

SUBJECT: CONSUMER PROTECTION – DEBT
ATTORNEY GENERAL – PUBLIC PROTECTION UNIT
ADOPTED PURSUANT TO 9 V.S.A. SECTION 2453(c)

RULE CP 104
Effective Date: 1/28/74

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CP 104.01 Threats of Coercion

The use of any unfair threat, coercion or attempt to coerce in order to collect or attempt to collect any debt arising out of a consumer transaction constitutes an unfair trade act and practice in commerce under 9 V.S.A. Section 2453(a).

Such unfair acts include (but shall not be limited to) the following:

- (a) The use, or express or implicit threat of use, of violence or other criminal means, to cause harm to the person, reputation, or property of any person;
- (b) The false accusation or threat to accuse falsely or threat to file an action in court falsely accusing any person of fraud or any other crime, or any conduct which would tend to disgrace such other person, or in any way subject him to the ridicule or contempt of society or his community;
- (c) False accusations made to another person, including any credit reporting agency, or the threat to so falsely accuse, that a consumer is willfully refusing to pay a just debt;
- (d) The threat to sell or assign to another or to refer to another for collection an obligation of the debtor with an attending false representation or false suggestion that the result of such sale or assignment would be that the debtor would lose any defense to the claim.
- (e) The threat to sell or assign to another or to refer to another for collection an obligation of the debtor with an attending false representation or false suggestion that the result of such sale or assignment would be that the debtor would be subjected to harsh, vindictive, or abusive collection attempts;
- (f) The threat that nonpayment of any alleged claim will result in the arrest of any person or the seizure, garnishment, attachment or sale of any property or wages of any person without proper

notice, and a court order permitting such action unless such action is in fact contemplated by the debt collector and permitted by the law;

(g) The threat to take any action not in fact taken in the usual course of business, unless it can be shown that such threatened action was actually intended to be taken in the particular case in which the threat was made;

(h) The threat to take any action prohibited by this Rule.

CP 104.02 Harassment

The use of any conduct, the natural consequence of which is to oppress, harass, or abuse any person in connection with the collection of or attempt to collect any debt arising out of a consumer transaction constitutes an unfair trade act and practice in commerce under 9 V.S.A. 2453(a).

Such unfair acts include (but shall not be limited to) the following:

(a) The use of profane or obscene language or language that would ordinarily abuse the hearer or reader;

(b) The placement of telephone calls to the debtor without disclosure to the debtor of the name of the business or company the debt collector represents;

(c) Causing expense to any person in the form of long distance tolls, telegram fees, or other charge incurred through the use of a medium of communication by misrepresenting to such person the true purpose of the notice, letter, message or communication;

(d) Causing a telephone to ring or engage any person in telephone conversation with such frequency as to be unreasonable or to constitute a harassment to the person under the circumstances, or at times known to be times other than normal waking hours of the person;

(e) The placement of telephone calls to any person, contrary to his instructions, at his place of employment.

CP 104.03 Unreasonable Publication

The use of any conduct or means which would unreasonably publicize information relating to any debt arising out of a consumer transaction constitutes an unfair act and practice in commerce under 9 V.S.A. Section 2453(a).

Such unfair acts include (but shall not be limited to) the following:

(a) The communication of any information relating to a consumer debt to any employer or his agent; provided, however, that a communication to an employer would be permitted if it were made after a judgment on the consumer debt had been entered against the debtor or made with

the written consent of the debtor or his attorney, or in order to locate the debtor or his residence or his place of employment and no indication of indebtedness is conveyed including the fact that the call is being placed by a debt collection agency;

(b) The disclosure, publication, or communication of any information relating to a consumer debt to any family member of the debtor other than the debtor's spouse or the parents or guardians of a debtor who is either a minor or who resides in the same household with such parent or guardian; provided, however, that the making of such communications would not be considered unfair acts if made after the obtaining of a judgment or if the debtor or his attorney had consented to them;

(c) The disclosure, publication, or communication of any information relating to a consumer debt to any person other than as specified above, other than through proper legal action, process or proceeding;

(d) The use of any form of communication to the debtor which ordinarily would be seen by any other person, except telegrams, that displays or conveys any information about the alleged claim other than the name, address, and phone number of the debt collector;

(e) Notwithstanding the foregoing provisions of CP 104.03, the disclosure, publication or communication by a debt collector of information relating to a consumer debt or the debtor to a consumer reporting agency or to any other persons who request such information and who are reasonably believed to have a legitimate business need for such information shall not be deemed to violate this Rule.

CP 104.04 Deceptive Representations

The use of any false, fraudulent, deceptive, or misleading representation or means to collect or attempt to collect any debt arising out of a consumer transaction or to obtain information concerning debtors constitutes an unfair and deceptive trade act and practice in commerce under 9 V.S.A. Section 2453(a).

Such unfair and deceptive acts include (but shall not be limited to) the following:

(a) The use of any business, company, or organization name while engaged in the collection of claims, other than the true name of the debt collector's business, company, or organization;

(b) The failure to clearly disclose in all written communications made to the debtor or to members of the debtor's family in order to collect or attempt to collect a claim or to obtain information about a debtor that the debt collector is attempting to collect a claim and any information obtained will be used for that purpose;

(c) Any false representation that the debt collector has information in his possession or something of value for the debtor;

(d) The failure to clearly disclose the name and full business address of the person to whom the claim has been assigned at the time of communicating the first demand for money after the date of the assignment;

(e) Any false representations, or any representation which tends to create in the mind of the ordinary debtor a false., impression, of the character, extent or amount of a claim against a debtor, or of its status in any legal proceeding;

(f) Any false representation, or any representation which tends to create in the mind of the ordinary debtor a false impression, that any debt collector is vouched for, bonded by, affiliated with, or an instrumentality, agency or official of the state or any agency of federal, state, or local government;

(g) The use, distribution, or sale of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, a governmental official, or other governmental authority, or which tends to create in the mind of the ordinary debtor a false impression about its source, authorization, or approval;

(h) Any representation that an existing obligation of the debtor may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges, if in fact such fees or charges may not legally be added to the existing obligation;

(i) Any false representation, or any misrepresentation which tends to create in the mind of the ordinary debtor a false impression, about the status or true nature of, or services rendered by, the debt collector or his business.

CP 104.05 Unconscionable Means

The use of any unfair or unconscionable means to collect or attempt to collect any debt arising out of a consumer transaction constitutes an unfair trade act and practice in commerce under 9 V.S.A. Section 2453(a).

Such unfair acts include (but shall not be limited to) the following:

(a) The seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a debtor who has been declared bankrupt, an acknowledgment of a debt barred by a statute of limitations, or a waiver of any legal right of a debtor, without clearly disclosing the nature and consequences of such affirmation or waiver and the fact that the debtor is not legally obligated to make such affirmation or waiver; provided, however, that this provision does not prohibit the accepting of promises to pay that are voluntarily written and offered by the debtor;

(b) The collection of or the attempt to collect from the debtor any part or all of the debt collector's fee or charge for services rendered, unless legally entitled to such fee or charge;

(c) The collection of or the attempt to collect any interest or other charge, fee, or expense incidental to the principal obligation unless such interest or incidental fee, charge, or expense is

expressly authorized by the agreement creating the obligation and is legally chargeable to the debtor, or is legally chargeable under state law;

(d) The initiation of communications with a debtor, other than statement of account used in the normal course of business to inform persons of money due, whenever the debt collector has been notified that the debtor is represented by an attorney and such notice includes the attorney's name and a request by such attorney that all communications regarding the consumer debt be addressed to the attorney; provided, however, that such communications would be allowed if the attorney has given prior approval to the communications.

CP 104.06 Practice of Law by Debt Collectors

The practice of law by any debt collector, not a licensed attorney, in the collection or enforcement of debts arising out of consumer transactions constitutes an unfair and deceptive trade act and practice in commerce under 9 V.S.A. Section 2453(a).

Such unfair and deceptive acts include (but shall not be limited to) the following:

(a) Performance of legal services, provision of legal advice or making of a false representation or false implication that any person is an attorney;

(b) Any communication with a debtor in the name of an attorney or upon stationery or other written matter bearing an attorney's name.

CP 104.07 Definitions

(1) The term "debt collector" means any person engaging or aiding directly or indirectly in enforcing claims, and includes creditors and their agents when they are so acting.

(2) The term "debt" means money, property, or their equivalent which is due or owing or alleged to be due or owing.

(3) The term "debtor" means a person from whom a debt collector seeks to collect a debt which is due and owing or alleged to be due and owing from such person.

(4) The term "consumer reporting agency" means any person, which, for monetary fees, dues, or on a co-operative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer credit information to third parties, and which uses any means or facility for the purpose of preparing or furnishing consumer credit reports.