors that lacked copies of the written contracts routinely filed suit in cases that were more than 5 years old and thus time-barred. *Ramirez v. Palisades Collection*, 250 F.R.D. 366 (N.D. Ill. 2008)

## Claims NOT Suitable for Class Treatment

- **Telephone harassment/abuse claims**
  - These are better brought as individual claims, especially when there are significant damages
- **Claims involving too many individual issues or where the class is not ascertainable**
  - E.g., recent proposed nationwide class action against Midland Funding for filing time-barred debts. Court held that the class was not ascertainable because it was too difficult to determine what statute of limitations applied to any particular claim. Therefore, court would have to conduct mini-hearing in each class member’s case to determine whether they were members of the class. *Clavell v. Midland Funding* (E.D. Pa. June 21, 2011).

## Choosing Your Defendants

- **Before filing suit, check to make sure your proposed defendant is financially viable.**
  - **Is Defendant insured?**
  - **Remember that class damages will be capped at 1% of Defendant's net worth.**
  - **You may need to bring in additional defendants to maximize recovery, such as a law firm, a related corporate entity, or the owner of the collection agency. However, this is not always possible or advisable.**
  - **Consult experienced NACA members before filing.**

## Choosing Your Named Plaintiff(s)

- **Named Plaintiffs must have claims typical of absent class members and otherwise be adequate class representatives.**
- **Named Plaintiffs should have an understanding of their obligations to absent class members and a desire to obtain the best possible relief for them.**
- **The best kind of Plaintiff is someone who wants to correct an injustice and is not in the case for the money. (They are unlikely to recover a lot of money, anyway.)**
- **In addition, it is best if Plaintiffs are sympathetic to the court – for example, if they have a defense to the underlying debt or are elderly or disabled.**

## Maximizing Relief for the Class

- The proposed class should be defined as narrowly as possible -- no nationwide classes.
  - Multiple statewide class actions will have a greater deterrent effect
- Consider naming multiple defendants in order to raise the statutory cap.
- Consider bringing concurrent state law claims, such as UDAP claims.
  - State law claims are not subject to damage caps.
  - State law claims also provide for injunctive relief.

## Resources

- NCLC FDCPA Manual
- NCLC Class Actions Manual
- NACA – [www.naca.net](http://www.naca.net)
- Co-counsel with experienced attorneys who have a class action practice and have expertise in the subject matter.

# PART II: Developing A Debt Collection Harassment Case

”

Introduction to Representing Consumers Abused by Debt Collectors  
National Consumer Law Center Webinar Series  
Wednesday, July 20, 2011  
Presented by: Robert W. Murphy, Esq.  
1212 SE 2<sup>nd</sup> Ave.  
Ft. Lauderdale, Florida 33316  
(954)763-8660  
Email- [rphyu@aol.com](mailto:rphyu@aol.com)

# DISCLAIMER

- In light of the recent increase in public discussion concerning consumer class action issues, the speaker specifically states that the instant presentation is an expression of personal opinion concerning the subject matter discussed.
- Any statements which may cast any party in a negative light do not constitute statements of fact of the speaker.
- Any disparaging remarks (i.e., a joke or expression of sarcasm) concerning any party should be viewed in the context of the discussion and not in a manner which would place the party in a false or negative light.

# A. OVERVIEW OF THE FDICPA

# 1. Objectives of the FDCPA

- Pursuant to 15 USC 1692, Congress stated:  
“There is abundant evidence of the use of abusive, deceptive and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to a number of personal bankruptcies, to marital instability, to loss of jobs, and to invasions of individual privacy.”

# The FDCPA as a Device to Protect the Free Market

- Congress created the FDCPA (and all consumer statutes) to protect the market economy...
- Including the hypothetical law abiding debt collector.
- The argument appeals to even the most conservative court



## 2. The Two-Prong Enforcement Scheme of the FDCPA

The FDCPA regulates debt collectors by:

1. Proscribing “bad” conduct both generally and in specific laundry list fashion
2. Providing for consumer rights to obtain “validation” or “verification” of debts and directing the disclosure of such rights to the consumer by the debt collector.

**B. Debt Collector Conduct  
Restrains: Communications By  
Debt Collector**

# Communications With Consumer- General Rules (Be Nice!)

- No communications at unusual times or places.
- Presumption: do not call between 9:00 pm and 8:00 am (Watch those out-sourced call centers in Sri Lanka!). 15 USC 1692c (a) (1)
- No calls at funerals, hospitals and church

# No Contact If There is An Attorney

- If knowledge the consumer is represented by an attorney, debt collector may not contact unless the attorney fails to respond in a “reasonable time” period. 15 USC 1692c(a)(2)

# Contacts at Work Are Restricted

- If the Debt Collector knows or has reason to know that employer prohibits calls. 15 USc 1692 c(a)(3)
- May be invoked by consumer telling the collector orally.

# Contacts With Third-Parties Severely Restricted

15 USC 1692 c (b) provides:

without the prior consent of the consumer given **directly** to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, a debt collector may not communicate, representation or means in connection with the collection of any debt.

# HYPOTHETICAL ONE: THE REAL ESTATE CLOSING SNAFU

- Client, Chris Consumer, owes \$10k to Monster Mastercard, which hires Wolverine Acceptance to collect
- After several nasty telephone calls, Chris decides to refinance her house through Ameriless Mortgage to get rid of Wolverine.
- Ameriless Mortgage- during underwriting- calls Wolverine and gets information re. the debt.

# Exception to Third-party Gag Rule: Locator Activities

- Debt collector may contact third-parties to locate debtor. 15 USC 1692 b
- Not surprisingly, debt collectors like to use the exception
- Nothing better than calling Mom & Dad about their child's debts

# Locator Rules- Step by Step

## First Step: Debt Collector Does Not Volunteer Information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

- (1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if **expressly** requested, identify his employer;

# Step Two: Never mention the D Word

- (2) not state that such consumer owes any debt;

## Step Three: Once Means Once

- (3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

## Step Three: No Locator Activity if There is An Attorney

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney

## HYPOTHETICAL TWO: "Faux Locator" Scheme

- Chris Consumer is still being pursued by Wolverine. She speaks to a John Steele at Wolverine @ 3:00PM on Tuesday after he called her house.
- Steele calls two neighbors in San Marco at 4:00pm "looking for Chris."
- Steele calls two credit references at 4:10 pm "looking for Chris."

# Right to Say “Enough is Enough”

- Consumers have an absolute right to terminate debt collector communications.  
15 USC 1692 c
- Consumer may either send a written notice:
  1. To cease communications; *or*
  2. That the Consumer refuses to pay.

# HYPOTHETICAL THREE: The Spike Letter

- Chris is fed up. On May 10, 2005, she sends a one line letter to Wolverine that reads: "I refuse to pay."
- On May 30, 2005, Wolverine sends a letter that offers a "one-time offer to settle" the claim for \$5,000 (Chris has a collection of six such letters!!!).

C. Debt Collector Conduct  
Restraints: Proscription Against  
Harassment, Oppression & Abuse

# General Proscription of “Bad” Conduct

15 USC 1692 d provides:

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

# Laundry List of Commonsensical No-Nos

- No threats of force or violence
- No obscene or profane language
- No publication of “debt beat” lists
- No advertisement of debt for sale
- No repeated/constant telephone calls
- No telephone calls without “meaningful disclosure” of identity

# HYPOTHETICAL FOUR: The Stalking Collector

- Chris starts to get about 20 telephone calls from a number owned by Wolverine (per Caller Id)
- The “caller” hangs up each time
- Chris learns that Wolverine is using a predictive dialing system.

Debt Collector Conduct  
Restraints: Proscription Against  
Deception

# General Rule Against Lying

15 USC 1692 e provides:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.

# Laundry List of Lying Offenses

Debt collector may not make a false representation :

1. that debt collector is with the government (e.g., a police officer, state attorney etc)
2. as to the character, amount or legal status of any debt
3. the services or compensation of the debt collector

# The Easy Stuff

4. that the debt collector is an attorney when he/she is not;
5. that the non-payment of a debt will subject the debtor to arrest or his property to seizure
6. that the consumer committed any crime or other conduct in order to disgrace the consumer

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October 4, 2001

23597

James R Holder  
1499 GALLINULE DR  
DELRAY BEACH, FL 33444

RE: Gary W. Boyce  
CLAIM #: 23597  
BALANCE: \$16620.49

James R Holder,

I have been attempting to assist you in amicably resolving your indebtedness to Gary W. Boyce. Your repeated failure to establish a satisfactory payment arrangement is leaving our firm few remaining alternatives to resolve this matter.

**"AS WE ADVISED YOU IN THE PAST, YOUR ACCOUNT HAS BEEN REPORTED TO THE CREDIT BUREAU'S. THIS ACTION IS IRREVOCABLE AND WILL REMAIN A PART OF YOUR CREDIT FILE FOR THE NEXT SEVEN (7) YEARS OR UNTIL SATISFIED WITH MY FIRM."**

It is our hope you understand the seriousness of this matter. A payment arrangement today will ensure a favorable report to the Credit Bureau's and may help avoid an embarrassing situation with credit grantors in the future.

Please call my office today to discuss a payment arrangement that we all can live with.

Sincerely,



Ron Foster  
Senior Paralegal For The Firm

**EXHIBIT** E

# False Threats to Report

8. communicating or threatening to communicate information to any person which should be known to be false, including that the debt is disputed. 15 USC 1692e (8)

# “Times Up”: Dealing With Stale Debt Issues

- Debt scavengers are increasingly buying out of statute debts (because they are real, real cheap).
- Courts differ on whether collection of time-barred debts is violation of FDCPA as misrepresentation of “character” of debts. See, *Kimber v. Federal Finance*, 668 F. Supp. 1480 (MD Ala 1987); contra, *Freyermuth v. Credit Bureau*, 248 F. 3<sup>rd</sup> 767 (8<sup>th</sup> Cir 2001) [no FDCPA violation unless threat of suit]

# HYPOTHETICAL FIVE: "So sue me..."

- Our hero, Chris Consumer, gets a call from Steele at Wolverine. Steele says that she needs to pay the debt. Chris says "sorry."
- Same as above, except that Steele says that "the matter is going up to legal ASAP."
- And quips, "it does not matter to me lady, you will have to pay me for each hour I spend on this."

## HYPOTHETICAL FIVE CONTINUED:

“And I will take your little dog too...”

- Steele (not be deterred by the word “no”) calls back and says he just talked to their lawyers and he wants to let Chris know that they will take Chris’ home in Miami and will garnish her wages **next week.**
- Chris is a single mom of an 8 and 4 year old who gets no support.

# HYPOTHETICAL FIVE CONTINUED-

## “Shame on you, shame on me”

- Steele goes to lunch, has a chance to think about getting into Chris’ head...
- Steele calls Chris and says that borrowing money on a credit card without repaying is “fraud.”
- Tells Chris that Monster Mastercard is a “federal bank” which will “cause her trouble in court.”
- Chris remembers that she last used the card in 1990 & did not owe anything. She tells Steele that she does not owe anything..

- Steele says that it is going on her credit file “that afternoon.”
- Wolverine does not report *any accounts* to the CRAs.

# Disclosure Requirement- “Tell them who ya are!”

15 USC 1692e (11) makes a false or deceptive act: the failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose **in subsequent communications** that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

Debt Collector Conduct  
Restrains: Proscription Against  
Unfair & Unconscionable Acts

# General Prohibition Against Unfair & Unconscionable Acts

- The drafters of the FDCPA were careful to provide broad prohibitions- coupled with a laundry list of bad acts- to make it difficult for a debt collector to argue...
- “What is not prohibited is allowed”

# Gordon Geeko is wrong... Greed is Not Good (under the FDCPA)

First in the laundry list under 15 USC 1692 f (1):

The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement.

- Includes:
  1. Dishonored check charges in excess of statutory limit.
  2. Non-contractual collection charges & interest

# Restrictions on Use of Checks- Rule 1

Under 15 USC 1692, the collector may not: accept from any person of a check or other payment instrument postdated by more than **five** days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

# Restrictions on Use of Checks- Rule 2

- (7) The false representation or implication that the consumer the solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

# Restrictions on Use of Checks- Rule 3

- Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

# Restraints on Filing of Legal Actions By Debt Collectors

Any debt collector who brings any legal action on a debt against any consumer shall—

- (1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located....

(Good enough!)

# The Venue Trap

- in the case of an action not involving real estate, the debt collector may bring such action only in the judicial district or similar legal entity—
- (A) in which such consumer **signed** the contract sued upon;
- or
- (B) in which such consumer **resides at the commencement** of the action

# HYPOTHETICAL SIX: “Welcome to the neighborhood”

- Steele hires Mike Merc, Esq. an attorney in Miami to file a collection lawsuit against Chris, who lived in Dade County until Sept 1. and has since moved to Broward County
- Steele files a lawsuit against Chris in Dade County on Dec. 1
- Served Chris in Palm Beach County on Dec. 15
- Chris opened the account over the telephone many years ago while living in Dade.

# State Law Restraints on Telephone Recording

- According to one survey, 36 states allow recording of if one party consents (i.e., the client). For a summary of state law see <http://www.rcfp.org/taping/>.
- In those states requiring two-party consent, the penalties for non-compliance are severe. As an example, in Florida, the act is a felony and one debt collector retaliated by filing a state law claim against a Michigan consumer (where it was legal)

# Evidence Preservation

# Know and Live By Your State Law

- If you can't tape without the consent of the debt collector, tell the client not to.
- Tell the client repeatedly.
- In writing.

# Answering Machines & Voice Mail

- Messages left voluntarily by the debt collector are fair game.
- Equip the client with an inexpensive recording machine (\$29 at Office Depot)
- Repeat the warning about taping when necessary.

# Maintenance of Client Logs

- Clients should be instructed to keep a log of all future collection calls by the phone.
- Dates, time of day, who was the caller and contemporaneous verbatim notes of the calls

# Remedies for FDICPA Transgressions

# Statutory Damages

- Up to \$1,000
- Not per violation. ☹️

# “Actual Damages”

- Not defined either....
- Depending on the jurist, can include “softie feelies” or intangible harm for pain & suffering etc.

# Litigation Expense

- Attorney fees & costs to consumer only.
- State Offer of Judgments to not shift fees as a result of federal preemption .

# Actual Damage Cases = Work

- Actual non-economic damage claims (i.e., the typical harassment case) will involve:
  1. Real trial lawyer skills- stuff like depositions and the like.
  2. Proof of damages through experts
  3. Problems of proof (especially in telephone abuse cases in two-party consent states)
  4. Difficult to fix value
  5. Costs (for depositions, travel etc.)

**A CAVEAT**

# SLAPP Lawsuits

“strategic lawsuits against public participation” (SLAPP) are lawsuits that masquerade as ordinary lawsuits but are brought to deter common citizens from exercising their political or legal rights or to punish them for doing so.”

**Mello v. Great Seneca Financial Corp.**

526 F.Supp.2d 1024  
(C.D.Cal.,2007).

# And sanctions

On October 11, 2001, pursuant to a motion filed by Riddle, the district court imposed sanctions against Edelman, finding that Edelman “was trying to extort money from Riddle by saying it would go away for \$3000, even though it could not have believed that its overshadowing argument had any chance of success in court.” Further, the court found that Edelman’s “actions in threatening to file a baseless suit and opposing the motion for summary judgment as to the overshadowing claim were objectively and subjectively egregious and multiplied the proceedings unreasonably and vexatiously.”

*Riddle & Associates, P.C. v. Kelly*  
414 F.3d 832  
(7th Cir. 2005)

# To Tag a Consumer Lawyer is Nothing More than Sport

Debt collectors will use:

1. Rule 11
2. Bad faith filing provision of 15 USC  
Section 1692 k

# A sobering example~ filing an FDCPA Lawsuit on a Direct TV Civil Theft Collection Letter

- Therefore, even if Parker had reasonably inquired into the factual and legal sufficiency of the May 17, 2007 complaint, as of May 21, 2007, Parker knew or should have known that the complaint contained no factual or legal basis for relief. Yet Parker has failed to respond during the interim two months by withdrawing the complaint or accepting Defendant's proposed settlement. This inaction exposes Parker to sanctions. [\*Runfola & Assoc., Inc. v. Spectrum Reporting II, Inc.\*, 88 F.3d 368, 373-74 \(6th Cir.1996\)](#) (The "gravaman of [Rule 11](#) [is not in] the filing of the claim that eventually turns out to be meritless, but rather the persistence in pursuing that claim after the pleader has or should have become aware of its lack of merit."). Accordingly, the court will award [Rule 11](#) sanctions against Parker in the form of Defendant's attorneys' fees and costs unnecessarily incurred in defending this action.

**Grimard v. Palmer, Reifler and Associates, P.A.**

,2007 WL 2221396  
(E.D.Mich.,2007).

# A cornucopia of other examples (over 123 *reported* decisions and counting)

- **Wilkinson v. Wells Fargo Bank Minn., N.A.**, 2008 WL 681810 (7<sup>th</sup> Cir. 2008)- sanctions for suing original creditor
- **O'Brien v. Valley Forge Specialized Educ. Services**, 173 Fed.Appx. 977 (3<sup>rd</sup> Cir. 2006) – sanctions for filing case contrary to Rooker-Feldman
- **Carter v. Daniels**, 91 Fed.Appx. 83 (10<sup>th</sup> Cir.2004)- threat of sanctions after lawsuit against state court judges dismissed.
- **Ellis v. CAC Financial Corp.**, 6 Fed.Appx. 765 (10<sup>th</sup> Cir.2001)- review of sanctions after consumer improperly challenged state court collection judgment in FDCPA lawsuit

# D. Conclusion