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June 17, 2011

Office of Attorney General Martha Coakley  
Attention: Mary Marshall, Public Protection and Advocacy Bureau  
One Ashburton Place  
Boston, MA 02108  
via email: [Mary.marshall@state.ma.us](mailto:Mary.marshall@state.ma.us)

Re: Comment on Proposed Debt Collection Regulations

Dear Attorney General Coakley:

We fully support your proposed amendments updating the debt collection regulations, 940 CMR 7.00. They are critical to protecting Massachusetts consumers, particularly as the debt collection industry has expanded and grown increasingly aggressive in recent years. The debt collection industry dominates the civil docket of our state District Courts and deserves this close attention. Our comments are provided on behalf of our low-income and elderly clients.<sup>1</sup>

We commend you for modernizing the regulations and for making them consistent with the Fair Debt Collection Practices Act and the Massachusetts Division of Banks' regulations. The proposed regulations also bolster the recently-enacted protections of the Commonwealth's personal property exemptions, MGL Ch. 235 sec. 34, MGL Ch. 246 sections 28 and 28A. The proposed addition of 940 CMR 7.07(19)(defining as an unfair or deceptive act or practice a debt collector's taking possession of or selling property that is exempt) will deter process servers from wrongfully seizing a consumer's assets. The Legislature has increased the car exemption to \$7500 (\$15,000 for the elderly and disabled), which means consumers can keep a car for personal use and for finding and maintaining employment. In the past, some debt

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<sup>1</sup> The National Consumer Law Center, Inc., (hereinafter "NCLC") is a non-profit corporation. NCLC was organized in 1969 to conduct research, education and litigation to promote consumer justice. One of the NCLC's primary objectives is to provide assistance to attorneys advancing the interests of their low-income and elderly clients in the area of consumer law. Accordingly NCLC has focused considerable attention on laws to prevent abusive debt collection and unreliable disclosure of the terms of consumer credit transactions. The Fair Debt Collection Practices Act and the Truth in Lending Act have been a major focus of the work of NCLC. NCLC publishes *Fair Debt Collection* (6th ed. 2008 & 2009 Supp.) and *Truth in Lending* (6<sup>th</sup> ed. 2007 & 2008), comprehensive treatises, each over 1000 pages, to assist attorneys, creditors and debt collectors in complying with the law.

collectors would seize a car, even where seizure resulted in no benefit to the creditor, in order to coerce payment from struggling family's exempt income. The effect was devastating, often causing individuals to lose their jobs, suffer mental distress and incur crippling expenses. The elderly and the disabled suffered most.

In 2006, the Boston Globe ran its award-winning investigative reporting series, "Debtors' Hell", which spotlighted abusive debt collection tactics. Those tactics include the failure to provide notice of pending lawsuits, the imposition of onerous and unreasonable fees for seizing cars, the resale of delinquent debts without any attempt to verify or authenticate the validity of the obligation, and the use of coercive, demeaning and abusive communications to consumers, their families, neighbors and employers. For ten years debt collection agencies have been the subject of more consumer complaints than any other industry at the Federal Trade Commission, with the complaints increasing each of the last ten years. Because those abuses and complaints continue unabated today, your proposed amendments to 940 CMR 7.00 are a necessary and appropriate exercise of your statutory powers to protect Massachusetts consumers.

We urge you to retain provisions requiring debt collectors to inform a consumer that a debt is time-barred. Proposed 940 CMR 7.07(24) is an extremely valuable protection for consumers because it accurately informs them that the time-barred debt is legally uncollectible. Despite the protestations from the debt collection industry, we believe you should keep this important provision. The collection industry argues that the provision hurts consumers because a debtor is less likely to pay a time-barred debt if he or she knows it is unenforceable in court; non-payment, they argue, will thus blemish the debtor's credit score.

We reject this view. Consumers should be informed and allowed to act in their best interests. There is often no legitimate purpose served by a consumer's paying a debt that is time-barred. Often time-barred debts are invalid, not verifiable, and include erroneous, unauthorized and onerous fees and charges. Often debtors pay time-barred debts only because they do not know that the debt is time barred. Retaining section 7.07(24) merely informs the debtor of the true legal status of the debt and allow them to address their financial choices in a more informed manner.

Public utilities currently have three exemptions from the debt collection regulations. We urge removal of two of the exemptions for utilities- from 7.04(1)(j) and 7.04(2). Section 7.04(1)(j) limits the hours during which a debt collector can visit the debtor's household, generally prohibiting visits after 9 PM and before 8 AM. Utilities are allowed to visit a person's house to terminate service for non-payment. However, the DPU's own regulations prohibit terminations except for the hours of 8 AM- 4 PM, Monday to Friday. 220 CMR 25.02(3)(d). Thus, a utility company has no greater need than any other collector to be at the customer's premises outside of waking hours. Second, if the utility needs to be at the customer's house outside of waking hours, either to restore previously terminated service (e.g., the customer pays up) or due to an emergency (e.g., power outage), this would not be a collection activity and would not be covered or barred by these regulations. This exemption for utilities in 7.04(1)(j) is unnecessary.

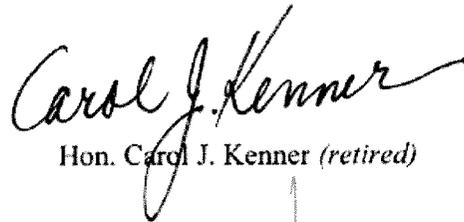
Section 7.04(2) requires a creditor to contact the attorney, and not the debtor, once the attorney notifies the creditor "that all contacts relative to the particular debt in question should be addressed to the attorney." We believe that a utility company should work with a consumer's attorney and should not be exempt from this requirement.

We thank you for your leadership in this important area.

Very truly yours,



Robert J. Hobbs  
Deputy Director



Hon. Carol J. Kenner (retired)



Charles Harak  
Staff Attorney