

**Presented:**

2011 Mastering the Art of Collecting Debts and Judgments

September 1-2, 2011  
Austin, Texas**The Fair Debt Collection Practice Act  
And  
The Texas Debt Collection Act  
(A Practical Approach)****Michael J. Scott, Speaker**Author contact information:  
Michael Scott  
Michael J. Scott, PC  
1120 Metrocrest Dr., Ste. 100  
Carrollton, TX 75006[mScott@scott-pc.com](mailto:mScott@scott-pc.com)  
214-234-8456

**Fair Debt Collection Practices Act  
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**Fair Debt Collection Practices Act  
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(A Practical Approach)**

**I. Introduction**

**A. Purpose**

The purpose of this paper is to provide a practical perspective on the day-to-day application of the Fair Debt Collection Practices Act, 15 USC 1692, *et seq.*, (“FDCPA”) and its Texas counterpart, the Texas Debt Collection Act, Tex. Fin. Code § 360, *et seq.*, (“TDCA”). As such, this paper does not attempt to provide a comprehensive overview of these statutes, but rather, focuses on those aspects of the statutes which a debt collector may encounter on a regular basis, or which are the most active areas of alleged non-compliance. There are many great presentations regarding the FDCPA/TDCA<sup>1</sup> and you are directed to these for a more thorough treatment of these topics.

**B. Context**

This paper is practical, not technical. It is about how the real world works. As such, it provides case citations which are intended to be illustrative, rather than exhaustive. Adding to the complexity of this topic is a myriad of United States District/Appellate Court decisions, each with unique facts spread over time and geography, and which pertain to subjective, fact-laden issues. These decisions reflect both an evolution of thought, as well as a regional perspective which is difficult to summarize into clean rules. The ACA (American Creditor’s Association) has some 260 pages of annotations which make for recommended reading for any attorney who regularly practices as a debt collector.<sup>2</sup> Finally, this paper also contains both statements of opinion and prospective. You are free to do with these as you wish.

**II. What is the FDCPA? (the short version)**

The purpose of the FDCPA is “to protect consumers from a host of unfair, harassing, and deceptive debt collection practices without imposing unnecessary restrictions on ethical debt collectors.”<sup>3</sup> Section 806 of the FDCPA bars “[e]ngaging in any conduct the natural consequences of which is to harass any person in connection with the collection of a debt.”

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<sup>1</sup> University of Texas CLE eLibrary Paper: FCRA and FDCPA Issues for Collection Attorneys, Manuel H. Newburger, (2010), <http://www.utcle.org/eLibrary>; Fair Debt Collections Practice, Manuel H. Newburger, 2011, From: *Suing/Defending and Negotiating with Financial Institutions* 2011, <http://www.texasbarcle.com/CLE>.

<sup>2</sup> *ACA International's Guide to the Fair Debt Collection Practices Act* (Vol 1: Professional Practices, Vol 2: Legal Resource).

<sup>3</sup> S. Rep. No. 382, 95th Cong. 1st Sess. 1, 2, reprinted in 1977 U.S.C.C.A.N. 1695, 1696.

### III. Surveying the Landscape

To understand FDCPA/TDCA compliance, you must understand the world in which a debt collection attorney operates. While the statutes may contain various definitions which are “open to interpretation,” the reality is that the language of the statute is routinely stretched to its breaking point for one purpose, and one purpose only: Attorney’s Fees. Specifically, the FDCPA provides for an award of attorney’s fees in “any successful action” to recover damages.<sup>4</sup> Combine this fact with a strict liability statute and you have a legal industry.

So, what makes the FDCPA so problematic for collection attorneys? The answer can be found in the application of the statute which, at every turn, is interpreted expansively.

#### A. Are You a Collection Attorney?

Put simply, if you ever stop to ask yourself that question – you are. While the legal standard is that a third-party debt collector is a person who “regularly engages in consumer debt collection activity,” courts have held that dedicating as little as 4% of one’s legal practice to collections may satisfy this requirement.<sup>5</sup> An original creditor is not a third-party debt collector,<sup>6</sup> however, the person who acquires a debt once it is in default, is considered a third-party debt collector.<sup>7</sup>

#### B. Are You Attempting to Collect a Consumer Debt?

The FDCPA defines the term “debt” to mean

“any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.”<sup>8</sup>

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<sup>4</sup> 15 U.S.C. §1692k(a)(3).

<sup>5</sup> See *Stojanovski v. Strobl & Manoogian, P.C.*, 783 F.Supp. 319 (E.D.Mi. 1992).

<sup>6</sup> 15 U.S.C. §1692a(6)(A).

<sup>7</sup> See *McCartney v. First City Bank*, 970 F.2d. 45 (5th Cir. 1992) (A bank that attempts to collect a judgment in connection with the liquidation of another bank is a debt collector, not a creditor, and must follow the requirements of the FDCPA); see also *Ruth v. Triumph P'ship*, 577 F.3d 790 (7th Cir. 2009) (A debt collection company that purchases debts already in default at the time of purchase is considered a debt collector); *Pollice v. Nat'l Tax Funding LP*, 225 F3d 379, 403-404 (3rd Cir. 2000); *Whitaker v. Ameritech Corp.*, 129 F3d 952, 958-959 (7<sup>th</sup> Cir. 1997).

<sup>8</sup> 15 U.S.C. §1692a(5).

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First appeared as part of the conference materials for the 2011 Collecting Debts and Judgments session

"Fair Debt Collection Practices Act and the Texas Debt Collection Practices Act"