

Practice of Law Technical Clarification Act of 2017

The Problem

The judicial system is designed to provide a level playing field for everyone. Attorneys must adhere to the rules of professional conduct, strictly follow federal and state laws and rules of procedure, and conduct themselves in a manner consistent with their responsibilities as officers of the court. Presiding judges are charged with enforcing these rules. Allowing others to step into this would threaten the delicate balance in our judicial system.

Against Congress's clear intent, courts have found collection attorneys can be subject to the Fair Debt Collection Practices Act (FDCPA) even when they are engaged in litigation. As a result, collection attorneys are routinely sued for technical violations of the FDCPA that arise from errors from statements made or omitted in pleadings and discovery. This rips authority from presiding judges, who are charged to ensure proceedings remain fair, and puts them with another body.

Additionally, the Dodd-Frank Act inadvertently allowed the Consumer Financial Protection Bureau (CFPB) to gain authority over attorneys acting under a presiding judge using executive branch power to tip the scales of justice. Lawyers are deemed to be "providing a financial service" to the very borrowers they are suing in court. This creates conflicts of interest for lawyers who are duty bound to their creditor clients. This perverts our justice system by weakening attorney-client relationships and compromises the fiduciary duty that lawyers have to clients who hired them to provide services.

Overview

The Practice of Law Technical Clarification Act states that attorneys should not be subject to the Fair Debt Collection Practices Act ("FDCPA") when, and *only* when under the supervision of a presiding judge. This narrow scope ensures that attorneys remain subject to the FDCPA when involved in traditional collection activities like sending letters or making phone calls to consumers.

Additionally, the Dodd-Frank Act included exclusion in Section 1027(e) for the "practice of law," but a poorly written exception has led the CFPB to interpret the exclusion so that creditors' rights do not qualify. This has led to an untenable outcome where lawyers are deemed to be "providing a financial service" to the very borrowers they are suing in court. This interpretation creates conflicts of interest for lawyers who are duty bound to their creditor clients. The proposed legislation clarifies that creditors rights attorneys qualify for the 1027(e) exclusion.

We want to emphasize that this bill only excludes attorneys from federal regulation as a "debt collector" when engaging in litigation-related activities - in other words, practicing law within the purview and oversight of the court.