

Banking and Finance Law Daily Wrap Up, TOP STORY—D.C. Cir.: Debt collection letter made clear attorney was only debt collector, (Jul. 27, 2016)

By [Richard A. Roth, J.D.](#)

An attorney who is collecting a debt can act only as a debt collector and not as a lawyer, the U.S. Court of Appeals for the District of Columbia Circuit has made clear. The fact that a dunning letter was sent on the law office letterhead and bore a signature that included "Attorney" did not misrepresent that there had been a legal review and did not threaten a suit when the letter included a clear disclaimer to the contrary. Neither the Fair Debt Collection Practices Act nor District of Columbia consumer protection laws were violated by the debt collection letter ([Jones v. Dufek](#), July 26, 2016, Randolph, A.).

In an effort to collect a debt of just more than \$1,000, the attorney sent the consumer a letter demanding payment. The letter apparently included all of the disclosures required by the FDCPA. It also included, below the signature, this sentence: "Please be advised that we are acting in our capacity as a debt collector and at this time, no attorney with our law firm has personally reviewed the particular circumstances of your account." The letter said nothing about any potential litigation.

Nevertheless, the consumer claimed the letter had violated the FDCPA in two ways. First, she said, it misrepresented that there had been meaningful involvement by an attorney. Second, it threatened a suit the attorney had no intention of filing.

Attorney involvement. The FDCPA bans misrepresentations in connection with debt collection. A debt collector cannot falsely represent that a letter is from an attorney, and many courts have decided that this includes misrepresenting that an attorney was meaningfully involved—if an attorney has not formed a legal opinion about the consumer's liability and is merely acting as a debt collector, his collection letter cannot imply anything more.

In this case, however, the letter made clear the attorney was acting only as a debt collector. The court interpreted the consumer's argument as being that using the letterhead and attorney signature implied there had been a legal analysis, and it rejected that argument. The FDCPA allows attorneys to act as debt collectors without concealing that they are attorneys, the court said.

Threatened collection suit. Neither did using the letterhead and signature imply a threat to sue, the court said. The letter demanded payment but said nothing about the consequences of nonpayment. "[L]awyers do more than just file lawsuits," the court pointed out.

It was true that the letter left open the possibility that an attorney might review the matter in the future and decide to file a collection suit, the court conceded. However, the possibility of future legal action is not a threat to take legal action.

District of Columbia laws. The consumer's claims that the collection letter violated the D.C. Consumer Protection Act and the D.C. Debt Collection Law were rejected for the same reasons. The consumer admitted that the D.C. laws did not offer any more consumer protections than the FDCPA, so claims under those laws failed as well.

The case is [No. 15-7013](#).

Attorneys: Radi Dennis (Radi Dennis, Attorney at Law) for Tawanda Jones. Manuel H. Newburger (Barron & Newburger, P.C.) for David Sean Dufek, Sr.

Companies: CACH, LLC

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