



## Alerts

### FDCPA Does Not Apply to Misleading Communications Directed at Judge

April 12, 2011

*Lawyers for the Profession® Alert*

*O'Rourke v. Palisades Acquisition XVI, LLC*, \_\_\_ F.3d \_\_\_, 2011 WL 905815 (7th Cir. Mar. 17, 2011)

#### Brief Summary

The U.S. Court of Appeals for the Seventh Circuit held that the [Fair Debt Collection Practices Act \(FDCPA\)](#) does not create a cause of action based on a debt collector plaintiff's communications that would confuse or mislead a state court judge.

#### Complete Summary

A debt collector filed a complaint in state court that included a potentially misleading exhibit. The exhibit appeared to be a credit card statement listing the balance that the debtor owed, but it was not and had not been sent to the debtor. The debt collector later voluntarily dismissed the action. The debtor subsequently sued the debt collector in federal court, alleging that the inclusion of the exhibit violated the FDCPA because it was misleading to the state court judge.

The Seventh Circuit held that misleading statements made to state court judges are not actionable under the FDCPA. The FDCPA prohibits misleading representations made in connection with the collection of debt, but does not specify to whom such statements must be made to be actionable. The court held that the prohibition on misleading representations is limited to communications with consumers because the FDCPA's purpose is to protect consumers. Thus, a misleading statement is not actionable unless it has the ability to influence a consumer's decision. Because a state court judge has no special relationship with a debtor (*e.g.*, the judge does not stand in the shoes of the debtor), the FDCPA's protections need not be extended to cover statements made to judges.

A concurring judge opined that the majority opinion was broader than necessary. The concurrence would have based the court's holding on the debtor's lack of evidence as to whether the exhibit was actually misleading.

#### Significance of Opinion

#### Service Areas

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This opinion limits the scope of the FDCPA in a way that should partially insulate debt collectors, including lawyers, from liability—at least in the Seventh Circuit. Other circuits have reached inconsistent holdings on similar issues. The Seventh Circuit also left open the question of the extent to which the FDCPA’s prohibition of misleading communications does or does not apply to other steps in the judicial process.

For more information, please contact your regular [Hinshaw](#) attorney.

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