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**Unfair Debt Collection Cases:
The Cases That Keep Giving**

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Mr. Langley received his undergraduate degree in Finance from the University of Texas at Austin in 1987. He received his *juris doctorate* degree from South Texas College of Law in 1990 where he served as Note and Comment Editor on the SOUTH TEXAS LAW REVIEW in 1989–1990 and he received the award for “Best Article on Federal Law” in 1990.

A frequent author and lecturer, Mr. Langley has previously served as a Committee Member of the Houston Bar Association Continuing Legal Education Committee, as well as the CLE Seminar Sub-Committee. Mr. Langley has also authored and presented numerous articles and speeches to attorneys and business groups and associations for over twenty (20) years.

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UNFAIR DEBT COLLECTION CASES: THE CASES THAT KEEP GIVING

By Curt M. Langley

I. OVERVIEW.

A. INTRODUCTION.

This article provides a general overview of the federal FAIR DEBT COLLECTION PRACTICES ACT, (“FDCPA”) 15 U.S.C. § 1692-1692p and the TEXAS DEBT COLLECTION ACT, TEX. FIN. CODE § 392.001 *et seq.* and explores new ways to think about debt collection cases and the opportunities they can bring to your law practice. The debt collection industry is constantly evolving and changing in response to technology, economic conditions, and federal and state regulation. Accordingly, in addition to the most recent case law addressing debt collection, a general knowledge of the origins and history of debt collection laws can be beneficial to understanding the current trends and possible future direction of debt collection laws.

B. FEDERAL DEBT COLLECTION LAW.

The federal FAIR DEBT COLLECTION PRACTICES ACT, (“FDCPA”) 15 U.S.C. § 1692-1692p was passed in 1977 when most debt collectors were local or regional and their files were primarily paper files – many were kept on index cards. Demand letters were often typed one at a time and then mailed in the regular mail. All telephone calls were made via land-line telephones and the high cost of long-distance telephone calls was a prohibitive factor for many debt collectors. In fact, very few consumer households even had answering machines in 1977.

Over 40 years later in 2018, debt collection is a \$10.9 billion dollar industry which employs nearly 120,000 people in more than 8,000 collection agencies.¹ Much different than the cottage industry in 1977; debt collectors are now regional, national, or even international. Collection files and data are now stored and transmitted in digital form and on computer media. Demand letters arise from digitized form letters and they are often issued in groups of dozens or even hundreds at one time with

¹ Edward Rivera, *Debt Collection Agencies in the US*, IBIS Word (Dec. 2017) as cited in the he most recent report was issued to Congress on March 20, 2018 entitled Fair Debt Collection Practices Annual Report 2018 to Congress by the Consumer Financial Protection Bureau.

automated merging of consumer account data into form demand letters. Additionally, communications with the debtor are now undertaken via telephones, mobile telephones, email, text messaging, and digital voice mail. Furthermore, payments can now be arranged instantaneously with pay-by-phone, credit card transactions, wire transfers, Check 21 (digital) payments, and web-based payment systems. As of the beginning of 2018, more than one-half of the debt collection industry's revenue, at least \$5.9 billion, was generated based upon a contingency fee basis.²

Based upon the need for changes in the debt collection legal system, the Federal Trade Commission ("FTC") convened a public workshop in October 2007 in order to evaluate the need for changes in the debt collection system, including the FDCPA. At least sixty-one (61) public comments were received from industry experts and associations. Based upon input and public comments at the workshop, on February 26, 2009, the FTC issued an extensive report titled "COLLECTING CONSUMER DEBTS – THE CHALLENGES OF CHANGE – A WORKSHOP REPORT" which recommends that the debt collection legal system be substantially overhauled and modernized to reflect changes in consumer debt, the debt collection industry, and technology. The full text of the 120 page FTC report is located at <https://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf> . The report and the proposed changes provide valuable guidance to those attempting to apply the statutory language from almost forty (40) years ago to the technology used in debt collection today. Among the issues raised and discussed in the 2009 report are the following:

Mobile telephones: FDCPA Section 805(a)(1) prohibits calls to a debtor before 8:00 am or after 9:00 pm local time at the debtor's location. (With the wide-spread use of mobile telephones, how does the debt collector know where the debtor is physically located at the time the call is placed?)

Voice mail: FDCPA Section 805(b) prohibits a debt collector from communication with third parties regarding the debt. (How does a debt collector know who may listen to a digital voice message left for the debtor?)

Caller ID: FDCPA Section 804(1) and 809 prohibit a debt collector from blocking its caller identification when calling a debtor. FDCPA Section 805(b) prohibits a debt collector from communication with third parties regarding the debt. (How does the debt collector know who will possibly see the caller ID when a call is made to the debtor's digital telephone and could that constitute a "communication with a third party"? For example, some home telephone systems actually show the

² See Fair Debt Collection Practices Annual Report 2018 to Congress by the Consumer Financial Protection Bureau at p. 10.

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