Communicating with a Debtor's Counsel: Don't Let Your Guard Down
3 Fact Patterns - The Circuit Splits and Best Practices

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Usually one of two things occurs when a debtor retains an attorney. The debtcollector either acts with extra caution or acts more casually than if dealing with the debtor directly.The debt collector may be lulled into a false sense of security and fail to strictly comply with the FDCPA.

Best Practice Tip: *Research the debtor's attorney. Most law firms have their own website or other web presence. A simple internet search can reveal significant information about a debtor's attorney.*

When dealing with an attorney it is strongly recommended that you follow the normal procedures, as if dealing with the debtor directly including following all the formalities of the FDCPA. Provide the MINI MIRANDA statement even if it seems awkward. Avoid some of the common traps discussed below.

A debt collector should be extra cautious if the debtor is represented by a self-proclaimed consumer protection attorney. A communication from such an attorney is often a trap. It is not recommended that non-legal staff, not specifically trained, engage this type of attorney. Limit emails and telephone calls. Do not engage in long email exchanges. These attorneys like email as they have limited staff. Emails permit them to runup a bill with minimal effort. It is recommended that you keep emails short. Professional letters (snail mail) and faxes are a safer course of action with the more aggressive plaintiff firms.

The best way to interact with these attorneys is use the *show them* approach. If the case law supports your position, telling the attorney about the case over the phone will not achieve the desired result. Write a short memo, citing the case(s) that support your position. If the case law is very strong consider including a copy of the decision as well. Creating a paper trail helps establish a record for potential sanctions at a later date if the attorney sues the debt collector despite clear case law contrary to his position.

Has the debtor retained a Bankruptcy Attorney?

Sometimes it is difficult to determine if the attorney is representing the debtor because the attorney or law firm does not return calls. (1) When contacting a bankruptcy attorney always ask for confirmation that the attorney has been retained. Follow up with a written letter confirming the conversation. (2) Inquire if the attorney has been paid a full retainer or only a portion. Usually, until the retainer is paid in full, the bankruptcy attorney is in a holding pattern. (3) Followup with questionsaboutwhether the debtor has taken the debt counseling exam; and (4) whetherthe debtor has reviewed and signed bankruptcy papers. These questions will help you determine whether and how close the debtor (not always the attorney) is to filing a bankruptcy petition or if the representation is merely a stalling tactic.Make sure to continue to follow the strictures of the FDCPA in all communications.

If the attorney fails to respond, it is suggested that you write 3 timed letters to the debtor's attorney. The firstletter inquires whether the attorney still represents the debtor and provides the attorney a minimum 14 days to respond.

Send a second letter after the expiration of the time period provided. The second letter should refer to the first letter (include the date of the first letter andthe date by which the first letter requested a response) and provide an additional 10 days for the attorney to respond. In the second letter advise the attorney that their failure to timely respond will be interpreted as proof that the attorney no longer represents the debtor. Send the second letter in two or three media(A) mail/fax/e-mail and (B) certified mail.

After the second time period expires, send a third letter. The third letter should be addressed to the debtor and carbon copy (cc) to the attorney. Advise the debtor that the attorney is not responding to your letters and inquire whether the debtor has retained new counsel. Include the dates of the prior letters and their respective deadlines to which the attorney failed to respond.You may choose to include the proposed third letter with the second letter. If attorney neglect is occurring, the attorneymay be faced with a potential ethics violation. The attorney may respond when reviewing the proposed third letter. (See attached sample letters.)

If at any stage the attorney responds by telephone or the debt collector is able to reach the attorney by telephone and the attorney confirms the lack of representation, follow up the conversation with a letter confirming the conversation. This letter should include the date the telephone conversation occurred, who participated in the phone call and a confirmation that the attorney informed the debt collector that the attorney no longer represents the debtor.

What is the Scope of the Debtor's Attorney's Representation?

Every debt collectorknows (or should know)that once a debtor is represented by an attorney, he or shemay not communicate with the debtor. However, what happens when a lawsuit is filed andthe debtor files a prose answer? What happens when the local court rules require you to contact the party who filed the appearance?

In Fisher v. Bernhardt &Strawser, PA,2013 U.S. Dist. LEXIS 108819 (W.D.N.C. Aug. 2, 2013)the firm guessed wrong and lost on its motion to dismiss the action pursuant to 15 U.S.C. § 1692c(a)(2). When in doubt it is best to ask an experienced attorney directly in this highly technical area of the law through CCEF, NARCA, ACA or a state group. Avoid listservs, as incomplete or inaccurate answers are provided for many reasons, including that the party answering the question misinterprets the question due to lack of information.

In Fisherthe law firm initiated a statecourt action against the debtor. The consumer debtor appeared pro se. Subsequently, the firm received a *written notice(paper trail)* thatthe consumer debtor was representedby an attorney regarding claims against the law firmfor alleged violations of the FDCPAand/or state law.The letter demanded that the law firm"not contact [her] client for any reason" and to "direct all future contact and correspondence to [counsel for Plaintiff's] office" (emphasis added). Within two months of the date of the debtor's attorney's letter, the law firm fell for the trap and sent the debtor a letter regarding overdue discovery responses in the statecourt proceeding.The law firm copied the debtor's attorney on the discovery letter.*Copying the debtor's attorney on direct communications with the debtor is not the solution! It is a violation.*

Thelaw firmunsuccessfullyargued that state law required the communication directly with the debtor since the debtor's attorney had not appeared in the state court action. General Statute § 1A-1, Rule 37(a)(2), required the debt collector to inform the debtor directly of its intention to confer with her before filing a motion to compel discovery. N.C. Gen. Stat. § 1A-1, Rule 37(a)(2). The Court rejected the argument. The court explained that that "although the FDCPA does not displace or annul state law, it does prevent the enforcement of state laws that are inconsistent with any provision of the FDCPA to the extent of the inconsistency," citing McDermott v. Marcus, Errico, Emmer & Brooks, P.C., 911 F. Supp. 2d 1 (D. Mass. 2012).

The Court stated that "it is more accurate to state that absent 'express permission of a court of competent jurisdiction,' as allowed under section 1692c, no state law may be put forth as a defense if 'inconsistent with any provision' of the FDCPA, pursuant to section 1692n, because

it would be rendered unenforceable. 15 U.S.C. §§ 1692c & 1692n.*State law is not the equivalent of a court order.*

The law firm's second argument was that the debtor's attorney's representation was limited to the FDCPA matter. The law firm also argued it did not have constructive knowledge of the debtor's attorney representation in the state court action or that any resulting harm was *de minimis*.

The Court rejected this argument. The Judge stated:

> The FDCPA forbids communication with a debtor "in connection with the collection ofany debt" if the debtor is represented by counsel "with respect to such debt." 15 U.S.C. 1692c.…Here, the Plaintiff has done so in a sufficient manner with respect to the third prima facie element—the attorney asked Defendant not to contact her client for "any" reason and alluded to any and "all collection activities" in her letter of notification. (Doc. 6, Ex. 5.) Surely, a reference to "all collection activities" can, at the very least, provide notice of representation "in connection with any debt" to support a reasonable inference that Defendant knew, or should have known, that Plaintiff was represented by counsel in regard to the underlying debt. (emphasis added)

The firm would have likely won on the motion to dismiss if the firm had requested that the debtor's attorney clarify the scope of the representation following the three letter approach outlined above. Had the debtor's attorney failed to respond to repeated requests regarding the scope of the attorney's representation, the law firm's arguments that the debtor's attorney did not represent the debtor in the state court action would have been stronger.

Best Practice Tip:*Assume representation is broad until the scope of the representation is clarified in writing. If the letter is not clear, request a written clarification letter from the debtor's attorney. If the attorney refuses to clarify the scope of clarification and if there is a conflict, obtain a court order to protect yourself.*

If a Debtor'sAttorney Calls Me, Do I Need to Provide the Mini Miranda Statement?

This scenario has happened to every collection attorney and most debt collectors. You receive a call from an attorney who is friendly and wants to discuss the matter. Usually the attorney practices another area of the law. The attorney claims to be"helping out a friend" and wants to find a solution to"get you paid" while helping the friend. The attorney will usually try to work out a settlement for a reduced amount or a payment plan favorable to the "friend."
A debt collector may assume that the FDCPA does not apply when dealing directly with the debtor's attorney.The answer is not clear cut. Several courts in the 2d, 3d, 4th, 7th and 9th Circuits have addressed this issue.These courts have produced different answers.

Kropelnicki v. Siegel, 290 F.3d 118 (2d Cir. 2002).The debt collector attorney allegedly made a representation to the debtor's attorney that she would not move to default the debtor without giving notice to the debtor's attorney who did not file a notice of appearance or provide a written confirmation that he represented the debtor. The debt collector attorney moved for default judgment sending all motion papers directly to the debtor. The court found: "Although not dispositive to our holding here, since we dismiss the appeal in regard to this issue, we would have grave reservations about concluding that this sort of claim is actionable under the FDCPA. A review of the FDCPA's purpose, as explained both in the statute and in the legislative history, and this Court's treatment of the FDCPA in other cases leads us to believe that alleged misrepresentations to attorneys for putative debtors cannot constitute violations of the FDCPA…. Where an attorney is interposed as an intermediary between a debt collector and a consumer, we assume the attorney, rather than the FDCPA, will protect the consumer from a debt collector's fraudulent or harassing behavior. However, this is not an issue on which we need to rule today."*See alsoHerrera v. Client Servs.*,2012 U.S. Dist. LEXIS 112637 (D.N.J. Aug. 9, 2012), where the court held that a different standard applied to communication with an attorney.

Diesi v. Shapiro,330 F. Supp. 2d 1002(C.D. Ill. 2004). Debt collection firm started a foreclosure action in which the debtor was represented by an attorney. The debt was transferred to another servicer who provided the debtor's attorney a faxed letter to reinstate the loan and mortgage. Debtor's attorney claimed the reinstatement letter contained false and misleading statements regarding attorney's fees for the foreclosure and other fees. The debtor's attorney sued and the debt collector countered that the debtor's attorney did not have standing to sue. The court found: "Communications between a debt collector and a consumer's attorney are not actionable under the FDCPA….Accordingly, the Court holds that Diesi has no cause of action

under the FDCPA against WMB for a communication directed by WMB solely to Diesi's attorney."

Tromba v. M.R.S. Assocs., Inc., 323 F. Supp. 2d 424 (E.D.N.Y. 2004). Debt collector sent a fax cover sheet with additional documents to debtor's attorney. The fax cover sheet was from a "Senior Legal Associate" who was not admitted to practice law in any state. Debtor's attorney claimed that since the Senior Legal Associate was not an attorney at law, the title was misleading and confusing. The court held: "Plaintiff has no cause of action under the FDCPA where a communication was solely directed to her attorney and no threat was made regarding contact with the debtor herself."

Sayyed v. Wolpoff& Abramson, 485 F.3d 226 (4th Cir. 2007).Debt collector sent interrogatories to debtor's attorney. Debtor's attorney claimed that the interrogatories failed to provide the Mini Miranda and that they were false and misleading because they did not provide an explanation of the consequences of failing to respond to the interrogatories. The court found: "the statute defines 'communication' broadly as 'the conveying of information regarding a debt directly or indirectly to any person through any medium.' 15 U.S.C. § 1692a(2). A communication to debtor's counsel, regarding a debt collection lawsuit in which counsel is representing the debtor, plainly qualifies as an indirect communication to the debtor.These courts have produced different answers." The Court remanded for further proceedings.

Guerrero v. RJM Acquisitions, LLC,499 F.3d 926 (9th Cir. 2007). Debt collector sent two simultaneous letters to the debtor at his residence and work addresses. Debtor retained an attorney who immediately sent a letter to the debt collector threatening a lawsuit for alleged FDCPA violations against the debt collector and requested verification of the debt. Debt collector ceased all collection activities but sent a response letter to debtor's attorney addressing the allegations made by the debtor's attorney. The debtor's attorney claimed, among other things, that the response letter from the debt collector was an attempt to collect the debt without verification in violation of the FDCPA. The Court held: "communications directed solely to a debtor's attorney are not actionable under the Act. Therefore, we hold that the responsive letter to counsel, and not to his client – 'the consumer' – was not a prohibited collection effort and did not violate §§ 1692g(b) or 1692e….Specifically, it appears that Congress viewed attorneys as intermediaries able to bear the brunt of overreaching debt collection practices from which debtors and their loved ones should be protected. Section 1692c, for instance, covers '[c]ommunications in connection with debt collection.' In regulating the ability of debt collectors

to commence such communications, the Act is plainly concerned with harassment, deception, and other abuse. Accordingly, Congress sought to protect not just debtors themselves from illegal communications, but also others who would be vulnerable to the more sinister practices employed in the debt collection industry.Section 1692c(d), as explained above, thus defines 'consumer' broadly to include a range of the debtor's relatives and fiduciaries. The conspicuous absence of the debtor's attorney from that otherwise extensive list is telling. It suggests that in approaching the debt collection problem, Congress did not view attorneys as susceptible to the abuses that spurred the need for the legislation to begin with, and that Congress built that differentiation into the statute itself. SeeZaborac v. Phillips & Cohen Assocs., Ltd., 330 F. Supp. 2d 962, 967 (N.D. Ill. 2004)....Section 1692e prohibits debt collectors from 'us[ing] any false, deceptive, or misleading representation or means in connection with the collection of any debt.' We do not disagree with the dissent that such prohibited representations or means may take the form of a communication. But we hold that communications directed only to a debtor's attorney, and unaccompanied by any threat to contact the debtor, are not actionable under the Act."

Fratz v. Goldman &Warshaw, P.C., 2012 U.S. Dist. LEXIS 148744 (E.D.Pa. Oct. 16, 2012). Debt collection law firm sued debtor for an overdue credit card account. Debt collector provided as evidence the 2002 signed credit card application, the statements and a 2005 Cardmember Agreement. Debtor's attorney claimed that using a 2005 Cardmember Agreement for a 2002 account was false and deceptive. Debt collector argued that the 2005 Cardmember Agreement was provided to the debtor's attorney and not to the debtor and therefore was not communicated to the debtor. The Court held: "We agree with the rationale expressed in both Allen and Panto that the term "communication" should be applied broadly. Thus, the expansive definition of "communication" is applicable to § 1692e and we conclude that communications directed at attorneys are actionable under § 1692e. … However, where communications are sent to attorneys, a "competent attorney" standard is applied when determining if the communication at issue was false, deceptive or misleading. Courts applying this standard have reasoned that the traditional "unsophisticated consumer" test is inappropriate when addressing communications sent to an attorney because "[m]ost lawyers who represent consumers in debt collection cases are familiar with debt collection law and therefore unlikely to be deceived." Evory, 505 F.3d at 774. Nothing in Allen calls this standard into question. In fact, Allen discussed the lower court's application of the "competent attorney" standard and expressed no disagreement with it. Accordingly, we also find that communications directed at a debtor's attorney will be actionable

under § 1692e only if those communications would deceive or mislead a "competent attorney."" The court held for the debt collector under the "competent attorney" standard.)

Another Third Circuit case citingAllen is Ogbin v. Fein, 414 Fed. Appx. 456, 458 (3d Cir. N.J. 2011),where the court left to the District Court to determine if the amounts the debt collector sought in the Payoff Letters are not permitted by the agreement authorizing the Ogbins' debt or by state law, such that the Ogbins have stated viable claims under § 1692f(1) of the FDCPA.In summary, the third circuit utilizes a more liberal standard that favors the consumer.

Other circuits have not addressed the issue directly. The scope of FDCPA protection as applied to debtors represented by attorneys remains an open question in these circuits. Even in circuits where the issue has been addressed, be aware that the law can change based on arguments raised by either side. In any circuit court an argument that a different circuit's interpretation is "better" may prevail despite a prior case on point.

Best Practice Tip:*Consult an attorney in your state to determine whether this issue has been addressed in your state. Use the most conservative approach when dealing with any attorney to better protect yourself and the company.*

The courts that have been confronted with this issue have been split in their reasoning and final decisions. Courts generally agree that a communication with a debtor's attorney is not the same as a direct communication with the consumer.See Guerrero, 499 F.3d at 939 (holding, "when the debt collector ceases contact with the debtor, and instead communicates exclusively with an attorney hired to represent the debtor in the matter, the Act's strictures no longer apply to those communications."); seealsoFratz, 2012 U.S. Dist. LEXIS 148744 at *9-10 (holding, "communications directed at a debtor's attorney will be actionable under § 1692e only if those communications would deceive or mislead a 'competent attorney.'"); seealsoSayyed, 485 F.3d at 233 *(*holding "communications with a debtor's attorney with regard to the debt are 'communications' as defined and regulated by the FDCPA – and that such communications must in fact be directed to the attorney under the terms of the statute."). This agreement is not universal though and some courts have held that pursuant to the FDCPA, a communication with a debtor's attorney is an indirect communication with the debtor.SeeAllen ex Rel. Martin v. LaSalle Bank, N.A.,629 F.3d 364, 368 (3d Cir. 2011) (holding, "[a] communication to a consumer's attorney is undoubtedly an indirect communication to the consumer.") As an indirect communication, the communication is subject to all the protections and requirements of the FDCPA.

Best Practice Tip:*Consult with an attorney or attorneys in the jurisdictions in which you collect debts regarding which test courts currently apply. If there is no binding appellate authority, the test used by courts may vary from state to state, county to county, or even judge to judge. Regardless, you should always take a conservative approach when dealing with an attorney.Treat every communication with the debtor's attorney as a direct communication with the consumer.*

The FDCPA is a remedial statute meant to protect consumer debtors.Brown v. Card Serv. Ctr., 464 F.3d 450, 453 (3d Cir. 2006).Somecourts have found that Congress believed that a consumer debtor's attorney serves the same purpose as the FDCPA.SeeGuerrero, 499 F.3d at 935. These*"common sense"*courts therefore reason that when a consumer retains an attorney, the attorney will protect the consumer debtor and the FDCPA's purpose is fulfilled. The statute does not apply.Seee.g., Guerrero, 499 F.3d 926; seealsoKropelnicki, 290 F.3d 118, 129-31. The debtor's attorney has a duty to be competent and to protect the rights of the debtor. "[W]hen the debt collector ceases contact with the debtor, and instead communicates exclusively with an attorney hired to represent the debtor in the matter, the Act's strictures no longer apply to those communications."Id.

Best Practice Tip:*In communicating with the debtor's attorney do not use any methods that are clearly prohibited by the FDCPA. A judge may find bad faith on the part of the collector and may find a reason to punish a clearly "bad" debt collector. False or misleading representations made to the debtor's attorney the falsity of which the debtor's attorney could not know will almost universally be considered a violation of the FDCPA.*

Other courts base their holdings on a broad *interpretation of the term "communication*" in the statute. The statute provides that all communications with a debtor are subject to the FDCPA.SeeAllen ex Rel. Martin, 629 F.3d 364, 368; seealsoEvory v. RJM Acquisitions Funding L.L.C., 505 F.3d 769, 773 (7th Cir. 2007); seealsoSayyed, 485 F.3d at 232-233. The FDCPA defines a communication as a *direct or indirect communication*. A communication with the debtor's attorney is an indirect communication with the consumer.Id.Some of these courts treat a debtor's attorney as a mere mouthpiece that passes messages between the debtor and debt collector.SeeSayyed, 485 F.3d at 232-233. The SayyedCourt went on to state, "[w]hile the district court stated, 'I cannot see how commercial litigation could proceed' if the statements at issue in this case were subject to the FDCPA, the FDCPA does not apply to commercial litigation: it covers debt collection where 'debt' is defined as an obligation of a 'consumer,'

defined as a ‘natural person,’ for ‘personal, family, or household purposes.’ 15 U.S.C. § 1692a(3), (5). And, in any event, ‘[i]n the ordinary case, absent any indication that doing so would frustrate Congress's clear intention or yield patent absurdity, our obligation is to apply the statute as Congress wrote it.’Hubbard v. United States, 514 U.S. 695, 703, 115 S. Ct. 1754, 131 L. Ed. 2d 779 (1995) (internal quotation marks omitted). Operating from ’the understanding that Congress says in a statute what it means and means in a statute what it says there,’Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 6, 120 S. Ct. 1942, 147 L. Ed. 2d 1 (2000)….’The decisionsdisregard a debtor’s attorney’sindependent duty to protect his or her client, the debtor.The communications made to a debtor’s attorney ‘must be directed to the attorney under the terms of the statute.’”These courts can hold a debt collector liable for failing to comply with the most technical requirements of the FDCPA as if the debt collector were contacting the debtor directly.The requirements may extend as far as any statements made throughout the entire litigation process.These courts may also apply the “least sophisticated consumer” standard to alleged violations as opposed to a lower “competent attorney” standard when evaluating the alleged violations.This line of cases seems to yield patently absurd results and may need to be revisited.

Best Practice Tip:*Always strive to take the most conservative approach when dealing with a debtor’s attorney. Comply with all parts of your training and all directions in your manual and/or script. Comply with even the technical requirements of the FDCPA especially when dealing with a debtor’s attorney in a jurisdiction where the standard is ambiguous.*

Some courts apply a middle ground approach by applying the “competent attorney” standard to a debt collector’s communication with the debtor’s attorney.See, e.g.,Fratz,2012 U.S. Dist. LEXIS 148744 at *9-10. When a debt collector deals directly with a consumer, courts apply the “least sophisticated consumer” standard to analyze alleged violations of the FDCPA.See, e.g.,Graziano v. Harrison, 950 F.2d 107, 111 (3d Cir. 1991).Under the competent attorney standard, courts analyze whether a competent attorney with the information provided by the debt collector could properly protect the consumer from deceptive and harassing debt collection activities.See, e.g., Fratz, 2012 U.S. Dist. LEXIS 148744 at *11 (citing Evory, 505 F.3d at 775 (“A false claim of fact in a dunning letter may be as difficult for a lawyer to see through as a consumer. Suppose the letter misrepresents the unpaid balance of the consumer's debt. The lawyer might be unable to discover the falsity of the representation without an investigation that he might be unable, depending on his client's resources, to undertake. Such a misrepresentation

would be actionable whether made to the consumer directly, or indirectly through his lawyer.")). This standard sets a higher bar for a debtor to establish a violation of the FDCPA. As long as the information provided by the debt collector is objectively true the court should dismiss an alleged violation as a matter of law.Technical violations of the FDCPA will likely not be deemed sufficient to mislead the "competent attorney."Marshall v. Portfolio Recovery Assocs., 646 F. Supp. 2d 770 (E.D. Pa. 2009).

Best Practice Tip: *Never make a material misrepresentation to a debtor's attorney about the debt or associated fees. The debtor's attorney or the debtor can always argue that they could not know whether or not the amount of the debt or fees is proper. Any misstatements could subject you to FDCPA liability based on any standard utilized by the court.*

A cease and desist request under most circumstances may apply to communications with a debtor's attorney. The debtor's attorney has no obligation to negotiate or even speak to the debt collector. A debt collector has been held liable for harassment under the FDCPA for making numerouscalls to a debtor's attorney.

If the debtor requests verification of the debt, and then provides an attorney to contact,the debtor collector must first verify the debt with the debtor's attorney prior to attempting to collect the debt.SeePanto v. Prof'l Bureau of Collections, 2011 U.S. Dist. LEXIS 23328 (D.N.J. Mar. 7, 2011).

> After receiving the initial debt collection letter, Plaintiff's attorney sent a letter to Defendant disputing the alleged debt...Plaintiff contends that Defendant thereafter violated *§ 1692g(b)* when a representative contacted Plaintiff's attorney via telephone in an attempt to collect the alleged debt prior to Defendant obtaining the requested verifications of the alleged debt... Defendant argues that *§ 1692g(b)* solely prohibits communication with the consumer, not the consumer's counsel... In contrast, Plaintiff asserts that, for purposes of *§ 1692g(b)*, a consumer and his attorney are "one and the same," and, therefore, a communication by a debt collector to a consumer's attorney is actionable under the FDCPA... In light of *Allen*, the Court concludes that a communication by the debt collector to the consumer's attorney is actionable under the FDCPA, and the Court further concludes that Plaintiff has pled sufficient facts to state a claim for relief under *§ 1692g(b)*.

Best Practice Tip:*Do not put the debtor's attorney on an auto- dialer or call the debtor'sattorney frequently (more than 1x a week) demanding payment. Frequent calls to the debtor's attorney may subject the debt collector to liability for harassment under the FDCPA.*

In conclusion, there is a split among the circuits regarding the debt collector's potential FDCPA liability when dealing with a debtor's attorney and not the debtor. To be safe, a debt

collector should treat every communication with a debtor's attorney as if the debt collector were speaking directly to the debtor. The debt collector should comply with all sections of the statute even though debtors' attorneys are specifically retained by debtors to protect the debtors' interests.Some courts hold debtors' attorneys to a higher standard of competency and allow debt collectors some leeway in communicating with the debtors' attorneys. Other courts continue to provide the same protection to debtors even when communicating with the debtors' attorneys. These courts seek to provide every benefit of the FDCPA to every debtor under all circumstances. While debt collectors should always strive to comply with the FDCPA, debt collectors should be more cautious in dealing with attorneys. Debt collectors should research any debtor's attorney and proceed with the utmost caution to avoid potential FDCPA liability.

DISCLAIMER

This article is not intended to be a substitute for consultation with an attorney. No attempt has been made here to review, include, or comment upon all the relevant laws and statutes. Most of the general statements presented are representative of the laws in the majority of the states, but some states have passed laws that modify or change the legal consequences of the general statement. Exceptions exist to every general statement. Therefore, a general statement should not be used to fit a particular set of circumstances until after a thorough examination of the facts and laws plus a review of the decisions of the courts of the appropriate state. Laws and statutes are continually amended, revised, and repealed and court decisions may be reversed or rendered obsolete by more recent decisions or decisions of higher courts. It is recommended that a review of all the state laws and federal laws as well as the court decisions of the federal courts and the state courts should be done before any decision is made with regard to any legal problem involved with the credit or collection effort and consultation with an attorney is always recommended before proceeding.