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Most Common FDCPA/Rosenthal Violations

The debt must be a consumer debt, not that of a business.

Under the FDCPA, only debt collectors – those trying to collect for someone else – are covered.

Under the California Rosenthal Act, creditors are also covered, as well as debt collectors.

Notice Violations

1. Within 5 days of first call or letter, must give the 30 days validation notice in writing: “You have 30 days to dispute, etc.”
2. Must tell the consumer how much the current amount of debt is.
3. Other language such as ‘get in touch with us immediately’ may contradict the 30 days to dispute language.

Misrepresentations

1. Misstating the amount due. One company sent a letter saying \$11,000 was due. Even adding 10 years of interest, that was \$3,000 too high.
2. Suing or even threatening to sue on a debt that the client has not made a payment on for more than four years. (In CA.) In other states, this can vary from 3-13 years).
3. Stating that the writer or caller is an attorney when he is not.
4. Saying or implying anything about arrest, going to jail, or the like.
5. Threatening to sue when the collector has no intention of doing so. This is usually proven by the collector giving a deadline that passes without them filing suit.
6. Threatening to garnish wages without explaining that first the creditor must file suit and get a judgment.
7. Same as 6 for threats of taking cars, furniture, or any other property; putting liens against property.
8. Embarrassing the individual: “You are a deadbeat; why don’t you pay your bills; you are a disgrace.” Things like that.

9. Threatening to report to a credit bureau without mentioning that they will also report that the amount is disputed. Or actually reporting without making reference to the dispute.
10. Giving the impression that the writer or caller has some connection with the government, the courts, the police, etc.
11. Giving the false impression that the debt collector is, or is employed by a credit bureau. We have a case where the company mentions reporting credit. The name of the company is "The Bureaus."
12. Anything else that can be considered false, deceptive, or misleading.

Unfair Practices

1. Trying to collect the wrong amount: adding even small fees, for instance.
2. Threatening to deposit a post-dated check, particularly when the collector knows the client does not have the money to cover the check. Typical situation: "Give us a check to stop the calls and we will hold it." Of course the client's perfect response to this and of equal validity should be: "The check is in the mail."

Harassment and Abuse

1. Using profane or other abusive language.
2. Calling the client repeatedly. One case has said a call a week is not too much. Less than that is too much. Certainly more than one call in the same day is an abuse.
3. The collector refusing to give his name or his company.
4. Calling the client before 8 a.m. or after 9 p.m., the client's local time.
5. Calling the client after the client gives him the name and phone number (or address) of his attorney.
6. Calling the client at work when the type of employment is nursing and other medical, assembly line, waitressing and the like. IF the client tells the collector to stop calling her at work, he must.
7. Calling the client after the client tells the collector in writing not to call, or that he is not going to pay the debt.
8. Calling other people to do anything other than try to locate the client. The collector cannot say that he is trying to collect a debt.
9. Calling other people more than once.
10. Calling others people when the collector knows the client has an attorney.

11. Suing the client on the debt can be done only) where the client now lives, or b) where the client entered into the debt agreement.

12. Anything else that harasses.

The law is very consumer-oriented.