

RESOLUTION 11-07-2014

DIGEST

Unfair Debt Collection Practices: Inclusion of Law Firm in Attorney Exemption

Amends Civil Code section 1788.2 to expand the current exemption of “attorney” to “a law firm or attorney(s)” from the definition of a “debt collector.”

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Civil Code section 1788.2 to expand the current exemption of “attorney” to “a law firm or attorney(s)” from the definition of a “debt collector.” This resolution should be disapproved because there is no indication that the Legislature intended to exclude multiple attorneys, even though working jointly for a client, from the definition of “debt collector” in the Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”), and Business and Professions Code section 6077.5 only refers to attorneys in the singular.

The stated purpose of this resolution is to clarify the Legislature’s intent that the attorney exclusion is intended to cover law firms, and attorneys working jointly for a single client as well as solo attorneys. The proponent’s articulation of the legislative intent to exempt law firms and attorneys from the reach of the Rosenthal Act would make sense if that were the actual legislative intent. The specific wording of Business and Professions Code section 6077.5 says nothing of law firms, referring only to attorney in the singular, and, significantly, requiring any attorney’s employee who is not a member of the State Bar to comply with the obligations of the Rosenthal Act, along with specific regulation as to the attorney’s conduct in connection with the collection of the consumer debt, as defined by Civil Code section 1788.2.

The proponent cites *Abels v. JBC Legal Group, P.C.* (N.D. Cal. 2005) 227 F.R.D. 541 as an example of how the federal courts are interpreting the attorney exclusion to apply to a single attorney, but not to a law firm. It makes sense to be concerned about the apparent incongruity of the result in a case like *Abels v. JBC Legal Group, P.C.*. However, it may be that the distinction is that the omission of the singular attorney from the definition of “debt collector” in the Rosenthal Act shows a legislative intent to allow an individual attorney to personally avoid the sanctions of the Act, but expose that attorney to State Bar sanctions if any prohibition contained in Business & Professions Code section 6077.5 is violated. It would not seem that the State Bar has the ability to administer such discipline to a law firm, as opposed to an individual attorney.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 1788.2 to read as follows:

§ 1788.2

1 (a) Definitions and rules of construction set forth in this section are applicable for the
2 purpose of this title.

3 (b) The term "debt collection" means any act or practice in connection with the collection
4 of consumer debts.

5 (c) The term "debt collector" means any person who, in the ordinary course of business,
6 regularly, on behalf of himself or herself or others, engages in debt collection. The term includes
7 any person who composes and sells, or offers to compose and sell, forms, letters, and other
8 collection media used or intended to be used for debt collection but does not include ~~an attorney~~
9 ~~or counselor at law~~ a law firm or attorney(s).

10 (d) The term "debt" means money, property or their equivalent which is due or owing or
11 alleged to be due or owing from a natural person to another person.

12 (e) The term "consumer credit transaction" means a transaction between a natural person
13 and another person in which property, services or money is acquired on credit by that natural
14 person from such other person primarily for personal, family, or household purposes.

15 (f) The terms "consumer debt" and "consumer credit" mean money, property or their
16 equivalent, due or owing or alleged to be due or owing from a natural person by reason of a
17 consumer credit transaction.

18 (g) The term "person" means a natural person, partnership, corporation, limited liability
19 company, trust, estate, cooperative, association or other similar entity.

20 (h) Except as provided in Section 1788.18, the term "debtor" means a natural person from
21 whom a debt collector seeks to collect a consumer debt which is due and owing or alleged to be
22 due and owing from such person.

23 (i) The term "creditor" means a person who extends consumer credit to a debtor.

24 (j) The term "consumer credit report" means any written, oral or other communication of
25 any information by a consumer reporting agency bearing on a consumer's creditworthiness,
26 credit standing, credit capacity, character, general reputation, personal characteristics or mode of
27 living which is used or expected to be used or collected in whole or in part for the purpose of
28 serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used
29 primarily for person, family, or household purposes, or (2) employment purposes, or (3) other
30 purposes authorized under any applicable federal or state law or regulation. The term does not
31 include (a) any report containing information solely as to transactions or experiences between the
32 consumer and the person making the report; (b) any authorization or approval of a specific
33 extension of credit directly or indirectly by the issuer of a credit card or similar device; or (c) any
34 report in which a person who has been requested by a third party to make a specific extension of
35 credit directly or indirectly to a consumer conveys his or her decision with respect to that
36 request, if the third party advises the consumer of the name and address of the person to whom
37 the request was made and such person makes the disclosures to the consumer required under any
38 applicable federal or state law or regulation.

39 (k) The term "consumer reporting agency" means any person which, for monetary fees,
40 dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of
41 assembling or evaluating consumer credit information or other information on consumers for the
42 purpose of furnishing consumer credit reports to third parties, and which uses any means or
43 facility for the purpose of preparing or furnishing consumer credit reports.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

The Problem: The Rosenthal Act excludes an attorney from the definition of a debt collector. Several state courts have reasoned that such exclusion means an attorney or attorneys, whether as a single attorney or acting in a firm. Despite the clear intent of the California Legislature, to exclude attorneys from the definition of a “debt collector” under the Rosenthal Act, the federal courts in California, starting with the decision in *Abels v. JBC Legal Group, P.C.* (N.D. Cal. 2005) 227 F.R.D. 541, 548, have held that the intent of the law did not extend the exemption to law firms, and thus law firms would be subject to the remedies set under the Act, whereas an individual attorney would not. As a law firm is, of necessity and by regulation, comprised of individual attorneys, to say that an attorney, acting alone, is not a debt collector and that two acting as a firm are, is illogical. Business and Professions Code, section 6077.5, already imposes regulation on the behavior of attorneys and their staff in the conduct of collecting for their clients. In fact, the very act of the legislature in enacting Business and Professions Code section 6077.5, to specifically impose such regulation upon attorneys and law firms, is a clear indication that the legislature believed that there was no such regulation under the Rosenthal Act, and thus needed to enact such a section in order to extend the regulation to attorneys and law firms. This resolution would amend the Rosenthal Act to clarify the legislature’s intent and resolve the split within California courts on the issue.

The Solution: This resolution proposes to amend Civil Code Section 1788.2(c) to add a specific reference to law firms, as well as add the plural indicator to the term “attorney”, in order to resolve a split between California federal and state courts in application of the same statute.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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