

# LawClips

March, 2009  
Vol. 8, No. 1

Topic for the Month

## Collections

Mark A. Bartels

Terence J. Bouressa

John P. D'Angelo

Debra A. DeLeers

Timothy A. Hawley

Steven D. Hitzeman

Sandra L. Hupfer

Robert J. Janssen

Michael J. Kirschling

Evan Y. Lin

Lora A. Matzke

Peggy L. Miller

Christina L. Peterson

Patricia J. Sandoz

C. David Stellpflug

Kathryn M. Ver Boort

444 Reid St., Suite 200

De Pere, WI 54115

920-336-5766

920-336-5769 (fax)

866-525-5200 (toll-free)

[stellpfluglaw.com](http://stellpfluglaw.com)

[info@wislawyers.com](mailto:info@wislawyers.com)

Lakewood Office:

15251 Hwy. 32

Lakewood, WI 54138

715-276-6599

Hayward Office:

10594 Main St.,

Hayward, WI 54843

715-934-2767



**Collection:** With the economy in a recession, the need to collect outstanding debts is at an all time high. However, many people are unaware of the Fair Debt Collection Practices Act (FDCPA), which regulates the methods people may use to collect a debt. The FDCPA was enacted in 1977 to eliminate abusive debt collection practices, such as threatening incarceration of debtors, multiple calls to debtors at their workplace and misrepresenting the collector's identity to obtain addresses or telephone numbers.

The FDCPA applies to the collection of consumer debts, which are defined as any obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services that are subject to the transaction are primarily for personal, family or household purposes. Only debts owed by a person are subject to FDCPA. Debts owed by corporations, partnerships, limited liability corporations or other organizations are not subject to the FDCPA. The FDCPA generally applies only to debt collectors. However, almost any third-party collector will qualify as a debt collector under the FDCPA.

Under the FDCPA, the following are examples of collection methods that are prohibited:

- Debt collectors may not engage in any conduct, which is to harass, oppress, or abuse any person in connection with the collection of a debt. For example, a debt collector may not use or threaten to use violence or other criminal means to harm the physical person, reputation or property of any person. Additionally, a debt collector may not use profane language or make repeated, continuous phone calls to the debtor.
- Debt collectors may not make false, deceptive or misleading representations, such as the false representation of the character, amount or legal status of the debt or attempting to collect upon a debt that has been discharged in bankruptcy.
- Debt collectors may not engage in any unfair collection practices, such as collecting any sum, including interest, fees, charges or expense incidental to the principal obligation, unless such amount is authorized by the agreement.

**Consumers:** A consumer has the right to require the debt collector to verify the debt. The consumer must be provided with notice of this right. After a request from the consumer, the debt collector must send the consumer written notice containing the amount of the debt and the name of the creditor to whom the debt is owed, as well as several mandatory statements required by the FDCPA.

A violation of the FDCPA can render a debt collector liable for various types and amounts of relief, including: actual damages, statutory damages, attorney's fees, costs and injunctive relief. The FDCPA authorizes statutory damages up to \$1,000 as an incentive to obey the law. To determine the appropriate amount of statutory damages, courts look to the frequency, persistence and nature of the noncompliance, along with the intent of the debt collector. Additionally, a consumer is entitled to actual damages for items, such as amounts improperly collected, lost wages, and emotional distress.

This is a brief overview of the FDCPA. If you have any questions regarding a collection activity by a debt collector, or if you are a debt collector and want to ensure your methods are acceptable under the FDCPA, contact either Attorney Mark Bartels or Attorney Christina Peterson at Stellpflug Law, S.C.

## Super Lawyers

**Congratulations:** Recently, Attorneys Evan Y. Lin and Christina L. Peterson of Stellpflug Law, S.C. were selected for inclusion as Rising Stars in **Wisconsin Super Lawyers & Rising Stars 2008** published by Law & Politics. No more than 2.5 percent of all attorneys in Wisconsin are selected as Rising Stars, which is based on a selection process consisting of nominations, peer evaluation and internal research.

Attorney Lin is a shareholder here at Stellpflug Law and practices in the areas of Estate Planning, Probate, Business/Corporate Law and Real Estate. Attorney Peterson is an associate with our firm and practices in the areas of General Litigation, Business/Real Estate Litigation and Appellate Practice. For more information on either Attorneys Lin or Peterson, visit our website at [stellpfluglaw.com](http://stellpfluglaw.com).



Mark A. Bartels



Christina L. Peterson



Evan Y. Lin