

## Lawyer Starting Debt Action Is Debt Collector Under FDCPA

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In a matter of first impression in the Second Circuit, the Court of Appeals has found that the commencement of a suit to recover unpaid rent represents an “initial communication” within the meaning of the Fair Debt Collection Practices Act. *Goldman v. Cohen*, S.D.N.Y., Docket No. 05-2645-cv (April 12, 2006). In a decision by Circuit Judge Jose A. Cabranes, the Court held that the lawyer who brought the action was a professional consumer debt collector as defined in the Act and was therefore required to give the validation notice required by the FDCPA, 15 U.S.C. §1692g(a). Failure to give the notice constitutes a violation of the Act.

The validation notice, which must be given “[w]ithin five days after the initial communication with a consumer in connection with the collection of any debt,” must contain the following: 1) the amount of the debt; 2) the name of the creditor to whom the debt is owed; 3) a statement that the debt will be assumed valid by the debt collector if the consumer does not dispute the debt within 30 days after receipt of the notice; 4) a statement that if the debtor disputes the debt in writing within the 30 days, the debt collector will obtain verification of the debt or judgment and mail the copy to the consumer; and 5) a statement that upon consumer’s written request within the 30-day period, the debt collector will provide the consumer with the name of the original creditor, if different from the current creditor.

The plain language of the FDCPA defines “[t]he term ‘communication’ [as] the conveying of information regarding a debt directly or indirectly to any person through any medium.” “Indeed, any construction of the FDCPA that exempted state legal proceedings from the definition of ‘initial communication’ would permit debt collectors to avoid the validation notice requirements of the statute simply by collecting debts through the medium of litigation.” Further, the Supreme Court has held that the term “debt collector” includes “lawyers who regularly tr[y] to obtain payment of consumer debts through legal proceedings.” *Heintz v. Jenkins*, 514 U.S. 291 (1995).

To avoid the risk that debtors will be confused by receipt of the validation notice either simultaneously with or within five days after the summons and complaint, the Court “exhorted” debt collectors to send the following notice along with the validation notice and the pleadings:

This advice pertains to your dealings with me as a debt collector. It does not affect your dealings with the court, and in particular, it does not change the time at which you must answer the complaint. The summons is a command from the court, not from me, and you must follow the instructions even if you dispute the amount of the debt. The advice in this letter also does not affect my relations with the court. As a lawyer, I may file papers in the suit according to the court’s rules and the judge’s instructions.