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The Division is issuing the following opinion pertaining to attorneys at law ("attorneys") engaged in the collection of consumer debt in the Commonwealth and the applicability of the Commonwealth's debt collection laws, General Laws chapter 93, sections 24-28, inclusive and the Division's regulations, 209 CMR 18.00 *et seq* (collectively the "Debt Collection Law").

The Debt Collection Law defines a "debt collector" in section 24 of chapter 93 as "any person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of a debt, or who regularly collects or attempts to collect, directly or indirectly, a debt owed or due or asserted to be owed or due another." Within the same definitional provision is a list of exclusions from the "debt collector" definition including in clause (g) "attorneys-at-law collecting a debt on behalf of a client". The Division has been requested to opine on the scope of this attorney-at-law exclusion and applicability of the Debt Collection Law to attorneys.

Historically, the Debt Collection Law, prior to its most recent amendment, did not apply to attorneys licensed to practice law in the Commonwealth. However, the Debt Collection Law, including its licensing provisions, was applicable to attorneys licensed to practice in other jurisdictions. The Debt Collection Law was amended in many provisions to model the federal statute, the Fair Debt Collection Practices Act ("FDCPA") which does not contain a licensing component. The most recent amendments to General Laws chapter 93, sections 24-28, inclusive, were based on a legislative recommendation submitted by the Division. That recommendation was passed into law without any substantive change.

The Division is mindful of the 1995 U. S. Supreme Court decision which held that attorneys who regularly engage in consumer debt collection activity, even when that activity consists of litigation are "debt collectors" under the FDCPA and subject to compliance with its requirements and restrictions. See Heintz v. Jenkins, 514 U.S. 291 (1995).

It is the position of the Division that the "attorney-at-law" exclusion applies solely to attorneys licensed to practice law in the Commonwealth since, unlike attorneys licensed in other jurisdictions, they are in fact authorized to practice law and utilize the court system in the Commonwealth. Attorneys licensed to practice law in the Commonwealth are subject to the Supreme Judicial Court's Rules of Professional Conduct and the disciplinary oversight of the Board of Bar Overseers. This position is consistent with the Division's longstanding practice relative to the licensing of attorneys as debt collectors. Attorneys, licensed to practice law in the Commonwealth, are also subject to the requirements and restrictions of the FDCPA and the debt collection regulations of the Massachusetts Attorney General, 209 CMR 7.00 *et seq*. The Debt Collection Law contains substantially similar requirements and restrictions as the FDCPA.



In a separate opinion (Opinion O06060), also issued today, the Division established that a "passive" debt buyer need not obtain a debt collector license if the collections were done by a licensed debt collector or an attorney licensed to practice law in Massachusetts. However, it is the Division's position that Opinion O06060 can not be coupled with the attorney-at-law on behalf of a client exclusion, so called, to result in situations where an entity is not required to be licensed. Two such situations are addressed as follows.

In the first situation, if an attorney licensed to practice law in Massachusetts is, in fact, the "debt buyer" as contemplated by the Division's Industry Letter of June 16, 2006 (the "Industry Letter"), the attorney or a law firm would be required to obtain a license as a debt collector in accordance with the requirement of the Industry Letter. Accordingly, the attorney-at-law exclusion would not be available to an attorney who or a law firm which is a debt buyer. It is the Division's position that under those facts the debt buyer/attorney would neither be passive nor acting on behalf of a client.

Similarly, in the event that an attorney licensed to practice law in Massachusetts is a debt buyer as contemplated by the Division's Industry Letter and Opinion O06060 and that attorney seeks to collect the debt solely through a law firm that attorney is affiliated with, that attorney would no longer be viewed as a "passive debt buyer" and that attorney would be required to obtain a debt collector license.

Attorneys not licensed to practice law in the Commonwealth who regularly engage in or whose principal purpose is debt collection, must obtain a license as a debt collector and will be subject to all provisions of the Debt Collection Law in the Commonwealth. In that situation such an attorney, not authorized to practice in the Commonwealth, collecting debt would be conducting such business as a debt collector and not as an attorney. That fact was clearly recognized in the prior statute. The Division's view under the amended statute remains the same.

This opinion is effective as of October 2, 2006.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

The Division will review other fact patterns on a case by case basis. An entity seeking an opinion from the Division on the Debt Collection Law should review the process for obtaining an opinion as set out in Regulatory Bulletin 1.1-103. Opinion requests must contain all applicable facts and cite specific cases, if any, which support the argument presented. Additionally, rulings of the Federal Trade Commission, if applicable, should be cited as well.

Sincerely,



Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
and General Counsel

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