

Fair Debt Collection Practices

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Novi

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I. Notices to Debtors

A. Fair Debt Collection Practices Act (FDCPA)

1. Pursuant to the FDCPA, section 1692e, “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:

(11) 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.”

2. Pursuant to the FDCPA, section 1692g
 - (a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing –

1. the amount of the debt;
2. the name of the creditor to whom the debt is owed;
3. a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

4. a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
5. a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, is mailed to the consumer by the debt collector.

(c) Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

B. Case law.

1. Who is a debt collector?

As long as the attorney collects "regularly", the attorney is determined to be a debt collector and must comply with the FDCPA. According to **Garrett v. Deebes**¹, the judge noted that it was not necessary for debt collection to be the principal purpose of the attorney's practice. In this case, even though it was only one half of one percent, it was determined to be regularly.

2. Who determines whether or not the debtor is bankrupt?

If the debtor filed bankruptcy, the debt collector cannot try to collect a discharged debt. In **Hyman v. Tate**², the attorney did not use any database to determine whether or not the debtor filed bankruptcy. Instead, he relied on his client to not refer accounts wherein the debtor was bankrupt, or he received notification from the bankruptcy court, or the debtor. The attorney had procedures in place to act on the information once it was obtained. The attorney noted that he handled roughly 80,000 accounts per month. If he were to obtain a credit report, it would cost approximately \$120,000 per month for the reports. Yet, less than one one hundredth of one percent of the debtors were bankrupt at the time the demand letter was sent. The demand letter notified the debtor of her right to dispute, which she did, and that

1. *Garrett v. Deebes*, 110 F.3rd 317 (5th Circuit, 1997)

2. *Hyman v. Tate*, No. 02 C 242, 2003 WL 1565863 (N.D. Ill. Mar. 24, 2003)

ended the matter because of the attorney's procedures. The court held that the attorney's decision to proceed with sending out demand letters without determining whether or not the debtor was bankrupt did technically cause the attorney to violate the FDCPA, but because he had procedures in place to remedy the violation immediately upon learning that it had occurred, the FDCPA violation occurred as a result of a bona fide error.

3. What amount should the demand letter state?

In **Miller v. McCalla**³ "The dunning letter said that the 'unpaid principal balance' of the loan (emphasis added) was \$178,844.65, but added that 'this amount does not include accrued but unpaid interest, unpaid late charges, escrow advances or other charges for preservation and protection of the lender's interest in the property, as authorized by your loan agreement. The amount to reinstate or pay off your loan changes daily. You may call our office for complete reinstatement and payoff figures.' An 800 number is given."

The court determined that "the statement does not comply with the Act.... The unpaid principal balance is not the debt; it is only a part of the debt; the Act requires statement of the debt."

In **McDowall v. Leschack & Grodensky, P.C.**⁴, the court stated that in *Miller v. McCalla*, "the court addressed the question of whether a debt collector demanding payment of interest need specify the amount of interest owed. The court held that the collector must disclose the dollar amount of the debt, including the interest, as of the date of the letter."

Also, in **Taylor v. Cavalry Investments, LLC**⁵, the letter stated:

"PRINCIPAL BALANCE	\$1,802.90
INTEREST	\$ 511.23
ACCRUED INTEREST	\$ 0.00
OTHER CHARGES	\$ 0.00
TOTAL BALANCE DUE	\$2,314.13"

The court held that a debt collection is not required to state what the total amount due will be at some future date with expected interest, but that a debt collector must clearly state the total amount due at the time the letter was sent. "The letter breaks down the unpaid principal and the interest amounts, and states the total amount due, as required by the FDCPA."

3. *Miller v. McCalla*, Raymer, Padrick, Cobb, Nichols & Clark, L.L.C., 214 F.3d 872 (7th Cir. 2000)

4. *McDowall v. Leschack & Grodensky, P.C.*, 2003 U.S. Dist. LEXIS 14240

5. *Taylor v. Cavalry Investments, LLC*, 2002 WL 959771 (N.D. Ill. May 9, 2002)

In **Valdez v. Hunt and Henriques**⁶, the defendants sent plaintiff a demand letter stating “ALLEGED DEBT: \$3056.08 plus interest”. Then the body of the letter stated, “this office has been retained by [creditor] to whom you owe \$3056.08.” The court determined that the caption was misleading when the body of the letter stated the exact amount of the debt as of the date of the letter. The defendant argued that if the plaintiff did not take steps to resolve the debt, then interest would continue to accrue. The court stated the debtor would not read “\$3056.08 plus interest to read \$3056.08 as of today, plus any future interest which may accrue.” The court further stated that the caption of the letter should have read “\$3056.08 plus future interest which may accumulate,” or “\$3056.08 as of today”.

In **Veach v. Sheeks**⁷, the situation is a little different. “Veach’s girlfriend’s son was behind in his payments on his car, which was in danger of repossession. As a favor, Veach mailed to CreditNet, the finance company, a check for \$350 to help reduce the overdue balance on the car. When the car was repossessed anyway, Veach stopped payment on the check. CreditNet then sent Veach a written notice indicating that the check had been dishonored and demanding that Veach make full payment on the check or face a lawsuit for appropriate legal remedies, including three times the amount of the check, interest, attorney’s fees and court costs. Since he was not a guarantor of the car loan, Veach did not feel he owed any money to CreditNet, and therefore was under no obligation to honor the check, so he ignored the notice and did not make any effort to reinstate payment on the check....Sheeks mailed Veach a notice of claim pursuant to the FDCPA.” Judgment was ultimately entered for CreditNet and against Veach. “As a result of Veach’s non-payment of the small claims court judgment, his bank account was frozen.” He appealed the judgment and, “after the appeal was filed, CreditNet voluntarily moved to set aside the underlying small claims court judgment without prejudice.” Veach sued Sheeks arguing that Sheeks failed to comply with the FDCPA by not stating the amount of the debt. “The notice of claim Sheeks sent Veach described the ‘amount of the claimed debt’ as ‘Remaining principal balance \$1,050.00; plus reasonable attorney fees as permitted by law, and costs if allowed by the court. Because the amount of attorney’s fees and court costs due is not specified, Veach argues, there was not an ‘amount’ stated for FDCPA purposes.” The court held that “we agree with Veach that Sheeks incorrectly stated the amount of the debt, but not because he specified indeterminate attorney’s fees and court costs. Rather, by stating the amount of the debt as \$1,050, Sheeks took it upon himself to hold Veach liable for legal penalties that had not yet been awarded.”

In **Schletz v. Academy Collection Service, Inc.**⁸ the court stated, “the total amount actually due as of the date of the letter” is required by such cases as *Miller v. McCalla*.

6. *Valdez v. Hunt and Henriques*, 2002 WL 433595 (N.D. Cal. March 19, 2002)

7. *Veach v. Sheeks*, 316 F.3d 690 (7th Cir. 2003)

8. *Schletz v. Academy Collection Service, Inc.*, 2003 U.S. Dist. LEXIS 8527

4. What is meaningful involvement?

According to **Avila v. Rubin**⁹, an attorney review of the client's information is necessary both to determine that a proper basis exists to proceed with collection activity and to allow such activity to take place.

According to **Clomon v. Jackson**¹⁰, the court indicated that facsimile signatures not be allowed because "there will be few, if any cases in which a mass-produced collection letter bearing the facsimile of an attorney's signature will comply with the restrictions imposed by" the FDCPA.

In **Neilsen, v. Dickerson**¹¹, Dickerson received accounts from Household. Dickerson reviewed the data sent to him by Household, but "did not make an individualized assessment of the status or validity of the debt or the propriety of sending delinquency letters to the account debtors referred to him by Household....Dickerson relied on Household's judgment as to the validity and delinquency of the debt....Household paid Dickerson a flat fee of \$2.45 per account.... Dickerson had never pursued a judgment on Household's behalf, nor had Household ever asked him to do so." The judge indicated that "the letters were not from him in any meaningful sense of the word." The court further indicated that "Dickerson played barely more than a ministerial role in handling the responses to this letter." The court concluded that "Household was the true source of Dickerson's letter....Household is a debt collector pursuant to section 1692a(6), and therefore shares Dickerson's liability for the violations of section 1692e(3) and (10)."

5. Is a written dispute required?

According to **In re Sanchez**¹², the court noted that if a notice of dispute is received within 30 days, either in writing, or orally, the debt collector may not assume the debt is valid. However, a verbal dispute does not trigger the validation requirements.

II. Prohibited and Unfair Practices

A. Part of the FDCPA lists prohibited and unfair practices.

1. Section 1692b refers to acquisition of location information.
2. Section 1692c refers to communication in connection with debt collection.
3. Section 1692d refers to harassment or abuse.
4. Section 1692e refers to false or misleading representations.
5. Section 1692f refers to unfair practices.

B. Case law.

9. Avila v. Rubin, 84 F.3d 222 (7th Cir. 1996)

10. Clomon v. Jackson, 988 F.2d 1314 (2nd Cir 1993)

11. Nielsen v. Dickerson, 307 F.3d 623 (7th Cir. 2002)

12. In re Sanchez, 2001 WL 1456942, ___B.R.__(N.D. Cal. Nov. 9, 2001)

1. The statements in the letter cannot mislead the debtor.

In **Cacace v. Lucas**¹³, the demand letter stated:

“If litigation is started it can cause: - attachment of your real estate or checkbook – payment of the court costs – payment of the above creditor – reasonable attorney’s fees, if permitted by contract or statute.”

The court determined that those statements were misleading because the start of litigation itself cannot cause any of the outcomes stated in the letter. The statements cannot give the “representation or implication of non-payment of any debt will result in... the seizure, garnishment, attachment or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.”

2. One cannot have statements in a letter that causes there to be overshadowing.

In **Terran v. Kaplan**¹⁴, the letter stated:

“Please be advised that this office represents MONTGOMERY WARD CREDIT CORP with whom you have an outstanding balance of \$546.63.

Unless an immediate telephone call is made to J. SCOTT a collection assistant at our office at (620) 258-8433, we may find it necessary to recommend to our client that they proceed with legal action.

Unless you notify us in writing within thirty (30) days after receipt of our initial notice that you dispute the validity of this debt, or any portion thereof, we will assume the debt to be valid. Upon such notification, we will obtain verification of the debt or a copy of the judgment against you and a copy of such verification or judgment will be mailed to you. Upon written request within the (30) day period described above we will provide you with the name and address of the original creditor if different from the current creditor.”

The court found that the use of the word “immediate” in requesting that a debtor contact creditor’s Counsel to resolve the case was not inappropriate nor did it overshadow the 30 day validation notice.

In **Renick v. Dun & Bradstreet Management Services**¹⁵, the top of the demand letter on the front side of the letter stated “Our client has assigned your past due account to this agency for collection. Please send your check or money order...for the full amount indicated above...Use the tear-off portion of this letter...to send your payment, unless you contest the validity of this debt. Act promptly to avoid further collection activity.” The back side of the collection letter stated “Your prompt payment is requested.”

13.Cacace v. Lucas (D. Conn. 1990), 775 F. Supp. 502

14.Terran v. Kaplan, 109 F.3d 1430, (9th Circuit, 1997)

15.Renick v. Dun & Bradstreet Receivable Management Services, Case No. C-99-5283 PJH (Dec. 21, 2000)

Then, less than 30 days later, the collection agency sent a second letter stating: “Use the tear-off portion of this letter and the enclosed return envelope to send your payment today.”

The court determined that the letter was uniformly printed in the same size font. The court also found that no immediate payment was required, but rather, requested. Also, the letter did not threaten legal action if the payment was not made.

3. The letter cannot indicate an action that cannot legally take place.

In **Savage v. Hatcher**¹⁶, the attorney sent plaintiff a collection letter requesting payment for the debt. It stated:

“If a civil suit is filed against you, and you win, you might be entitled to recover court costs and damages. However, if you lose, a judgment in the amount of \$1,017.50 could be taken against you as follows:

Compensatory Damages	\$517.50
Liquidated Damages	\$150.00
Administrative Charges	\$ 25.00
Court Costs	\$ 75.00
Reasonable Attorney Fees	\$250.00
TOTAL JUDGMENT AGAINST YOU....	\$1,017.50”

The court determined that since all of the charges above were permitted by state law, and since the letter indicated a law suit might be filed, the letter did not violate the FDCPA.

4. A debt collector may not communicate with a consumer in connection with the collection of any debt at the consumer’s place of employment if the debt collector knows or has reason to know that the consumer’s employer prohibits the consumer from receiving such communication.

In **Horkey v. J.V.D.B. & Assoc., Inc**¹⁷, “J.V.D.B. is a debt collection agency whose employee, identifying himself as Chris Romero, telephoned Amanda Horkey at her place of employment at least twice.... She ‘told Romero that [she] could not talk to him and asked him to give [her] his telephone number so that [she] could call him back from [her] home to set up a payment schedule.’ ...Shortly thereafter, Romero called back and spoke with Horkey’s coworker, Jimmie Scholes. When Scholes told Romero that Horkey was away from the office and asked if Romero wished to leave a message, Romero told Scholes to ‘tell Amanda to quit being such a [expletive] bitch,’ and Romero then hung up the telephone.... The salient question is whether Horkey’s statement was clear enough that, as a matter of law,

16.Savage v. Hatcher, 2002 WL 484986 (S.D. Ohio March 7, 2002)

17.Horkey v. J.V.D.B. & Associates, Inc., 2003 U.S. App. LEXIS 12512

J.V.D.B. knew or had reason to know that Horkey's employer prohibited her from receiving Romero's call at work. We agree with the district court that it was."

5. Does the FDCPA apply to repossession?

According to **Montgomery v. Huntington Bank**¹⁸, "Helen J. Smith financed the purchase of a 1998 BMW by entering into a personal loan agreement with Huntington Bank. As collateral for the loan, Huntington Bank took a security interest in the car... Huntington Bank sought to take possession of the BMW. Thus, Huntington Bank retained Silver Shadow to repossess the vehicle pursuant to the terms of the loan agreement...His allegations reveal only that Silver Shadow was seeking recovery of the BMW that was posted as collateral for the personal loan given to Smith by Huntington Bank. In fact, Montgomery admits that Silver Shadow was simply acting as a repossession agency when it seized his mother's BMW. As Such, Silver Shadow does not qualify as a debt collector."

III. Attorney Liability and Restrictions

Section 1692k refers to civil liability. It looks to the amount of damages, factors considered by the court, intent, jurisdiction, and advisory opinions of Commission.

1. Amount of damages.

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of –

(1) any actual damage sustained by such person as a result of such failure;

(2)(a) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000; or

(b) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (a), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and (iii) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

2. Factors considered by court

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors –

18. *Montgomery v. Huntington Bank*, _____ F.3d _____ (6th Cir. October 9, 2003)

(1) in any individual action under subsection (a)(2)(A) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

3. Intent

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

4. Jurisdiction

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

5. Advisory opinions of the Commission

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

IV. Damages and Debtor Attorney Fee Awards

A. Sometimes the hardest part to figure out is in which court to file a cause of action.

In **Necci v. Universal Fidelity Corporation**¹⁹, plaintiff purchased a car that was financed by Mazda American Credit. The debt became delinquent. Approximately two years later, plaintiff filed for bankruptcy relief and the debt was discharged. Even though there was a discharge of the debt in bankruptcy, Mazda placed the account for collection with Universal. Universal then sent a letter attempting to collect the discharged debt.

Plaintiff alleged the letter violates the FDCPA by attempting to collect a debt properly scheduled for bankruptcy discharge, and that it is unlawful for a debt collector to use any false, deceptive or misleading representation or means in connection with the collection of any debt; it is unlawful to falsely represent the character, amount, or legal status of any debt; and that it is unlawful to threaten to take any action that cannot legally be taken or that is not intended to be taken.

According to the court, "In Wehrheim, the court reasoned that if the plaintiff were allowed to pursue her FDCPA claim based on a violation of Section 524, the

19. Necci v. Universal Fidelity Corporation, 2003 U.S. Dist. LEXIS 13798

court would have to decide whether the debt at issue had been discharged in bankruptcy... This would require the district court to decide bankruptcy questions better and more properly handled by the bankruptcy court.” The court further stated that “those who have entered bankruptcy proceedings must find all protections and remedies within the confines of bankruptcy law... The court is persuaded that this is the better view primarily by the fact that Section 524 provides for a specific remedy, contempt, for violations of that provision. To permit Plaintiff to circumvent that provision and its remedy by bringing a claim under the FDCPA would directly contravene the bankruptcy code’s remedial scheme.”

- B. One must ask for the proper relief in order for there to be a chance that it will be ordered.

In **Kafele v. Lerner Sampson & Rothfuss, L.P.A.**²⁰, Kafele alleged that he was served with foreclosure proceedings against three properties that he owned. He stated that a summons and complaint filed with each foreclosure action was accompanied by a notice under the FDCPA, but that the notices did not comply with the requirements of the FDCPA. The court decided “in his request for injunctive relief, Kafele asked that the district court void the state court’s foreclosure proceedings. However, this form of relief is not available under the FDPCA. At most, Kafele would be entitled to \$1,000 in damages.”

- C. Class certification is what you want to avoid.

The case **Jones v. Risk Management Alternatives, Inc.**²¹ can be used as a learning tool for what needs to happen in order for there to be class certification. The case involves two collection letters. The first collection letter offered plaintiff a “one time settlement” offer to resolve her account for 75% of the balance then due. It also stated that the offer was for a limited time only. Then, a little more than one month later, defendant sent plaintiff a second, virtually identical, “one time settlement” offer to the plaintiff. The plaintiff alleges “the letters are false, deceptive, or misleading in violation of section 1692e of the FDCPA, because the offers were neither ‘one time’ offers nor offers of limited duration.”

The case then goes through an analysis of standards for class certification. “The plaintiff seeks to represent a class of persons consisting of all persons in Illinois from whom RMA attempted to collect a consumer debt, from December 26, 2001, to December 26, 2002, allegedly owed to Citibank, and as to which the consumer was sent more than one ‘one time settlement’ letter similar to the letters the plaintiff received. One or more members of a class may sue or be sued as representative parties on behalf of the class only if (1) the class is so numerous that joinder of all members is impracticable (numerosity); (2) there are questions of law or fact common to the class (commonality); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (typicality); and (4) the representative parties will fairly and adequately protect the interests of the class (adequacy)... The plaintiff bears the burden of showing that the proposed class meets the requirements for certification.”

20. Kafele v. Lerner Sampson & Rothfuss, L.P.A., 62 Fed. Appx. 584; 2003 U.S. App. LEXIS 6490

21. Jones v. Risk Management Alternatives, Inc., 2003 U.S. Dist. LEXIS 12017

1. Commonality

“Rule 23(a)(2) requires that there exist at least one question of law or fact common to the class.... Where a common question of law refers to standardized conduct by defendants toward members of the putative class, a common nucleus of operative fact is typically presented, and the commonality requirement is usually met.”

“The plaintiff’s proposed class includes individuals to whom the defendant sent similar multiple form collection letters making one time settlement offers.”

2. Typicality

“Rule 23(a)(3) requires that the claims of the named representatives be typical of the claims or defenses of the class.... When evaluating typicality, we focus on whether the named representative’s claims have the same essential characteristics as the claims of the class.”

“All potential class members’ claims will be based upon plaintiff’s contention that the defendant violated section 1692e of the FDCPA by making false and misleading statements in form collection letters.”

3. Adequacy

“Federal Rule of Civil Procedure 23(a)(4) requires that the named plaintiff be able to ‘fairly and adequately protect the interests of the class,’ and entails a two-fold inquiry.... First, the court must be satisfied that the named plaintiff’s counsel is qualified to sufficiently pursue the putative class action.... Second, the members of the advanced class may not have antagonistic or conflicting interests.”

“If RMA’s form collection letters are found to be false, deceptive or misleading in violation of Section 1692e of the FDCPA, each member’s rights were violated.... Furthermore, individuals who would rather pursue an individualized claim because they accepted the defendant’s offers are free to opt out of the class. Accordingly, there are no apparent antagonistic or adverse interests between the plaintiff and proposed class members.”

4. Class Definition

An identifiable class exists if its members can be ascertained by reference to objective criteria and the defendants’ conduct.”

“We hold that the class is not indefinite or overbroad. First, this class can be ascertained objectively. Second, the class can be identified by referring to the defendant’s misconduct, specifically RMA’s practice of sending a given individual multiple settlement offers under similar terms, each claiming to be a ‘one time settlement’ offer. Therefore, the proposed definition is sufficiently specific to comprise individuals exposed to the relevant alleged misconduct.”

“Having found that Plaintiff Jones’s proposed class definition satisfies the prerequisites of Rules 23(a) and 23(b)(3), we grant the plaintiff’s motion for class certification.”

D. Watch your office procedures!

E. Checklist for avoiding “Fair Debt” litigation.

- Read the Act. If you collect consumer accounts, consider yourself subject to the Act.
- In the initial communication be sure to state the purpose of this communication is to collect a debt and any information obtained will be used for that purpose.
- In all subsequent communications identify yourself as a debt collector.
- Have procedures for knowledge, education, and understanding of the Act. (i.e., have an FDCPA manual, training sessions, written tests.)
- Consider all claims against consumers as though they are subject to the Act. For example, while the courts struggle to determine if bad checks and condo fees are subject to the Act, consider them to be included.
- Consider claims purchased from others to be subject to the Act if it was in default at the time of purchase, or was purchased after maturity.
- When communicating with third persons, do not mention any debt.
- If a debtor says for you to stop communicating, do so and read the Act, and then follow through with suit if appropriate.
- Never harass or abuse the debtor.
- Use caution in determining the amount of the debt and do not threaten to take any action that cannot legally be taken, or that is not intended to be taken.
- Have a file on each claim.
- Do not let anyone outside of your office use your stationary.
- Avoid the use of simulated signatures on communications, except where you can show there is a file that has been reviewed, and the placement of the signature was under your control.
- On the validation notice, make certain the wording shows “a judgment” and not “the judgment”.
- On the validation notice, make certain the words “or any portion thereof” appears.
- If the debtor disputes the claim, provide “verification”.
- Because of uncertainty in the law and its interpretation, wait until 31 days after the debtor receives the validation notice before filing suit for money owed.
- If a violation is claimed, see if it occurred more than a year ago.
- Be very careful about “overshadowing”.

Fair Debt Collection Practices

- Do not use “versus” in the caption of a letter, except when litigation is pending, while the courts interpret this.
- Remember answering machines are often listened to by others. Do not mention the debt in a message.
- If a violation is claimed, try to resolve it promptly.
- Watch out for bankrupt accounts.
- Do not communicate with the debtor if he/she is represented by counsel, if you know this fact.
- Do not depend upon FTC “staff interpretations”.
- Notify the debtor in the manner required by the Act that you will deposit the post-dated check.

**Exhibit A
PowerPoint Presentation**

**Collecting Debts and
Judgments in Michigan
Fair Debt Collection Practices**
Lynn M. Olivier
OLIVIER and OLIVIER, P.C.
December 5, 2003

NOTICES TO DEBTORS

**Fair Debt Collection Practices
Act (FDCPA)**

·Section 1692e
·Section 1692g

Case law:

Who is a debt collector?

·Garrett v. Deebes

Who determines whether or not the debtor is bankrupt?

·Hyman v. Tate

What amount should the demand letter state?

- Miller v. McCalla
- McDowall v. Leschack & Grodensky, P.C.
- Taylor v. Cavalry Investments, LLC

·Valdez v. Hunt and
Henriques
·Veach v. Sheeks
·Schletz v. Academy
Collection Service, Inc.

What is meaningful
involvement?

·Avila v. Rubin
·Clomon v. Jackson
·Neilsen v. Dickerson

Is a written dispute required?

·In re Sanchez

**PROHIBITED AND UNFAIR
PRACTICES**

**Fair Debt Collection Practices
Act**
·Section 1692b
Refers to acquisition of location
information.
·Section 1692c
Refers to communication in
connection with debt collection.

·Section 1692d
Refers to harassment or abuse.
·Section 1692e
Refers to false or misleading
representations.
·Section 1692f
Refers to unfair practices.

Case law.

The statements in the letter cannot mislead the debtor.

·Cacace v. Lucas

One cannot have statements in a letter that causes there to be overshadowing.

·Terran v. Kaplan
·Renick v. Dun & Bradstreet
Management Services

The letter cannot indicate an action that cannot legally take place.

·Savage v. Hatcher

A debt collector may not communicate with a consumer in connection with the collection of any debt at the consumer's place of employment if the debt collector knows or has reason to know that consumer's employer prohibits the consumer from receiving such communication.

·Horkey v. J.V.D.B. & Assoc., Inc.

Does the FDCPA apply to repossession?

·Montgomery v. Huntington Bank

**ATTORNEY LIABILITY
AND RESTRICTIONS**

Fair Debt Collection Practices Act

- Section 1692k
- Amount of damages.
- Factors considered by court.
- Intent.
- Jurisdiction.
- Advisory opinions of the Commission.

DAMAGES AND DEBTOR ATTORNEY FEE AWARDS

Sometimes the hardest part to figure out is in which court to file a cause of action.

- Necci v. Universal Fidelity Corporation

One must ask for the proper relief in order for there to be a chance that it will be ordered.

·Kafele v. Lerner Sampson & Rothfull, L.P.A.

Class certification is what you want to avoid.

·Jones v. Rick Management Alternatives, Inc.
Commonality.
Typicality.
Adequacy.
Class Definition.

Watch your office procedures!

**Checklist for avoiding
"Fair Debt"
litigation.**
