

**DEBT COLLECTION PRACTICES AND BANKRUPTCY
SUBCOMMITTEE**

**American Bar Association
Committee on Consumer Financial Services
Debt Collection Practices And Bankruptcy Subcommittee
Winter Meeting – Scottsdale, Arizona
January 12, 2009**

DEBT COLLECTION PRACTICES AND BANKRUPTCY SUBCOMMITTEE

Chair: Katrina Christakis, Grady Pilgrim Christakis Bell, Chicago, IL

Vice Chair: Tomio Narita, Simmonds & Narita, San Francisco, CA

Presentation:

“Abusive Collection Practices: A Consumer Lawyer’s Perspective”

Speakers:

Peter Barry, Barry & Slade, Minneapolis, MN

Peter F. Barry is an attorney admitted to practice in the State and Federal courts of Minnesota. He is also admitted in numerous other federal courts including the United States Supreme Court. He is a partner of Barry & Slade, LLC. His national practice is dedicated exclusively to protecting consumers against illegal debt collection activity and training new FDCPA lawyers. He was named by his peers as a Super Lawyer® for 2003 and 2004 by Minnesota Law & Politics Magazine. The National Association of Consumer Advocates named him its Consumer Lawyer of the Year in 2005. □□Pete opened his law practice directly out of law school and has been enjoying his private plaintiff's practice ever since. His FDCPA Boot Camps have trained more than 265 lawyers in more than 36 states.

Pete frequently appears in local and national news stories discussing consumer rights issues. He has appeared on NBC, ABC, CBS, MSNBC, and on numerous local stations discussing abusive consumer collection cases. Pete recently appeared on the cover of CityPages magazine in a feature story about his life and career suing debt collectors. Pete volunteers as a district ethics investigator and as a formal mentor to law students.

Pete volunteers annually with the Minnesota State Bar Association's High School Mock Trial Program as a judge and maintains an ongoing pro-bono legal services commitment in the area of consumer rights. Since 2003, Pete has taught as an adjunct Professor of Law at William Mitchell College of Law where he teaches Consumer Rights Law. He was born in San Jose, California in 1964 and lives in St. Paul, with his wife Robin and three beautiful daughters. More information about his law practice can be found at www.lawpoint.com.

Abusive Debt Collection Practices: Why Collectors Get Sued

AMERICAN BAR ASSOCIATION
BUSINESS LAW SECTION
CONSUMER FINANCIAL SERVICES COMMITTEE
2009 WINTER MEETING
SCOTTSDALE, AZ JANUARY 10-13, 2009

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Remember the Four Essentials

- Truth
- Fairness
- Dignity
- Respect

Abusing the Consumer

- Yelling
- Name-calling
- Accusations
- Moralizing
- Threats
- “Debtor”

Abusing Military

- **Soldiers**
- **Service Members Civil Relief Act**
- **No service on active duty soldiers**
- **No contact to commanding officers**
- **No threats to security clearances**

Abusing Vulnerable People

- You look like a real jerk
- Children
- Parents of Consumers
- Vulnerable persons
- SS Disability
- Mental Illness

Calling The Workplace

- Stop it if consumer tells you to
- Don't play games with this
- Respect this restriction
- Don't dial-around to other co-workers

Calling Third Parties

- Why are you doing this?
- Do you really need to locate consumer?
- Nearby calls are lightning rods for litigation
- Third-Party and Consumer may both have FDCPA claims

Leaving Voicemails

- Harassing VMS: How dumb is this?
- Date and Time-stamped evidence
- Name and phone number only or get ready to be sued
- Does e(11) apply? You are going to find out...

Being Rude

- Hanging up
- Being nasty
- Interrupting
- Repeated calls
- Moralizing
- Belittling

Not Listening/Not Hearing

- Listen to what the consumer is saying
- Hear their side of the story
- Don't assume your client is right
- Escalate the problem

Making Stuff Up

- Debts are a crime
- Arrest
- Will call employer
- Will seize unrelated assets
- Will seize any assets
- Pre-legal department

Using Autodialers and Prerecorded Messages

- May be prohibited by state law
- Leaves possible recorded evidence
- Annoying to consumers

Credit Reporting a Debt

- **Why do this?**
- **Liability lingers for years possibly**
- **Consumers direct attention to you on disputes after you stop collecting**
- **Make sure, if reported, to report debts as disputed if they are disputed**

Not Supervising Collectors

- Annual reviews
- Random audits
- Collection notes don't mean anything
- Zero Tolerance Policy for complaints
- Zero Tolerance Policy for violations

Ignoring the ACA

- ACA has it finger on the pulse of the industry
- They know who gets sued and why
- They are organized and systematic

Attorneys: Law Practice Run Like a Collection Agency

- Lots of “legal assistants”
- Lack of sensitivity to Ethics Rules
- High Volume=Low Quality
- Overkill Effect on Small Debts

Attorneys: Sending Letters Out of State

- Unauthorized practice of law
- Makes consumers suspicious
- Makes consumer lawyers money

Attorneys: Sending Letters By The 1000's

- No meaningful involvement
- Class action potential
- The better the letter, the worse the call
- Draws attention to lawyer collector

Attorneys: Suing The Wrong Person

- Remember Rule 11
- Better have all documents you'll need for trial BEFORE you file suit
- Don't sue spouses unless legally liable
- Remember: Identity Theft Victims
- Taking defaults can be very problematic

Attorneys: Suing In Spite

- Suit filed because consumer disputed debt
- Suit filed because consumer disagreed with collector
- Suit filed because of bruised ego

Attorneys:

Ignoring Answers In Defaults

- Duty of Candor
- Tell the Court about everything you got from consumer
- Don't ignore pre-litigation disputes
- Disclose and attach letters offering settlement or disputing debt
- You're not the Judge--so don't act like it

Attorneys: Threatening Garnishment/Liens

- Nobody should be talking about this unless they are a lawyer and actually understand state's law
- Buzzwords aimed at scaring people
- Drives consumers to consumer lawyers

Attorneys: Threatening Anything

- Don't make idle threats
- Lawyers ought to be acting and not “acting”
- Legal staff shouldn't be threatening anything
- Don't assume you're going to win
- Beware of giving advice

Attorneys: Keeping Lawyers Hidden

- No escalation plan for calls
- Consumers can't speak with lawyers
- No one in authority
- Fake "Supervisors"
- Makes consumers suspicious

Question & Answer

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