

RULES OF THE ADMINISTRATOR

COLORADO FAIR DEBT COLLECTION PRACTICES ACT

(effective July 30, 2010)

4 Code of Colorado Regulations 903-1

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Scope of Rules

These rules apply to all collection agencies and debt collectors, whether or not exempt from licensing under the Colorado Fair Debt Collection Practices Act, unless the rule is limited to “licensees” or “applicants.” The words “client” and “creditor” have the same meaning throughout these rules.

Chapter 1

Licensing and Disciplinary Matters

Rule 1.01 Collections Manager

- (1) Whenever an applicant or licensee designates a new collections manager, it shall notify the Administrator by filing a collections manager application form. The collections manager shall meet the qualifications of sections 12-14-119, 12-14-123(2), and the other applicable provisions of the Colorado Fair Debt Collection Practices Act.
- (2) Pursuant to section 12-14-122(3)(a), C.R.S., an application filed due to a change of collections manager shall be filed within thirty days of the change. The temporary absence of an approved collections manager does not constitute a change requiring designation of a new manager.

Rule 1.02 Licensure

- (1) No license shall issue until all necessary documents and information have been filed, all fees paid, and the designated collection manager's qualifications to collect debts has been determined. No debts may be collected nor creditor accounts solicited until a license has been issued.
- (2) Within ninety (90) days after notice from the Administrator that the application is incomplete, the applicant must complete the application for licensure by providing all necessary documents, information, and fees specified. If the licensure application is not completed within that time, the application shall be null and void and the applicant must then reapply for licensure, including payment of all fees.

Rule 1.03 **Aliases**

- (1) Licensees must retain records reflecting the true name of all debt collectors and, if applicable, the one alias used by each debt collector. These records shall be retained for two (2) years after the debt collector leaves the licensee's employment. The Administrator may require a licensee to submit these records at any time.
- (2) No debt collector may use more than one alias. The alias must consist of both a first and last name. Debt collectors employed by a licensee may not use the same alias.

Rule 1.04 **Letters of Admonition**

- (1) Any letter of admonition issued against a licensee or collections manager shall be mailed by first-class certified mail.
- (2) A licensee or collections manager receiving a letter of admonition may appeal the admonishment by filing a written request within forty (40) days after the date of the letter. Upon receipt of a timely appeal, a hearing will be held. While an appeal is pending, the letter of admonition shall be vacated until conclusion of a hearing held pursuant to Rule 1.04(3).
- (3) Any hearing held following a request to appeal the issuance of a letter of admonition shall be conducted pursuant to the State Administrative Procedure Act, title 24, article 4, of the Colorado Revised Statutes. If a violation of the Colorado Fair Debt Collection Practices Act, the rules adopted pursuant thereto, or a lawful order has occurred, or the licensee fraudulently obtained a license, the licensee, collections manager, or both, as applicable, may be disciplined as provided in § 12-14-130(10), C.R.S.
- (4) If the Administrator determines that a violation is minor or technical, the Administrator has the discretion to issue an advisory letter in lieu of a letter of admonition.

Rule 1.05 Termination of License

- (1) Upon the termination of a license by revocation, expiration, denial, or surrender, the licensee must immediately cease collection activities. All client accounts must be returned to the clients within thirty (30) days unless the licensee has written authorization from the client to transfer or assign the accounts to another collection agency for collection. No later than the end of the thirty day period, the licensee must file a notarized affidavit with the Administrator of the Collection Agency Board stating its compliance with this rule and providing the names and addresses of all clients for whom it was attempting to collect debts.
- (2) The licensee shall not charge or retain any fee or commission for the return or transfer of client accounts made pursuant to Rule 1.05(1).
- (3) All consumer payments received after the revocation, expiration, or surrender of a license shall be immediately forwarded in full to the applicable client without the licensee's retention of any fee or commission.
- (4) This rule does not prohibit the bulk sale of the licensee's business, assets, and goodwill as a unit, including the provision of information to enable the purchaser to solicit reassignment of client accounts directly from the client after termination of a license. A licensee may not purchase the right to collect client accounts from another licensee but only the right to solicit their reassignment from the client.
- (5) This rule does not apply to any license voluntarily surrendered in conjunction with the simultaneous issuance of a new license due to any of the changes listed in § 12-14-122(2)(c), C.R.S.

Rule 1.06 License Renewals

Collection agency licenses shall be valid from the date of issuance to the following July 1. In order to renew its license, a licensee must file its completed renewal application and renewal fee on or before July 1 of each year or its license shall automatically expire.

Rule 1.07 Address Changes

A collection agency's obligation to provide written notice to the administrator within thirty days after an address change pursuant to section 12-14-122(1)(a), C.R.S. applies to both the local Colorado office and the principal place of business printed on the collection agency's license, and may be provided by facsimile, electronic mail, U.S. mail, or any other delivery method.

Rule 1.08 **Abbreviated Applications**

- (1) A licensee filing an abbreviated license application upon a change of ownership structure pursuant to section 12-14-122(2)(c)(III), C.R.S. is not required to submit the following:
 - (a) Investigation fee;
 - (b) List of currently employed debt collectors and solicitors;
 - (c) License verification forms from other states that license the applicant; and,

 - (d) If there has been no change in any of the documentation on file with the administrator:
 - (i) Personal affidavits of owners, officers, members/managers, and partners;
 - (ii) Collections manager application; and
 - (iii) List of branch offices.

Rule 1.09 **Local Colorado Office**

- (1) A collection agency may satisfy the local Colorado office requirement of section 12-14-123(1)(b), C.R.S. by contracting with a third-party if the third-party:
 - (a) maintains an office in Colorado open to the public during normal business hours that may be a shared office location if signs or directories are posted or displayed listing all collection agencies for whom the third-party provides a local Colorado office;
 - (b) maintains at that office records, or free and easy access to records, of all moneys collected and remitted for Colorado residents;
 - (c) accepts payments physically made at that office for any debt the agency is attempting to collect;
 - (d) staffs that office with a full time employee who may be a shared employee;
 - (e) provides a telephone number that may be a shared telephone number, that rings to the local Colorado office, and is answered in a manner that does not mislead consumers; and,
 - (f) complies with all applicable provisions of the Colorado Fair Debt Collection Practices Act.

- (2) A collection agency that uses a third-party to provide a local Colorado office is responsible for actions of the third-party that violate the Colorado Fair Debt Collection Practices Act.

Chapter 2

Consumer Protections

Rule 2.01 **Notices**

- (1) The consumer rights information required to be in the initial written communication and the validation of debts notice may be printed on two (2) separate pages provided that the first page contains language referring the consumer to the second page and the two (2) pages are attached together.
- (2) Every collection notice mailed or delivered by a licensee must contain the collection agency's name, mailing address, toll-free telephone number, and the address and telephone number of its local Colorado office. The collection agency's address(es) may not be printed only on any portion of the collection notice designed to be returned to the agency with the consumer's communication or payment. "Toll-free" means a call made at no cost to the consumer.

Rule 2.02 **Payment Agreements and Schedules**

No collection agency shall engage in unnecessary, additional collection activities on a debt while a consumer is complying with the terms of a payment agreement or schedule agreed to by the collection agency and consumer concerning the debt. "Unnecessary, additional collection activities" shall not include the mailing of payment coupons or reminders, the mailing of receipts, any communications requested by the consumer that do not contain demands for collection, or the filing or notification of post judgment liens.

Rule 2.03 **Costs of Collection**

- (1) No collection agency shall add, collect, or attempt to collect a charge for costs of collection unless such costs are expressly authorized by statute or by the contract, agreement, note, or other instrument creating the debt and are not otherwise prohibited by law.
- (2) No licensee shall advise, suggest, or request that a client add collection costs to any existing debt unless such costs are specifically authorized by statute.
- (3) If a statute, contract, agreement, note, or other instrument specifically authorizes the addition of collection costs and such costs are collected, the licensee may retain only those collection costs exclusive of attorney fees and court costs as its fee or commission for the collection of the debt, unless otherwise agreed to in writing with the assignor.

- (4) No collection agency shall add, collect, or attempt to collect costs of collection pursuant to § 13-21-109(1)(b) (II), C.R.S. on any dishonored check, draft, or payment order payable to it unless the check is assigned for collection to another collection agency not owned in whole or in part by the payee collection agency.

Rule 2.04 Overpayment

If a collection agency has received final payment of any debt which overpays the debt by more than five dollars (\$5.00), it shall issue a refund to the consumer of the amount of the overpayment within thirty (30) days after the end of the month in which the payment was received unless otherwise required by law or as directed by court order.

Rule 2.05 Cash Payments

A collection agency shall provide the consumer with a receipt for all payments made in cash or by any other means which does not in and of itself provide evidence of payment. The receipt shall be provided to the consumer within five (5) business days after the payment is received. A “business day” does not include Sundays or legal holidays.

Rule 2.06 Account Statements

- (1) Subject to the payment record retention requirements of Rule 3.03, a collection agency shall provide the consumer with a written statement of the consumer’s payments for as long as the collection agency has had assignment of the debt within ten (10) days after the consumer makes a written request. The statement shall include the consumer’s name, the creditor’s name, the amounts paid, the dates on which payments were received, the allocation of each payment to, as applicable, principal, interest, court costs, attorney fees, other costs, the interest rate, and the current balance due. Account statements shall be provided upon request without charge once during any twelve (12) month period. If additional statements are requested, they may be provided upon payment of a reasonable fee not to exceed five dollars (\$5.00) per statement.
- (2) After a debt has been paid or settled in full, a collection agency shall provide a written statement or receipt that the debt has been paid or settled in full within ten (10) business days after request by the consumer. Such a statement shall be provided free of charge. A “business day” does not include Sundays or legal holidays.

Rule 2.07 Consumer Communication Records

Collection agencies shall maintain accurate summaries or records of all communication in connection with the collection or attempted collection of a debt with consumers, a consumer's attorney or representative, the consumer's employer, consumer reporting agencies, and persons contacted to obtain location information, for two (2) years following the date of the communication.

Rule 2.08 Business Cards

- (1) No collection agency shall use a business card in obtaining or attempting to obtain location information about a consumer or in communicating or attempting to communicate with a consumer unless:
 - (a) The business card does not indicate in any way that the collection agency is in the business of collections or is attempting to collect a debt, or,
 - (b) The business card is placed in a sealed envelope which contains the consumer's name and does not indicate by means of name, symbol, or any marking, that the envelope is from a collection agency.

Rule 2.09 Attorney Letters

- (1) During the time that a licensee is in possession of a creditor account, the licensee shall not use or deliver any communication from an attorney unless the creditor has previously provided specific written authorization to commence legal action to collect the debt.
- (2) This rule does not prohibit any direct communication from an attorney if the attorney is authorized to collect the debt.

Rule 2.10 Dual Collections

No collection agency may knowingly collect a debt that is being collected by another collection agency or attorney.

Rule 2.11 Office Location

A collection agency may share an office location with another business as long as signs, directories, and other business identification information clearly contain the collection agency's name.

Rule 2.12 Consumer Payments

- (1) All accepted consumer payments must be credited to a consumer's account to reflect payment no later than the next business day following the date payment was received unless the delay will result in any economic harm to the consumer or the payment is by post-dated check. Post-dated checks shall be credited to the consumer's account to reflect payment as of the date of deposit in the collection agency's trust account.
- (2) This rule does not prohibit subsequent adjustments to a consumer's account to reflect dishonored checks, drafts, or other payment instruments.

Rule 2.13 Checks Not Paid Upon Presentment

A collection agency collecting a check, draft, or order not paid upon presentment shall send the consumer its validation of debts notice required by § 12-14-109, C.R.S. at least fifteen (15) days prior to the mailing or service of the notice of nonpayment required by § 13-21-109(2)(a) and (3), C.R.S.

Rule 2.14 Payment Authorization by Telephone

- (1) If a consumer's authorization for payment of a debt is provided orally, the licensee must also:
 - (a) Obtain the consumer's written authorization for the payment prior to the date of payment, or
 - (b) If permitted by law, record by audio tape or other digital means the consumer's verbal authorization and retain the recording, or
 - (c) Transfer the consumer's telephone call to a manager or another debt collector to verify the amount, means, and verbal authorization for payment.
- (2) If a collection agency does not comply with section (1) of this rule and the consumer denies or disputes the purported oral payment authorization within sixty days of the payment, the collection agency must refund the payment amount within five (5) business days of receipt of good funds. A "business day" does not include Sundays or legal holidays.

Rule 2.15 Disclosure of Contact Information

Upon the request of a consumer or person contacted for location information, a licensee shall provide the address of its principal place of business and mailing address, its toll-free telephone number, the address and telephone number of its local Colorado office, and, if applicable, its facsimile number.

Rule 2.16 Debt Collector Obligations

Except as otherwise provided, all references in this Chapter 2 to collection agencies shall apply to debt collectors.

Chapter 3

Creditor Protections

Rule 3.01 Trust Accounts

- (1) A licensee shall maintain the trust account required by section 12-14-123(1)(c), C.R.S., but need not maintain the account in a Colorado bank or financial institution if the licensee maintains one or more trust accounts in other states for the benefit of its clients, including its Colorado clients, and it executes and files annual written authorization with the Administrator on an approved form acknowledging the account(s) may be attached upon order of a Colorado court.
- (2) If any of the trust account information in a licensee's license or renewal application changes, the licensee must file a new bank authorization form within thirty (30) days of the date of the change.
- (3) No trust account is required if the licensee does not receive nor have access to any consumer payments because they are made directly to the client according to all of the licensee's contracts or agreements.
- (4) A licensee, other than one that only collects debts it owns, shall maintain in its trust account the minimum liquid assets referred to in section 12-14-123(1)(a), C.R.S.

Rule 3.02 Unidentified Accounts

- (1) If a licensee receives a consumer payment but is unable to identify the client account on whose behalf the payment is made, the licensee shall return the entire payment to the consumer within thirty (30) days after the end of the month in which the payment was received.

- (2) No amount may be retained by a licensee as fee or commission from any consumer payment made on an unidentified account.
- (3) If a licensee is able to identify, but cannot locate, a client on whose behalf payment is made, the licensee shall comply with applicable state laws on unclaimed property.

Rule 3.03 **Payment Records**

- (1) Licensees shall maintain a record of all consumer payments for two (2) years following the date the payment was received.
- (2) Records of consumer payments shall include the consumer's name, the client's name, the amounts paid, the dates on which payments were received, the allocation of each payment to, as applicable, principal, interest, court costs, attorney fees, other costs, the interest rate, the current balance due, and the date of deposit of the payment to the trust account.

Rule 3.04 **Bonds**

- (1) The bond required of each licensee shall be in the form and manner prescribed by statute, and shall be filed with the Administrator.
- (2) As an alternative to the bond, a licensee may present a savings account, deposit, or certificate of deposit.
 - (a) The savings account, deposit, or certificate of deposit shall be in a federally insured bank or savings and loan association doing business and located in this state or accessible in a branch in this state.
 - (b) The savings account, deposit, or certificate of deposit shall be assigned to the Attorney General of the State of Colorado for the use of the People of the State of Colorado in the form and manner prescribed by the Administrator. The assignment shall be for a period ending two (2) years after the revocation, expiration, or surrender of a license or on such earlier date as may be determined by the Administrator.
 - (c) As far as practical, the procedure used to determine claims against a bond shall be used for claims against a savings account, deposit, or certificate of deposit.

Rule 3.05 **Return of Accounts**

- (1) If a licensee may retain accounts in the process of collection, as defined in section 12-14-124(6), C.R.S., it must disclose that information to its clients at the time it initially accepts accounts for collection.

- (2) This Rule 3.05 takes effect May 1, 2009 and applies to all of the licensee's current and future clients.

Rule 3.06 **Licensee Obligations**

Except as otherwise provided, all references in this Chapter 3 to licensees shall apply to applicants.