

## UNFAIR DEBT COLLECTION CASES: THE CASES THAT KEEP GIVING

- Overview of Federal Law and Texas State Law.
- FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1692-1692p
  - Federal Trade Commission Advisory Options
  - Consumer Financial Protection Bureau Advisory Opinions
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- TEXAS DEBT COLLECTION ACT, TEX. FIN. CODE § 392.001 et seq.
  - Texas Case Law

#### UNFAIR DEBT COLLECTION CASES: THE CASES THAT KEEP GIVING

- The Year was 1977
  - I was 13 years old, 8<sup>th</sup> grade Class President, at St. Cecilia Catholic School on Bunker Hill Rd in Houston.
  - Top song *Tonight's the Night (Gonna Be Alright)* by Rod Stewart.
  - Top movies "Saturday Night Fever" (John Travolta), "Smokey and the Bandit" (Burt Reynolds), and "Star Wars: Episode I".
  - Telephones looked like this



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FDCPA 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.

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- 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.
- Debt collectors are now regional, national, or even international. Collection files and data are in digital form and on computer media. Demand letters arise from digitized form letters. Communications are now undertaken via telephones, mobile telephones, email, text messaging, and digital voice mail.

## Federal Trade Commission Opinions

UNTED STATES OF AMERICA FEDERAL, TRADE COMMISSION WASHINGTON, B.C. 20500
Bureau of Consumer Protection
March 20, 1998
Mr. Walter D. LeVine, P.A. 23 Vredenal Road Suite 102 Florham Park, New Jersey 07932 Dear Mr. LeVine: Reference is made to your letter of December 24, 1997, concerning a "Telewin Electronic Message" sent by your client, at thecommunications company, bo consumer-deburs. The facts are a stated in your letter and our letter of Fohruary 7, 1980 to which your refer. The question is whether your client is onevered by the Fair Debt Collection Practices Act (FDCPA) (copy enclosed). In order for a service provided by your client to fall within the scope of the Fai Debt Collection Practices Act, your client to fall within the scope of the Fai Debt Collection Practices Act, your client to fall within the scope of the Fai Debt Collection Practices Act, your client to fall within the scope of the Fai Debt Collection erasteried to be word or due another a "method collector" someone who " regularly collects or attempts to collect, directly or indirectly providers, it proposes to sent a measure to the attempt of the providers of the propose of the few voice delivery" left in their names at an 800 number, and scoond, to obtain free voice delivery" left in their names at an 800 number, and scoond, to obtain indirect collection function), which we believe it dees, this additional service bring vour client within the coverage of the faiters of the scool of the sait collection function (albeit an indirect collection function), which we believe it dees, this additional service
Since your client would be covered by the Act, its collection communications would have to comply with the Act. Among other things, this means that the letter referred to above must disclose that your client is intempting to collect a debt site and the start of the start of the start purpose, in accordance the start of the STCPA. The used for this purpose, in accordance PTDCPA would also have no be sent. If the letter is the initial communication with the consume regarding collection of the debt.
I hope this responds to your inquiry. Sincerely,
John F. LeFevre Attorncy

- From April 1988 to May 2002, FTC issued FTC Staff Opinion Letters upon request.
- From May 2002 to June 2011, FTC only issue Opinions in "unusual circumstances."
- As of July 11, 2011, only the Consumer Financial Protection Bureau ("CFPB") now issues Advisory Opinions under FDCPA.

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