

# Business Credit News

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## JULY 2019

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### “Trends In Third Party Collections”

*By: David Balovich*

Many of us utilize the services of third party collectors, collection agencies or collection attorneys, to assist in the collection of debts that reach a certain age or when a customer no longer responds to our efforts to collect what is legally owed.

Mike Stokowski writes to ask if there are any laws pertaining to collection agencies that are not defined by the Fair Debt Collection Practices Act, FDCPA. Now it is important to note that even though the FDCPA was originally passed as a consumer law many states have adopted parts if not all into a broad category that includes all debt consumer and commercial.

The last twenty years have proved that the debtor is not only becoming more educated but is also more aggressive in dealing with the mistakes being made by creditor's debt collectors in the collection of debt.

Although with the inclusion of commercial debt very little has changed in the statutes concerning debt collection. There has however been some very enlightening decisions rendered through court proceedings, commonly referred to as case law.

In *Stojanovski v. Strobl & Manoogian*, the court ruled that an attorney may be subject to the same requirements of debt collection agencies even though collections are a small fraction of the attorney's practice. This also includes attempting to recover on a bounced check given to a client to pay for goods and services.

The following statutory language, called the "Miranda warning" by debt collectors, must be included in all communications with the debtor: *We are attempting to collect a debt and any information obtained will be used for that purpose.* *Dutton v. Wolpoff & Abramson.*

Such language is even required in a post-judgment communication made several years after the judgment was entered. *Frey v. Gangwish* and *Carroll v. Wolpoff & Abramson.*

Once the debt collector knows that the debtor is being represented by an attorney, all further communication must be through the attorney. *Swanson v. Southern Oregon Credit Services, Inc.*

If a debtor notifies a debt collector in writing that he/she refuses to pay a debt or wishes the debt collector to cease further communication with him/her, the debt collector must comply.

It has been held that informing the debtor that immediate payment will avoid any further contact is illegal representation as this leads the debtor to believe that immediate payment is the only way to avoid further contact with the debt collector. *Rabideau v. Management Adjustment Bureau*.

Referring in the collection letter to the remedy of enforcing a judgment may be a violation of law. In *Dutton v. Wolhar*, the court held that the collection letter was illegal because it stated *once judgment is obtained*. The court said the letter falsely represented that a judgment was inevitable.

In a similar situation, a statement in a letter offering to release all liens was found to be deceptive because it implied the existence of liens upon the debtor's property when none existed. *Dutton v. Wolpoff & Abramson*.

Misrepresentations also apply to attorneys.

A lawyer or law firm may not lend its letterhead or a reproduction of a lawyer's signature to a client for the client to use when sending out demand letters to collect their own debts. *Taylor v. Perrin, Landry, DeLaunay & Durand*.

In the case of *Avila v. Rubin*, and *Clomon v. Jackson*, the courts ruled that mass produced demand letters with the image of an attorney's signature is illegal when no attorney has actually looked at the account records prior to the letter being sent.

It is not only important to verify that the third party collector you are engaging to assist in collecting your debt is qualified and authorized to do so but one also needs to review the methods and documents they utilize to collect your debt. These are just a sampling of cases that reflect the debtor's rights in dealing with third party collectors. Try to collect from a debtor in the wrong manner and you may be the one who ends up paying.

These and other cases can be reviewed in the Lectric Law Library found on the Intranet at <https://www.lectlaw.com>. As always, any specific questions pertaining to the legal approach that may/should be utilized should be addressed to learned legal counsel.

I wish you well.

\*\*\*\*\* **JULY 2019** \*\*\*\*\*

Day	Date	Group	Location	Time
Tues	2	Austin Construction	La Palapa Restaurant, 6640 E Hwy 290 Austin TX	11:30
Tues	8	Corpus/Victoria/La/RI	Johnny's Italian American, Corpus Christi TX/Telconference	2:30
Thurs	11	SW Food Credit Group	Las Palapas, 4802 Walzem Rd, San Antonio TX	11:00
Tues	16	Austin Construction	Las Palapa Restaurant, 6640 E Hwy 290 Austin TX	11:30
Wed	18	Fuel & Lube/Heavy Eq.	Phone Conference Meeting 1-800-791-2345	2:30
Wed	18	HVAC Credit Group	Mechanical Rep's Office , San Antonio TX	11:30
Fri	19	SW Electrical Group	The Onion Creek Country Club, Austin TX	11:30
Tues	23	SA Construction	Las Palapas, 4802 Walzem Rd, San Antonio TX	11:30

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