

# What We Know

## ARTICLES & INSIGHTS

### ABOUT THE AUTHOR



[Caren Enloe](#) leads Smith Debnam's consumer financial services litigation and compliance group. In her practice, she defends consumer financial service providers and members of the collection industry in state and federal court, as well as in regulatory matters involving a variety of consumer protection laws. Caren also advises fintech companies, law firms, and collection agencies regarding an array of consumer finance issues. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services Committee. She is also a member of the Defense Bar for the National Creditors Bar Association, the North Carolina State Chair for ACA International's Member Attorney Program and a member of the Bank Counsel Committee of the North Carolina Bankers Association. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. Caren oversees a blog titled: [Consumer Financial Services Litigation and Compliance](#) dedicated to consumer

## Eleventh Circuit Requires Strict Compliance with FDCPA's Initial Communication Requirements

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Collection communications with consumer's counsel must meet the same standard as those directly with a consumer according to the Eleventh Circuit. In *Bishop v. Ross Earle & Bonan, P.A.*, the defendant law firm sent a debt collection letter to a consumer in the care of his attorney. The letter omitted the "in writing" language required by section 1692g. Instead, it provided:

Federal law gives you thirty (30) days after your receipt of this letter, to dispute the validity of the debt or any portion of it. If you do not dispute it within that period, we will assume it is valid. If you do dispute the debt or any portion of it, you must notify us within the said thirty (30) day period and we will, as required by law, obtain and mail to you, proof of the debt.

The consumer filed suit alleging that the letter did not comply with 15 U.S.C. §1692g. The district court dismissed the lawsuit determining that the Complaint failed to state a claim upon which relief could be granted. On appeal, the appellate court addressed the following issues of first impression: (a) whether a debt collection letter sent to the consumer's attorney rather than directly to the consumer is a communication for purposes of the FDCPA; and (b) whether by omitting the "in writing" language required by section 1692g, a debt collector can simply waive the "in writing" requirement and avoid violation of 1692g.

In reviewing the first issue, the court looked at the requirements of section 1692g to ascertain whether a letter sent to a consumer's attorney was, in fact, a "communication" for purposes of the FDCPA. In determining that the provision applies to indirect communications to the consumer's attorney, as well as those directly with the consumer, the court relied on the definition of "communication" provided within the FDCPA as including "the conveying of information regarding a debt directly or *indirectly* to any person through any medium." The court, therefore, concluded that the provisions of section 1692g are triggered by communications with counsel and such communications must include the debt validation language required by section 1692g.

financial services and has been published in a number of publications including the Journal of Taxation and Regulation of Financial Institutions, California State Bar Business Law News, Banking and Financial Services Policy Report and Carolina Banker.

The court additionally rejected the notion that 1692g “gives debt collectors discretion to omit the “in writing” requirement or cure improper notice by claiming a waiver.” In doing so, the court took note that the requirements are couched in terms of “shall” and also pointed out that the consumer’s rights to verification under 1692g(b) are *only* triggered when a dispute is made in writing,

The moral of the story for debt collectors is to comply strictly with the language of section 1692g. Letter violations are easy to prosecute and easy pickings for the consumer bar.

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