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November 15, 1993

Re: Attorney Collection Agencies

Dear:

This letter is written to clarify the position of this office concerning the need for attorneys to comply with the requirements of the Colorado Fair Debt Collection Practices Act (the "FDCPA").

As you are well aware, section 12-14-103(2)(b)(VI), C.R.S. was repealed effective July 1, 1990. It was previously included in the provision that defined exemptions to the term "collection agency" for attorneys-at-law. Because the section was repealed attorneys are no longer specifically exempt from being regulated as collection agencies under the FDCPA.

However, with the repeal of section 12-14-103(2)(b)(VI), came the addition of section 12-14-102(2), C.R.S. (1991). This section was added to apply all but the licensing and registration provisions of the FDCPA to attorneys regularly engaged¹ in the collection or attempted collection of consumer debt² owed to any

¹ As an enforcement policy, this office considers the terms "regularly engaged in debt collection" to mean the collection of approximately ten (10) or more debts per year, unless the facts suggest otherwise. See Scott v. Jones, 1992 WL 91305, Clearinghouse No. 45,932A (4th Cir. 1992); Kolker v. Sanchez, Clearinghouse No. 46,774 (D.N.M. 1991).

² "Consumer debt" means any obligation of any natural person to pay money arising out of a consensual transaction, in which money, property, insurance, or services which are the subject of such transaction are primarily for personal, family,

person before the filing of a lawsuit to collect such debt. Thus, since July 1, 1990, attorneys who regularly collect or attempt to collect consumer debts are subject to the non-licensure and registration provisions of the FDCPA.

In the situation at hand, you are sending a 15 day notice letter to a consumer in an effort to collect money due, on a stop-payment check, for repairs done to the consumer's automobile. Assuming that you are correct in your statement that you "regularly" attempt to collect money on your clients' behalf and that such attempts are made before the filing of a lawsuit and concern consumer debt, it is necessary that you send along with the 15 day notice letter, all of the notices required by the FDCPA sections 12-14-105(3) and 109(1), C.R.S. (1991).

Note, there is some question as to whether the notice requirement of section 12-14-109(1)(f), C.R.S. (1991) applies to attorney collectors. That section requires that consumer notices include language indicating that the collector is regulated by the Collection Agency Board (the "Board"), with the current address of the department of law listed thereafter. Because the Board has no licensing authority over attorney collectors and must refer complaints regarding attorney collectors to the Supreme Court Disciplinary Counsel, the 109(1)(f) disclosure is sometimes omitted from consumer notices sent by attorneys. This office has not issued an opinion on the issue.

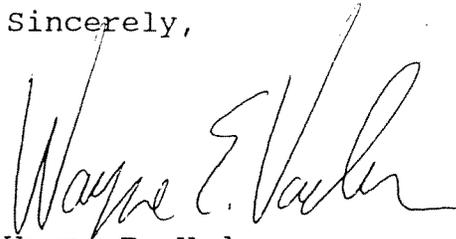
Note also, because section 12-14-109(1)(d), C.R.S. (1991) requires collectors to allow consumers 30 days in which to dispute the validity of a debt, it conflicts with the 15 day payment requirement of section 13-21-109(2)(a), C.R.S. (Supp. 1993). This office believes that the safest approach is to first send the 12-14-109 notices and then, after 30 days, send the 15 day notice required by 13-21-109.

Note further, the treble damages sought pursuant to section 13-21-109(2)(a), C.R.S. (Supp. 1993), may not be applicable to the stop payment situation at hand. Section 13-21-109(7), C.R.S. (Supp. 1993).

Enclosed is an opinion letter written by Laura E. Udis, Executive Director of the Collection Agency Board, also addressing the issue of attorney collection agencies. If you have any other question or concerns please feel free to call me or Ms. Udis at the number given below.

or household purposes, whether or not such obligation has been reduced to judgment. Note that the definition of "consumer debt" in 12-14-102(2), C.R.S. (1991) is narrower than the definition of "debt" applicable to collection agencies in section 12-14-103(6), C.R.S. (1991) which includes the business debts of individuals.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wayne E. Vaden". The signature is written in black ink and is positioned above the typed name and title.

Wayne E. Vaden
Assistant Attorney General
Consumer Protection Section
(303) 866-5304

Enclosure

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