

FDCPA Enforcement Policy Statement  
Matter No. P104806

Concurrence of Commissioner Julie Brill  
July 20, 2011

The Fair Debt Collection Practices Act ( FDCPA ) describes, in no uncertain terms, the individuals with whom a debt collector may communicate regarding a consumer's debts: the consumer, her attorney, her spouse, her parent (if the consumer is changed significantly

since the passage of the FDCPA over three decades ago. As a result of these changes, when a consumer dies, her estate will not necessarily have an executor or an administrator with whom a debt collector can communicate regarding the

who has legal authority to pay outstanding bills from a decedent's estate. Allowing debt collectors to contact the survivors and loved ones of recently deceased consumers will require them to respond to these arcane questions of law at a time when they find themselves in unfamiliar and unsettling territory, trying to sort through the finances and personal affairs of the deceased, while simultaneously trying to cope with their loss. A consumer in this vulnerable condition may mistakenly identify himself as the person with whom the debt collector should be speaking. Worse still, he may end up feeling as if he has an obligation — legal, moral, or otherwise — to pay the debt from personal funds, even though debt collectors cannot legally ask him to do so.

In view of the pitfalls of allowing debt collectors to contact family members to identify the person who has authority to pay outstanding bills from for the decedent's estate, the Policy Statement is crafted to limit potential abuses. First, when contacting the family members, the debt collector must include in the statement that he is looking for the person who is responsible for paying the outstanding bills of the decedent from the decedent's estate. Second, until such time as it is established that the debt collector is talking to the person with such authority, the collector cannot reveal that the decedent owes a debt. This should eliminate any opportunity by debt collectors to make appeals to those without authority to pay bills from the estate's assets to pay a debt out of a sense of moral obligation. Third, the Policy Statement makes clear the debt collector's general responsibility to disclose that the person with authority to pay the debts from the estate is not required to use his individual assets to pay the decedent's debt.<sup>3</sup> Finally, if the debt collector does reach the person with authority to pay the bills from the estate of the decedent, that person stands in the shoes of the consumer and must be given notice that he is entitled to proof of the decedent's debt and has the right to contest it.

On balance, I concur in the issuance of the Policy Statement at this time, despite concerns that the Policy Statement may operate as a license for some debt collectors to take unfair advantage. I take this view, in large part, because staff's review of thousands of interactions between debt collectors and the family members and survivors of decedents indicates that, while some collectors were engaged in egregious conduct, the vast majority were trying to comply with a reasonable, although at times incorrect, interpretation of the requirements of the FDCPA.

Yet, in light of these strong policy reasons for protecting the survivors and loved ones of recently deceased debtors, the Commission should ensure that any forbearance of enforcement will occur only when debt collectors strictly comply with the criteria set forth in the Policy Statement, especially the four safe 0 0 67se

