



# Hot Topics: Legal Update Regarding Collection Efforts

Cruisin' to Collections

Student Financial Services Compliance and Strategy Conference

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**June Coleman** is a defense litigator at Carlson & Messer with more than 20 years of experience. Her areas of emphasis include defense of consumer rights actions involving the FDCPA, TCPA, and FCRA. She has a deep understanding of permissible debt collection conduct and how best to defend claims and minimize liability in the collection industry. She also defends attorneys before the California State Bar. For 10 years (2008-2012, 2014-2017), Ms. Coleman has been voted by her peers as one of the top 5% of lawyers practicing in Northern California, earning her a spot on the Northern California Super Lawyers list; and has been voted by her peers to the "Best of the Bar" list by the Sacramento Business Journal from 2013-2016. Sacramento Magazine has also named Ms. Coleman to their Top of the Bar list based on a peer review from 2015-2018. Ms. Coleman was recognized last year by ACA as one of the top 50 women in collections. Ms. Coleman is a Martindale Hubbell AV Preeminent rated attorney.



# Agenda



- Time Barred Debts
- Recording Telephone Calls
- Autodialed Calls to Cell Phones – Texts?
- Credit Reporting



# Time Barred Debts

# What Are Time Barred Debts?

- Time barred debts are debts that are beyond the statute of limitations.
  - Can still collect – Except in Mississippi and Wisconsin
  - Most states have opined that threatening litigation (or actually litigating) a time barred debt is a violation of the FDCPA.
- Debts in bankruptcy can be time barred.
  - U.S. Supreme Court recently held that submitting a proof of claim in a bankruptcy on a time barred debt is not a violation of the FDCPA.
- Some states require special language on collection notices if the debt is time barred.

# Collection Notices Regarding a Time Barred Debt

- Use of the word “settlement” or “settle” can be a threat of litigation on a time barred debt.
  - Resolution, accept a reduced amount, etc.
- In some states, need notice that the debt is time barred and cannot be sued upon.
- In some states, need notice that payment of any kind may restart statute of limitation.

# What Is the Statute of Limitations on a Student Loan

- Federal Student Loans – none
  - Stafford
  - Perkins
  - Parent PLUS
  - Federal Consolidation Loans
- Private Student Loans – yes
  - Contract choice of law determines statute of limitations?
  - Where debtor entered into contract determines statute of limitations?
  - Where school is located determines statute of limitations?
  - Where debtor resides determines statute of limitations?



# What Can Extend Statute of Limitations?

- Military Service?
- Out of the state?
- Jail/Prison?
- Mental Facility?
- Deferment?
- Revival of statute of limitations?
  - Payment
  - Agreeing (verbally? in writing?) that the debt is valid.
  - Agreeing (verbally? in writing?) to repay debt.

# Call Recording



# Call Recording Laws

- Recording telephone calls is not per se illegal.
- Most states allow call recording with the consent of one party.
- 12 states have some form of two-party consent requirement.

California

Connecticut

Delaware

Florida

Illinois

Maryland

Massachusetts

Michigan

Montana

New Hampshire

Nevada

Pennsylvania

Washington



# Variations in State Call Recording Laws

- Some laws consider recording calls without consent a crime.
- Some laws allow for significant civil statutory damages per call.
- Some laws make distinctions between landline calls and cell phone calls.
- Some laws restrict live monitoring as well as recording.



# Consent

- Consent can be obtained in many different ways.
  - Automated at call in\*\*
  - Website
  - Letters
  - Contracts
  - Warnings in prior calls
- Consent should be obtained at the start of the conversation.
- Prior to confirming right party contact.



# Recommended Consent Script

“Hi. This is Joe Collector from University of the Pacific on a recorded (and monitored) line.”

State as though it is part of your name.

Stated to every new person on the phone.

If caller remains on the line, caller has consented.

# Auto - Communications



# Telephone Consumer Protection Act

- No autodialer calls to cellphones without consent.
- Text message constitutes a call under the TCPA.
- Consent can occur in many ways:
  - Phone number listed on loan application, deferment request, consolidation application, etc.
  - Phone number listed in correspondence.
  - Phone number provided orally.
  - Caller confirmed OK to call this number.





# Autodialer

- Statute defines autodialer as dialer that randomly generates or sequentially generates phone numbers.
- FCC and court cases expanded definition to include predictive dialers.
- New equipment involves “human intervention”?
- Recent case rejected FCC’s expansion to include predictive dialers.
- Is the question whether the call was made with a dialer that randomly generated or sequentially generated numbers, or is the question whether the call was made with a dialer that could do that?



# Bankruptcy and Credit Reporting

# Credit Reporting Fundamentals

- Some states require a notice prior to or shortly after you begin credit reporting.
- Furnishers cannot report information they know or should know is false or incomplete, but no liability for this under the FCRA.
- If debt is disputed, furnisher must inform credit reporting agencies that the debt is disputed. (15 U.S.C. § 1692e(8))
- If the consumer disputes the credit information, the furnisher should conduct a reasonable investigation to determine whether the information is inaccurate or incomplete. (15 U.S.C. § 1681i)



# Credit Information

- Credit information stays on the credit report:
  - 7 years for collection account
  - 7 years for collection lawsuits
  - 10 years for bankruptcies (15 U.S.C. § 1681c)
- Payment does not get rid of credit information
- Information reported:
  - Amount and date of debt
  - Furnisher's name (could be creditor, collection agency)
  - Whether the account is in collections
  - Other information, such as date of first delinquency, whether the debt is subject to a bankruptcy, charged off, how many days delinquent etc.



# Questions?



# Thank you!

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