Comment of the Commercial Law League of America
Submitted to the United States Congress in Support of
H.R. 5082 – the Practice of Law Technical Clarification Act of 2018 and
H.R. 7947 – Restoring Court Authority Over Litigation Act of 2004

March 3, 2025

Introduction

The Commercial Law CLLA of America ("CLLA"), founded in 1895, is the nation's oldest organization of attorneys and other experts in credit and finance actively engaged in the fields of commercial law, bankruptcy and reorganization. The CLLA has long been associated with the representation of creditor interests, while seeking fair, equitable and efficient treatment of all parties in interest. CLLA members can be found in every state across America and in many foreign countries. The CLLA regularly submits policy papers to Congress and CLLA members have testified on numerous occasions before Congress as experts in fields related to creditor interests.

Background

In 1977 Congress enacted the Fair Debt Collection Practices Act, ("FDCPA") with the intent, among other things, to protect consumers from certain actions of third-party debt collection professionals. In 1986 the FDCPA was expanded to encompass licensed attorneys and law firms. This expansion was redundant, in that attorneys were (and still are) governed by Local Court Rules and Procedures that provide protections and relief to litigants for alleged attorney overreach or abuses. For example, litigants can seek "Rule 11" sanctions against attorneys for misconduct during litigation in every jurisdiction. But for the collection attorney who files a consumer debt action, he or she is guided by "Rule 11" and the strict standards within the FDCPA. Under the FDCPA, an attorney who makes any error, regardless of intent, while engaged in litigation with a consumer debt action can be sued in Federal Court.

The purpose of this comment is to confirm the CLLA's support for H.R.5082 – the Practice of Law Technical Clarification Act of 2018 ("PLTCA")[1] which excludes law firms and licensed attorneys from the definition of a debt collector under the FDCPA when engaged in activities related to legal proceedings **and** prevents or limits the Bureau of Consumer Financial Protection ("BCFP") from exercising supervisory and enforcement authority when law firms or licensed attorneys take certain actions in legal proceedings.

[1] On February 23, 2018, Representative Alexander Mooney (R- W.Va.) introduced the "Practice of Law Technical Clarification Act of 2018" (H.R. 5082)

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CLLA Comment

1. H.R. 5082 PROVIDES A NARROW FDCPA EXEMPTION TO LICENSED ATTORNEYS ENGAGED IN ACTUAL LITIGATION FOR COLLECTION ON A CLIENT'S BEHALF

The FDCPA applies only to third-party debt collectors, which are defined as ''any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.''[2] When the FDCPA was enacted in 1977, attorneys collecting debts on behalf of clients were exempted from the definition of ''debt collector.'' However, in 1986 Congress amended the FDCPA to remove the attorney exemption, and in doing so claimed to allegedly ''close a significant loophole.''[3] As a result, there are certain instances in which attorneys will be considered debt collectors and subject to compliance with the FDCPA. Current legal interpretation considers a lawyer who regularly tries to obtain payment of consumer debts through litigation to be a person who ''regularly collects or attempts to collect . . . debts owed'' in the definition of debt collector.[4]

The CLLA believes that H.R. 5082 eliminates the perceived harms or the "loophole" cited by opponents, because it excludes licensed attorneys from the definition of a debt collector when engaged in the practice of active litigation and legal services. Specifically, H.R. 5082 proposes amendments to Section 803(6) of the FDCPA (15 U.S.C. 1692a(6)), as follows:

"(F) any law firm or licensed attorney, to the extent that—
(i) such firm or attorney is engaged in litigation activities in connection with a legal action in a court of law to collect a debt on behalf of a client, including—
(I) serving, filing, or conveying formal legal pleadings, discovery requests, or other documents pursuant to the applicable statute or rules of civil procedure;
(II) communicating in, or at the direction of, a court of law (including in depositions or settlement conferences) or in the enforcement of a judgment; or

[2] 15 U.S.C. § 1692(a)(6).

[3] H.R. Rep. No. 405, 99th Cong. 2d Sess. 3–6, *reprinted in* 1986 U.S. Code Cong & Ad. News 1752, 1753–57. ''The purpose of the amendment was . . . to close a significant loophole, whereby attorneys engaging in traditional debt collection activities were able to avoid the FDCPA's precepts merely by virtue of the fact that they had, at some point, obtained a law degree.'' *Firemen's Ins. Co v. Keating,* 753 F. Supp. 1137, 1142 (S.D.N.Y. 1990).

[4] Section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)).

(III) any other activities engaged in as part of the practice of law, under the laws of a State in which the attorney is licensed, that relate to the legal action; and (ii) such legal action is served on the defendant debtor, or service is attempted, in accordance with the applicable statute or rules of civil procedure;"

H.R. 5082 is a logical and necessary step for clarifying and restoring the intent of the FDCPA to stop abusive debt collection practices, while permitting licensed attorneys to practice law without the threat of federal litigation in matters that are pending before state courts. H.R. 5082 reinforces the clear differences between active litigation and debt collection, and clearly illustrates the parties that can engage in active litigation. Further and importantly, H.R. 5082 would not disturb consumer protections for debt collection outside of active litigation.

2. **THE CLLA SUPPORTS LEGISLATION THAT ELIMINATES THE BCFP FROM EXCERCISING SUPERVISORY AND ENFORCEMENT AUTHORITY OVER LICENSED ATTORNEYS IN CERTAIN ACTIONS IN LEGAL PROCEEDINGS**.

Title X of the Dodd-Frank Act gave the BCFP expansive supervisory authority of debt collection. In addition, the Dodd-Frank Act transferred FDCPA enforcement and rulemaking authority to the BCFP. Section 1027(e) of the Dodd-Frank Act exempts most consumer lawyers from the BCFP's authority, but not all creditor lawyers. Currently, the provision has been interpreted to treat an attorney representing a creditor in a legal action against a debtor as having "offered or provided " a financial product or service. Thus, an attorney representing a creditor that sues a debtor is considered to be providing financial products or services, and the BCFP may exercise its powers against said attorneys accordingly.

H.R. 5082 eliminates the duplicitous layer of enforcement at the federal level and returns oversight and enforcement to the state and local levels. Specifically, H.R. 5082 proposes amendments to 12 U.S.C. 5517 (e)(2)(B), as follows:

"[.], unless such financial product or service is provided by a licensed attorney who is not a debt collector as described under section (803)(6)(F) of the Fair Debt Collection Practices Act.

By removing unnecessary federal oversight of licensed attorneys, H.R. 5082 will stop claims against licensed attorneys in federal court for technical FDCPA violations, when they are engaged in active litigation matters. In addition, it will provide clarity to credit grantors and others who regularly seek judicial intervention to collect bad debt through litigation. Importantly, debtors will not lose protection either, because they can seek relief while engaged in litigation with court rules, procedures, defenses and court order to counter or address any attorney misconduct. Further, there would be no disruption to existing rules and procedures that best suit for and have established ethical rules and enforced disciplinary action for attorneys.

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3. THE CLLA SUPPORTS LEGISLATION EXCLUDING FEDERAL AGENCIES FROM REGULATION OF ATTORNEYS ENGAGED IN LITIGATION ACTIVITIES AS PROPOSED IN H.R. 7947.

H.R. 7947, introduced by Rep. Scott Fitzgerald, is drafted and follows the spirit of H.R. 5082 with the aim of eliminating and/or clarifying the appropriate supervisory and regulatory mechanisms and discipline for attorneys engaged in litigation activities. H.R. 7947 is supported by multiple organizations, including the American Bar Association and the National Creditors Bar Association. H.R. 7947 would confirm that the maintenance and judicial oversight of attorneys engaged in litigation activity is within the purview of state and federal courts, as well as state regulatory authorities already engaged in attorney regulation.

Conclusion

H.R. 5082 preserves the FDCPA's protections for consumers, logically clarifies the definition of "debt collectors" in the FDCPA and Dodd-Frank Act for licensed attorneys engaged in active litigation matters, and eliminates unnecessary federal regulation of licensed attorneys. H.R. 7947 is drafted in the same spirit and with similar goals that recognize the importance of acknowledging judicial oversight of attorneys while eliminating an unnecessary layer of regulation.

Proposals

The CLLA supports the technical changes to the FDCPA and Dodd-Frank Act as set forth in H.R. 5082 - the Practice of Law Technical Clarification Act of 2018, and referenced herein. In addition, The CLLA supports H.R. 7947, the Restoring Court Authority Over Litigation Act of 2024.

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