



More than any other area of law, malpractice claims against attorney debt collectors have increased significantly over the last four years. According to a study published by the ABA Standing Committee on Lawyers' Professional Liability (2012), 9.2% of all malpractice claims reported during the four-year period of study were asserted against attorneys practicing in the area of Collection and Bankruptcy. Although the claim category reported by the ABA includes all aspects of federal bankruptcy law, the jump in claims asserted against collection attorneys, acting on behalf of a third-party, and are alleged to have violated a provision of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq.

TIP #1: Understand Whether You are a Debt Collector

The FDCPA applies only to "debt collectors" and defines a debt collector as one who, "regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due another," 15 U.S.C. § 1692a(6). Whether the attorney is presumed to be a debt collector as defined by the FDCPA can depend on the percentage of debt collection matters that make up an attorney's practice. However, keep in mind that any effort to collect a debt on behalf of a third-party, whether they are your client or even a family member, can potentially subject an attorney to an FDCPA claim, and taking on these matters should be considered with caution.

TIP #2: Always Maintain a Good Understanding of the FDCPA

The FDCPA identifies no fewer than 16 types of conduct by debt collectors that is prohibited conduct, and since the Act is a strict liability statute, proof of just one violation may be sufficient to support a summary judgment for the plaintiff seeking redress.

TIP #3: The FDCPA Notice Requirements Must Be Strictly Adhered To

Once an attorney takes on a debt collection assignment and begins communicating with the debtor, the attorney must disclose that they are attempting to collect a debt and any information obtained will be used for that purpose. Many FDCPA mistakes occur at the outset of the attorney's collection activities because the attorney failed to notify the consumer of some basic information required in the statute. The initial collection letter must also disclose:

1. the amount of the debt;
2. the name of the creditor;

3. that the consumer has 30 days to dispute the debt, or else the debt will be assumed to be valid;
4. that if the consumer does dispute the debt in writing, the debt collector will obtain verification of the debt and provide the consumer with a copy of the verification;
5. that upon the consumer's written request within 30 days, the debt collector will provide the name and address of the original creditor, if it is different from the current creditor. 15 U.S.C. § 1692g(a).

TIP #4: Never Threaten to Take Legal Action Against Someone Who May Owe a Debt Unless You Follow Through On the Threat

A threat of a lawsuit can be considered a false representation that is prohibited under the FDCPA if it is not followed up with the commencement of legal action. Therefore, before indicating to the consumer that a legal action is about to commence, make sure that all preconditions for collecting a debt under the FDCPA are satisfied and that you have the authority to proceed with the litigation.

TIP #5: Carefully Identify the Correct Debt Amount That Is Owed By The Consumer

You may be liable under the FDCPA if you misrepresent the character, amount, or legal status of the debt. 15 U.S.C.A. § 1692e(2)(A). It is a common mistake for a debt collector to pursue the wrong debt amount against a consumer, so it is important to always verify the correct amount of debt that is owed the creditor. Make sure the creditor supplies you with correct information about the debt, and the collection letter that identifies the debt is carefully reviewed for the correct information before the notice is sent to the consumer.

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