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Hon. Rohit Chopra  
Consumer Financial Protection Bureau  
1700 G Street, N.W.  
Washington, D.C. 20552  
Sent via E-Mail: : advisoryopinion@cfpb.gov

Re: Advisory Opinion Program Request regarding Communication with Consumers Who Have  
Been Represented by Bankrupt or Defunct Law Firms

Dear Director Chopra:

We submit this Advisory Opinion Request on behalf of the National Creditors Bar Association (“NCBA”), which is seeking guidance for its members. Urgent need exists for such guidance in order to prevent substantial consumer harm that could result from the recent bankruptcy filings of two large law firms engaged in debt settlement and credit repair activities. The NCBA does not believe that any information contained in this request should be treated as confidential, and the NCBA is not aware of any active litigation or Federal or State agency investigation regarding the issue on which this advisory opinion is being sought.

### **Facts Giving Rise to This Request**

Two large law firms that represent consumers have recently filed for bankruptcy protection. The first, Litigation Practice Group, was a California Law Firm that is alleged to have been secretly operated by a disbarred attorney. The second, Lexington Law, is the subject of a CFPB enforcement action that is pending in federal court in Utah. With each of these filings, many employees of those firms have left or been terminated.

With regard to Litigation Practice Group, in an amended adversary complaint, the bankruptcy trustee has alleged that client files were wrongfully transferred to at least five other law firms (which he suggests may also be fronts for the same disbarred attorney).<sup>1</sup> A copy of the adversary complaint is enclosed. It appears that the bankruptcy court may be about to enjoin those firms from handling the transferred files.

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<sup>1</sup> See *Richard A. Marshack, Chapter 11 Trustee v. Tony Diab, et al.*, Adv. Proc. No. 8:23-ap-01046-SC in the United States Bankruptcy Court for the Central District of California.

## **The Potential Consumer Harm**

Section 805 of the Fair Debt Collection Practices Act (15 U.S.C. § 1602c) provides, in pertinent part:

(a) Communication with the consumer generally. Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

\* \* \*

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; . . .

Many of the consumers that have been represented by the law firms at issue are trying to pay or resolve their debts and restore their credit standing. Many need to be able to satisfy judgments in order to sell, buy, or refinance their homes. Others seek to satisfy their obligations in order to qualify to purchase vehicles or obtain loans for purposes such as their children's education. Often the need to achieve such resolutions is urgent, particularly in connection with transactions involving homes.

As a result of the bankruptcy filings of these law firms coupled with the concurrent reduction in workforce, and with the injunction that is about to be issued in the Litigation Practice Group case, NCBA members face urgent requests from consumers to maintain their payment plans, to satisfy or settle their debts, or merely to discuss their options. As a result of the protections afforded by Section 805(a)(2), the member firms cannot communicate with those consumers, even when they are told "I can't reach my attorney" or "the law firm seems to have shut down, and I don't know who is representing me anymore." The prior notice of representation still binds the creditors' attorneys until either the consumer's (possibly former) attorney consents to direct communication with the consumer or "fails to respond within a reasonable period of time" to the NCBA member.

Unfortunately, the FDCPA does not define what constitutes a "reasonable period of time" for an attorney to respond. Although industry commenters requested that Regulation F provide a definition, the Bureau declined to do so. *See, e.g.*, 85 FR 76734, 76798. At the time, the Bureau was not presented with the circumstances described above. NCBA believes that these large law firm bankruptcies which affect consumers throughout the United States present a sufficient reason to issue an advisory opinion as contemplated by Congress in Section 813(e) of the FDCPA (15 U.S.C. § 1692k(e)) providing guidance as to what is a "reasonable period of time" for an attorney to respond to a debt collector.

Without such an advisory opinion, the situation described above will result in disrupted payment plans that NCBA members and their clients want to honor. It prevents consumers from restoring their credit standing (as many have worked hard to do). In many instances it has the potential to prevent sales of consumers' homes or much-needed purchases and credit extensions. Quite simply, consumers need an advisory opinion so that they can be protected from the fallout of the Litigation Practice Group and Lexington Law bankruptcies. The very nature of the Bureau's Utah enforcement action is that Lexington Law has allegedly caused substantial consumer harm. This request is made in an effort to prevent further victimization of those consumers by the law firms in which they placed their trust.

### **Specific Opinion Sought/Question Presented**

Generally, the NCBA asks the Bureau to issue a formal advisory opinion as to what constitutes a "reasonable period of time" for an attorney to respond under Section 805(a)(2) of the FDCPA. This request is narrower than the broad guidance requested in the industry comments to Reg. F. Specifically, NCBA asks the following question:

In the context of Section 805(a)(2) of the FDCPA (15 U.S.C. § 1692c(a)(2)), what is a reasonable period of time for an attorney to respond when the law firm for which the consumer's attorney allegedly works has filed for bankruptcy or otherwise ceases to operate?

### **Information Regarding NCBA**

The NCBA is the only bar association in the country dedicated to promoting and protecting all creditors' rights attorneys, including attorneys who collect consumer debt. NCBA member firms practice law in a manner consistent with their responsibilities as officers of the court and must adhere to rules of state civil procedure, state bar association licensing, certification requirements, and the rules of professional conduct of each state in which they practice. NCBA's values are: Professional, Ethical, Responsible.

About the NCBA:

- Its membership includes over 2,500 creditors rights attorneys in over 400 law firms and other creditors' rights practices in all 50 states, Canada, and Puerto Rico;
- The majority of NCBA law firms are considered small businesses pursuant to the Small Business Administration classification;
- 45% practice creditors rights law across multiple state jurisdictions;
- NCBA member law firms are subject to audits on a regular basis by their clients, many of which are regulated entities, and devote significant time and resources on compliance and preparing for those audits; and

- NCBA member firms practice various subsets of creditors' rights law.

Creditors rights attorneys, like lenders and consumers, are a necessary part of the “credit ecosystem.” More than half of NCBA members also represent local, small businesses including retail establishments, small or regional banks, credit unions, and small medical providers. These are long-term attorney-client relationships that have existed, on average, for over two decades. These small business clients do not have vast legal departments or even in-house attorneys and rely on their local attorneys to ensure that outstanding receivables are paid so that their businesses can continue to operate.

Attorneys who are members of NCBA law firms understand that they are officers of the court and work diligently to ensure that consumers, especially those that appear *pro se* in court, are treated with dignity and respect. Although our legal system is complex, NCBA attorneys make every effort to work with consumers throughout the legal process including efforts to help resolve their debts in a reasonable manner. It is through this lens that NCBA seeks to prevent or mitigate any consumer harm that could flow from the bankruptcies of Lexington Law and Litigation Practice Group by requesting this advisory opinion from the Bureau.

Director Chopra, on behalf of our client and its members we thank you for consideration of this request.

Yours truly,

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