THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF BANKS
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DAVID J. COTNEY
COMMISSIONER OF BANKS

July 18, 2014

Steven S. Broadley, Esq.
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800 Boylston Street
Boston, MA 02199-8004

Dear Mr. Broadley:

This letter is in response to your correspondence dated November 20, 2013 to the Division of Banks (Division) relative to the five business day period in which a debt collector must provide certain enumerated papers and records to a consumer pursuant to the Division's regulation 209 CMR 18.18(3). You requested an advisory opinion interpreting how the five business days are to be measured and, specifically, whether a written request for such records is necessary to trigger the five business day period or whether any request, however presented, might trigger the response period.

In your correspondence you reference that 209 CMR 18.18(1) sets forth that the debt collector must provide the required response to the consumer within, "five days after the initial communication with a consumer." You also reference that under 209 CMR 18.18(2), if the consumer disputes the debt, the debt collector must cease collection activities and take additional actions to validate the debt upon receipt of written notification from the consumer that the debt attempting to be collected is disputed. You noted that 209 CMR 18.18(3) does not provide the same level of specificity and guidance regarding whether it is necessary that the consumer's request for records under this subpart, or the request of an attorney on the consumer's behalf, be in writing.

An interpretation of the requirements of 209 CMR 18.18(3) begins with a consideration of the plain meaning of the language of the regulation. As referenced in your letter, 209 CMR 18.18(2) explicitly requires that the consumer's notice to the debt collector that the debt is disputed must be submitted in writing to invoke the consumer protections afforded under this subpart of the regulation. By contrast, the plain text of 209 CMR 18.18(3) does not require that the consumer's request, or the consumer's attorney's request, be presented in writing. Further, nothing contained in 209 CMR 18.18(3) provides an indication that an oral notice from the consumer was intended to be treated as ineffective. Where no writing requirement is explicit in 209 CMR 18.18(3), the Division will not construe the regulation to negate the validity of a consumer's oral request for records and does not believe that a written request from the consumer is necessary to trigger the debt collector's obligation to provide the required response.

In considering your request for an advisory opinion, the Division reviewed the August 12, 2004 amendments to 209 CMR 18.00 *et seq.* which introduced the provisions contained in 209 CMR 18.18(1) and 18.18(2) into the Massachusetts regulation. In revising the regulation, the Division sought to remove inconsistencies, where appropriate, between the state regulation and the federal Fair Debt Collection

Practices Act. The provisions of 209 CMR 18.18(1) and 18.18(2) reflect an attempt to align the Massachusetts requirements with the provisions of 15 U.S.C. §1692g(a) and (b) under the Fair Debt Collection Practices Act. In substantial part, the provisions of 209 CMR 18.18(3) were continued from the then-existing version of the Massachusetts collection agency regulation appearing in 209 CMR 18.20. Prior to the August 12, 2004 amendments, 209 CMR 18.20 provided that, "It shall constitute an unfair or deceptive act or practice for a collection agency to fail to allow a debtor or any attorney for a debtor to inspect and copy the following materials regarding a debt during normal business hours of the collection agency and upon notice given to such collection agency not less than five business days preceding the scheduled inspection: (1) All papers or copies of papers, in the possession of the collection agency which bear the signature of the debtor and which concern the debt being collected; [and] (2) A ledger, account card, or similar record in the possession of a collection agency which reflects the date and amount of payments, credits, and charges concerning the debt."[1]

In addition to a plain meaning approach to applying the regulation, the Division also seeks to administer the regulation in a manner that is internally consistent relative to the use of language within the regulation and the way in which the subparts of the regulation work together. The Division is guided by the well-established principle that the, "inclusion of particular language in one part of a statute and omission of the same language in another is deemed to be an intentional and purposeful act by the Legislature." U.S. v. Romano, 929 F. Supp. 502, 506 (D. Mass. 1996). Similarly, as the Division proceeded in amending 209 CMR 18.00 *et seq.* during 2004, the Division was aware of the oral notice and writing requirements introduced throughout 209 CMR 18.18(1) and (2). In incorporating the provisions of 209 CMR 18.18(3) into the revised regulation, the exclusion of an express writing requirement in this subpart is indicative that a written request from the consumer would not be necessary to initiate the debt collector's obligation of a response under the regulation. Under 209 CMR 18.18(3) the debt collector's receipt of an oral request for records from the consumer, or the consumer's attorney, is sufficient to trigger the debt collector's obligation and may serve to commence the five business day period in which the required response must be returned to the consumer.

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.

Sincerely,

Merrily S. Gerrish
Deputy Commissioner of Banks
and General Counsel

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[1] 209 CMR 18.20 (1996).