

Examples of How Consumer Complaints Against Creditor Lawyers Under the FDCPA Would Be Resolved Under H.R. 5082, the “Practice of Law Technical Clarification Act of 2018

EXAMPLES OF FDCPA COMPLAINTS AGAINST LAWYERS	RESULT UNDER CURRENT FDCPA	RESULT AFTER PASSAGE OF H.R. 5082
Calling a consumer after 11:00 pm without permission from the consumer.	Potential violation of FDCPA by calling after 9 pm local time at the consumer’s location (1692c(a)(1)), subjecting the law firm to statutory damages, actual damages and attorney fees.	No change.
Sending letter to consumer threatening that he/she will go to jail if the amount owed is not paid in full.	Potential violation of FDCPA by representing to the consumer that the nonpayment of any debt will result in the arrest or imprisonment of any person (1692e(4)), subjecting the law firm to statutory damages, actual damages and attorney fees.	No change.
Making collection calls to a consumer despite receiving a letter from the consumer requesting the attorney cease & desist contacting the consumer.	Potential violation of FDCPA by contacting the consumer in connection with collecting a debt after the consumer notifies the debt collector in writing that the consumer wishes the debt collector to cease further communication with the consumer (1692c(c)), subjecting the law firm to statutory damages, actual damages and attorney fees.	No change.
Sending a notice to collect a debt to a consumer via a postcard so that the mailman can see that the consumer owes a debt.	Potential violation of FDCPA by communicating with a consumer regarding a debt by post card (1692f(7)), subjecting the law firm to statutory damages, actual damages and attorney fees.	No change.
Contacting a consumer via phone in an attempt to collect a debt and failing to say the mini Miranda warning.	Potential violation of FDCPA by failing to disclose in the communication is from a debt collector (1692e(11)), subjecting the law firm to statutory damages, actual damages and attorney fees.	No change.
Making an alleging in a complaint of the amount due which subsequently turns out to be incorrect.	Potential violation of FDCPA by using false representation and deceptive means to collect a debt (1692e(10)) or by seeking an amount not expressly authorized by the agreement creating the debt (1692f(1)) subjecting the law firm to statutory damages, actual damages and attorney fees, even though the conduct at issue actually benefited the consumer.	No claim under the FDCPA. Consumer has potential relief under state rules of civil procedure and can dismiss the case. If allegation was knowingly false attorney who prepared the pleading would be subject to possible sanctions under state law or reprimand by Judge and/or discipline by state Supreme Court/Bar Association.

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Sending discovery to defendant that requests defendant verify his responses to requests for admissions even though state law does not required responses to admissions be verified	Potential violation of FDCPA by making misleading representations to the consumer that the responses had to be verified when the state law did not require it (1692e), subjecting the law firm to statutory damages, actual damages and attorney fees.	No claim under the FDCPA. Consumer has potential relief under state rules of civil procedure. Attorney would be subject to sanctions or reprimand by judge and/or discipline by state supreme court/bar association, if the conduct was materially false or intended to oppress or harass.
Contacting a consumer at the court’s direction to schedule a court-required mediation despite receiving a letter from the consumer requesting the attorney cease & desist contacting the consumer.	Potential violation of FDCPA by contacting the consumer in connection with collecting a debt after the consumer notifies the debt collector in writing that the consumer wishes the debt collector to cease further communication with the consumer (1692c(c)), subjecting the law firm to statutory damages, actual damages and attorney fees.	No claim under the FDCPA. Consumer has potential relief under state rules of civil procedure. Attorney would be subject to sanctions or reprimand by judge and/or discipline by state supreme court/bar association, if the conduct was materially false or intended to oppress or harass.
While in court, the judge instructs the parties to go out in the hall to see if the case can be resolved by agreement. In hallway, pro se defendant tells plaintiff’s attorney that he has retained a bankruptcy attorney and plans to file bankruptcy, but parties then successfully resolve the case.	Potential violation of FDCPA by communicating with a consumer known to be represented by an attorney (1692c), subjecting the law firm to statutory damages, actual damages and attorney fees.	No claim under the FDCPA. Consumer has potential relief under state rules of civil procedure. Attorney would be subject to sanctions or reprimand by judge and/or discipline by state supreme court/bar association, if the conduct was materially false or intended to oppress or harass.
Inadvertently filing a Motion for Summary Judgment on a dismissed court case.	Potential violation of FDCPA by threatening to take action that cannot legally be taken (1692e(5)), subjecting the law firm to statutory damages, actual damages and attorney fees.	No claim under the FDCPA. Consumer has potential relief under state rules of civil procedure. Attorney would be subject to sanctions or reprimand by judge and/or discipline by state supreme court/bar association, if the conduct was materially false or intended to oppress or harass.
Filing a wage garnishment that includes the cost of previously filed wage garnishments in the amount owed. State statute is silent as to whether previous court costs are recoverable but court clerks routinely refuse to accept wage garnishments that do not include the cost of previously filed wage garnishments.	Potential violation of FDCPA by attempting to collect an amount that is not expressly authorized or permitted by law (1692f(1)), subjecting the law firm to statutory damages, actual damages and attorney fees.	No claim under the FDCPA. Consumer has potential relief under state rules of civil procedure. Attorney subject to sanctions or reprimand by judge and/or discipline by state supreme court/bar association if the attorney has misrepresented facts or law in the garnishment application.