

Fair Debt Collection Practices Act

By Rex C. Anderson



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It has been more than 33 years since the original enactment of the Fair Debt Collection Practices Act (“FDCPA”) in 1977 and arguably, it is still one of the finest federal consumer protection laws ever conceived. The FDCPA protects you, me, or anyone else who owes a “consumer” debt from harmful, abusive, and deceptive treatment by debt collectors. Before the enactment of this law, Congress found that debt collection harassment and abuses were “abundant.” In response, the FDCPA was fashioned by consumer advocates despite a voracious national opposition by the collection and banking industry. President Jimmy Carter then signed the law into effect on March 20, 1978. The Act was subsequently amended in 1986, 1996, and 2006.

Because the federal government did not have the resources to monitor and regulate the debt collection industry, it created a private right of action allowing enforcement by consumers

and their lawyers. The Act provided for the payment of attorney fees to compensate lawyers who stepped in to make sure that debt collectors complied with federal law.

The FDCPA is the debt collector’s rulebook on how it should conduct itself. It applies to all types of communications with debtors, whether written, verbal, in person, by telephone, or any other medium.

A lawsuit under the FDCPA requires four essential elements:

- 1) A consumer—“any natural person obligated or allegedly obligated to pay any debt;”
- 2) A consumer debt—“any obligation...incurred primarily for personal, family or household purposes;”
- 3) A debt collector—“any person using interstate commerce who regularly collects debts;” and
- 4) A violation of the FDCPA.

Simply put, the FDCPA protects consumers and those persons caught in the crossfire of the collection process who do not owe the debt but are getting harassed anyway. These include family, friends, and neighbors. The FDCPA applies to third party debt collectors who regularly collect debts owed to another. The FDCPA does not apply to creditors collecting their own debts unless they hold themselves out to be debt collectors. Lawyers and law firms handling consumer collections are regulated by the Act.

As a result of this strict liability statutory scheme, the collection industry is now heavily regulated. It is costly for the collector to violate the FDCPA. The civil liability for violating the FDCPA includes: 1) actual damages, 2) statutory damages of up to \$1000.00, 3) class action damages of \$500,000.00 or one percent of net worth, and 4) reasonable attorney fees. There is no such thing as a “technical” violation under the FDCPA. The standard is whether or not the collector is compliant with the FDCPA. If the collector is found to be non-compliant, the judge or jury may award actual damages arising from the collector’s conduct, including emotional distress. If the consumer is unable to prove actual damages, she may still be awarded statutory damages and her attorney fees under the lodestar method. (Lodestar Rule: “In determining the amount of statutorily authorized attorneys’ fees, ‘lodestar’ is equal to number of hours reasonably expended multiplied by

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prevailing hourly rate in community for similar work and is then adjusted to reflect other factors such as contingent nature of suit and quality of representation. *Cooper Liquor, Inc. v Adolph Coors Co.*, C.A.Tex. 684 F.2d 1087, 1092. Black's Law Dictionary 6th Edition.) Statutory damages are essentially a punishment of the debt collector who gets "caught." As with other consumer laws, the attorney fees are often the real hammer which deters collectors from violating the FDCPA.

Debt collectors are prohibited from "harassing, oppressing or abusing" a consumer while attempting to collect a debt. This includes threatening violence, using profanity, and causing the phone to ring repeatedly.

Debt collectors may not use any "false, deceptive, or misleading representations" in the collection of a debt. For instance, the FDCPA prohibits debt collectors from threatening legal action that the debt collector or attorney does not intend to take. A collector's threat to sue on a time-barred debt is also a violation.

The collector may not misrepresent that he is an attorney, a government official, or a credit bureau agency or that the consumer is guilty of crime for owing the debt. Failure to tell the credit reporting agencies that a debt is disputed also violates the FDCPA.

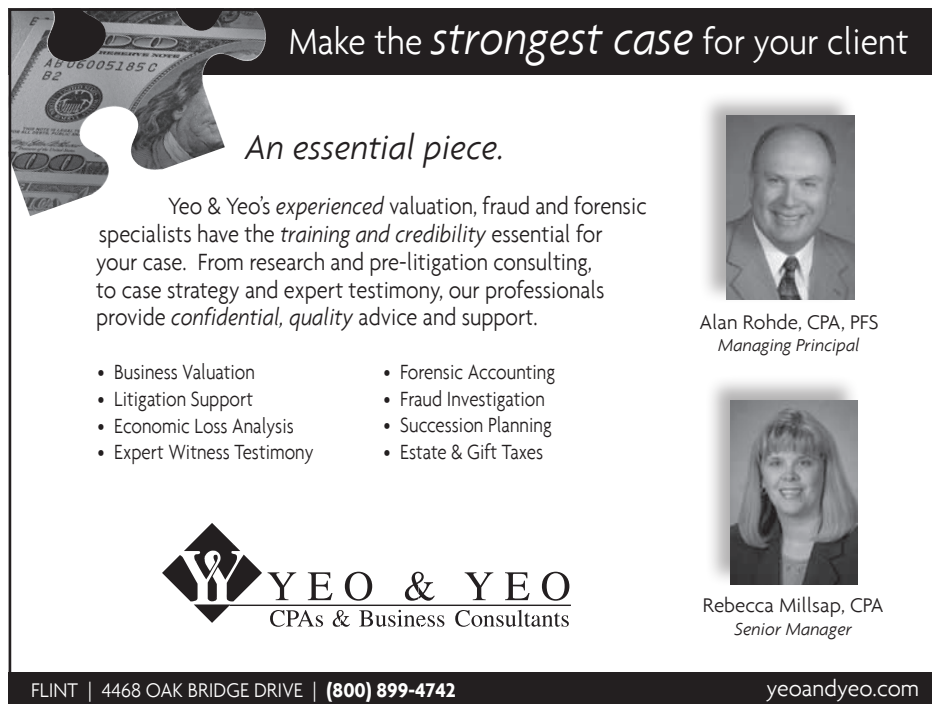
Collectors are prohibited from calling consumers, 1) at unusual or inconvenient times and places, 2) when they know the consumer has legal representation, 3) at the consumer's place of employment if they know the employer prohibits it, or 4) after written notification that consumer refuses to pay debt or the consumer wants the collector to cease communication.

Collectors are prohibited from calling third parties and disclosing the consumer's *location information*. Location information means confirming *home address, home telephone and place of employment ONLY*. Even asking such seemingly innocuous questions such as, "When will she be home?" or "Where is he?" or "What's his cell phone number?" is illegal.

If the consumer has not provided her cell phone number to the creditor, it is a violation for the collector to call it unless the consumer has given express written consent. The collector is liable for \$500.00 for each such call under the Telephone Consumer Protection Act.

The collection industry generates more consumer complaints than any other business in the United States. Many agencies, if not blatantly encouraging collectors to operate illegally, simply turn a blind eye to it. Top collectors can earn six-figure commission-based incomes. There are strong incentives for collectors to break the law to get consumers to pay. Consumers should pay their just and owing debts, and collectors have a right to collect. Unfortunately, some collectors operate in the murky waters of illegal collection activities. Many cannot resist crossing over into the easy money afforded by such tactics.

The only rational response is for even stronger incentive to enforce private rights of action under state and federal consumer protection statutes.




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