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Consumer Intake -- Debt Collection
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: **Docket No. CFPB-2019-0022.**
RIN 3170-AA41.

To the Consumer Financial Protection Bureau (CFPB):

These Comments concern proposed regulations stating that they are being issued under the authority of FDCPA or Fair Debt Collection Practices Act section 814(d), codified as 15 U.S.C. § 1692l(d). In particular, my comments break down into a couple of concrete areas relative to your new and proposed 12 CFR 100618(g). You have titled paragraph (g) as *Safe harbor for meaningful attorney involvement in debt collection litigation submissions*.

1. Your proposed 12 CFR 1006.18(g) was not issued pursuant to your authority to issue rules under section 814(d) of the FDCPA, 15 U.S.C. § 1692l(d), because your proposed rule provides immunity to debt collection attorneys, which you are not authorized to do. Your proposed rule does not prescribe rules with respect to the collection of debts as defined.

As an administrative agency, your authority is only that which was conferred upon you by Congress. Congress authorized you to "prescribe rules with respect to the collection of debts by debt collectors, as defined[.]"

Your proposed paragraph (g) may be fine for debt collection attorneys but it has nothing to do with the FDCPA statute. Your Summary recitation that "[p]roposed § 1006.18 would implement FDCPA section 807 [codified as 15 U.S.C. § 1692e]," is false at least with respect to paragraph (g).

It is also false to state, as you do in your Summary, that your proposed new § 1006.18 would provide "a clear articulation" of "what meaningful attorney involvement in debt collection litigation submissions **means under FDCPA section 807**" (emphasis added). The language of the statute under which you are authorized to prescribe rules does not contain any reference to "meaningful attorney involvement" and so it is not your place to interpret the meaning of that phrase.

As you note from the title you gave to it, paragraph (g) concerns *Safe harbor for* ***meaningful attorney involvement*** *in debt collection litigation submissions*. [Emphasis added.] As you also note in your Summary of proposed rule 1006.18, the concept of **meaningful attorney involvement** comes from case law and not from the statute. You have not been given any authority to review or interpret the decisions of judges and courts in any cases at all.

You further clarify your purpose by stating in your Summary and in footnote 351 of your Summary that paragraph (g)'s "safe harbor is proposed in part to set clearer standards" to govern debt collection litigation. To say again, your mandate or jurisdiction simply does not extend to providing immunity or safe harbor to debt collection attorneys. Further, your jurisdiction does not extend to interpreting the decisions of judges in litigated cases let alone to overruling their decisions.

To summarize this first Comment, proposed paragraph (g) of your new and proposed rule, § 1006.18, is invalid for any one or more of several reasons which include the following:

(1) Your proposed paragraph (g) does not "prescribe rules with respect to the collection of debts by debt collectors, as defined;"

(2) You are not authorized to extend a "safe harbor" or any form of immunity to debt collection attorneys, and

(3) What is meant by "meaningful attorney involvement case law" is up to judges to decide, and not to you.

2. <u>Your omissions of relevant and important safeguards on attorney conduct prescribed by Federal Rule of Civil Procedure 11 for all forms of attorney activity in litigation are fatal to your proposed rule in 1006.18(g).</u>

Rule 11 governs the conduct of all attorneys in all federal litigation. Without exception, attorneys engaged in litigation in federal courts must obey each "aspect" as you put it, of Rule 11(b):

> **(b) REPRESENTATIONS TO THE COURT. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing,** submitting, **or later advocating it**—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, **formed after an inquiry reasonable under the circumstances**:
>
> **(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;**
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law **or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law**;
>
> (3) the factual contentions have evidentiary support **or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery;** and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(Emphasis added.) You do not have the authority to alter or amend Rule 11 in any litigation in federal courts. You certainly have not been given that authority with respect to debt collection litigation.

In addition to your failure of authority to propose your new 1006.18(g), your omission of each and all of the requirements of Rule 11 reproduced in boldfaced language above, would if implemented be a clear violation of equal protection of the laws. Your proposed new guides to conduct of litigation in federal courts in one class of litigation, namely, debt collection litigation, at the same time constitute a baseless attempt to ease restrictions on the conduct of one class of attorneys, namely, attorneys representing debt collectors in federal litigation.

For each of these additional reasons, both for your failure of authority to impose new and lenient guidelines on the conduct of federal litigation and for your failure as the federal government to guarantee equal protection of the laws in this regard, your proposed 1006.18(g) is invalid and must fail.

Conclusion

To say again, in summary of my first Comments, above, proposed paragraph (g) of your new and proposed rule, § 1006.18, is invalid for any one or more of several reasons which include the following:

(1) Your proposed paragraph (g) does not "prescribe rules with respect to the collection of debts by debt collectors, as defined;"

(2) You are not authorized to extend a "safe harbor" or any form of immunity to debt collection attorneys, and

(3) What is meant by "meaningful attorney involvement case law" is up to judges to decide, and not to you.

In summary of my second set of Comments, above, your proposed new 1006.18(g) is invalid and must fail both for your failure of authority to impose new and lenient guidelines on the conduct of federal litigation and for your failure as the federal government to guarantee equal protection of the laws in this regard.

Thank you for your consideration.

Sincerely Yours,
Dennis J. Wall