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ABOUT THE AUTHOR



Jerry Myers is Smith Debnam's Managing Partner and for more than 30 years, he has focused his practice in the area of creditors' rights, with an emphasis on debt collection, judgment enforcement, and commercial litigation. Jerry is certified by the American Board of Certification as a Specialist in the field of Creditors Rights law. Jerry is a past President of the Commercial Law League of America and was the first President of the North Carolina Creditors Bar Association. He has written and lectured extensively on debt collection and judgment enforcement, including CLE presentations sponsored by Wake Forest University School of Law, the North Carolina Bar Foundation, the Commercial Law League of America, and the National Association of Retail Collection Attorneys.

Best Practices for Collection Law Firms in the Face of Increasing Regulatory Scrutiny

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Please refer to updated article titled: "Law Firm Assessed \$3.1 Million Fine - The Hanna Consent Order - published January 21, 2016."

Law firms that collect consumer debt continue to face increasing challenges. The newest and perhaps the most daunting challenge is coming directly from the Consumer Financial Protection Bureau (CFPB). Established by the Dodd-Frank Act, the CFPB aims to protect consumers from unfair practices by financial institutions. While the CFPB initially focused on policing the activities of large banks, it has since broadened its scope to encompass the activities of virtually all financial institutions and their vendors, including law firms.

In its recent enforcement action filed against *Frederick J. Hanna and Associates* in Atlanta, the CFPB raised specific concerns about the law firm's work, alleging the Hanna knowingly used false affidavits provided by its clients. Hanna routinely filed many of its cases on behalf of debt buyers. The supposed problem with the affidavits appears to stem from a belief within the CFPB that debt buyers are unable to verify the balances due on accounts they own, making any affidavit to that effect false. The CFPB also alleged that Hanna attorneys are not meaningfully involved in the cases they file against consumers because the attorneys' caseloads are too large to allow for meaningful involvement.

Hanna is aggressively defending the action. A preliminary question Hanna has raised in its motion to dismiss the complaint is whether the CFPB has the power to regulate the practice of law, power normally exercised by the Supreme Court of the jurisdiction in which the attorney is licensed. The US District Court judge assigned to the case recently produced a lengthy ruling denying Hanna's motion to dismiss. If the case ends with directives to the law firm to modify its practices, the law firm may be able to comply and continue to serve its clients. If the case ends with the assessment of a hefty fine, however, it is doubtful that any collection law firm would be able to pay the fine and continue to operate. Law firms, after all, are generally small businesses, not large,

publicly traded companies.

While we await the results of the enforcement action against Hanna, there are steps law firms should take in the meantime to address the CFPB concerns raised in the Hanna case.

1). Law firms should take the time to understand their clients' businesses and the processes by which its clients verify account balances and execute affidavits, so the law firm can ascertain that all client affidavits are factually correct.

2). Law firms need to demonstrate their attorneys are meaningfully involved in the accounts they handle. When acting under the close supervision of attorneys, many of the tasks involved in handling consumer debt collection cases may be competently handled by staff. Attorneys must, however, retain final approval and ultimate oversight of all processes followed by their staff, down to the final approval of all letter and pleading templates used in prosecuting their cases. While attorneys do not have to personally perform every step in the prosecution of their cases, they must demonstrate personal involvement in the decisions arising in their cases. Executing and retaining a checklist of items reviewed before filing a lawsuit is one easy way a collection attorney can demonstrate meaningful involvement.

The present climate for debt collection law firms is, and will remain, challenging for some time. Firms must adopt practices that bring them in line with the expectations of their clients and regulators. Although many in Congress believe the CFPB has overstepped its bounds and should be reformed, law firms need to face the reality that increased regulatory scrutiny is here to stay.

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