

---

SUPPLEMENTAL COMMENTS ON THE PROPOSED  
DECEASED DEBT COLLECTION POLICY STATEMENT

---

By: Barbara A. Sinsley  
Barron, Newburger & Sinsley, PLLC  
205 Crystal Grove Blvd., Suite 102  
Lutz, FL 33548  
(813) 500-3636  
[bsinsley@bns-law.com](mailto:bsinsley@bns-law.com)

Manuel H. Newburger  
Barron, Newburger & Sinsley, PLLC  
1212 Guadalupe, Suite 102  
Austin, TX 78701  
(512) 476-9103  
[mnewburger@bns-law.com](mailto:mnewburger@bns-law.com)

David Medine  
Wilmer Hale  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006 USA  
(202) 663-6220  
[david.medine@wilmerhale.com](mailto:david.medine@wilmerhale.com)

Filed: December 1, 2010

The undersigned counsel (“Commenters”) filed their Comment on the FTC’s proposed Deceased Debt Collection Policy Statement (the “proposed Policy Statement”) on November 4, 2010. Commenters wish to supplement their Comment to address various misperceptions about deceased collections and the proposed Policy Statement that have surfaced in the media, in particular, an online article published by the Wall Street Journal.<sup>1</sup>

The article, which focused on deceased collections, improperly implied that all or a significant portion of the complaints the FTC receives about debt collection relate to collection efforts on deceased accounts. This is simply not so.

The Commission’s own recent studies of debt collection practices demonstrate that collection agencies that focus on deceased collections are treating people fairly and with respect. In 2007, the Commission convened a public workshop to evaluate the need for changes in the debt collection system. The resulting February 2009 report, *Collecting Consumer Debts: The Challenges of Change*, makes no mention of deceased collections with respect to the need for change. Later in 2009, the FTC convened roundtables in Chicago, San Francisco and Washington, D.C., to consider problems with debt collection litigation. The FTC’s July 2010 report, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration*, also makes no mention of deceased collections. Despite the high annual volume of private litigation against debt collection agencies, there are remarkably few suits brought against firms specializing in deceased collections. This is because responsible deceased debt collectors generally handle such collections with sensitivity and compassion.

A lawyer for the National Consumer Law Center (“NCLC”) and commenter in this proceeding is quoted in the article as saying, “*This proposed rule could open the door for collectors to seek money by prodding and misleading relatives into thinking they have an obligation that they don’t*”. The proposed statement of the FTC enforcement policy does nothing to provide cover for collectors who engage in deceptive or misleading representations. Current law already prohibits such activities and the proposed Policy Statement specifically prohibits misleading relatives into thinking that they have an obligation to pay the decedent’s debts. In

---

<sup>1</sup> November 21, 2010, Wall Street Journal, “FTC Takes on Debt Collectors”.

furtherance of this prohibition, the proposed Policy Statement would require collectors to clearly and prominently disclose under some circumstances that payment is not being sought from relatives of the deceased. It is hard to see how this would “open the door” to misleading statements. As our earlier Comment states, we agree that a disclosure to relatives would be beneficial and we proposed a simple, easily understood statement that the collector “is seeking payment *only* from the assets of the deceased’s estate.”

The NCLC comment proposes that debt collectors initiate probate proceedings even where surviving relatives have concluded that such proceedings are not in their best interests:

Probably the majority of estates are not probated. Decedent’s creditors are permitted by state law to initiate administration of the estate if they believe it will be worthwhile and the survivors do not. That is the procedure for debt collectors to follow when there is no legal representative of the estate.<sup>2</sup>

Commenters agree that going through probate started by the survivors creates an orderly process and reduces stress on the survivors. On the other hand, it is surprising that an organization, such as NCLC, which advocates on behalf of consumers would suggest forcing a family into probate, because instituting probate proceedings would impose legal, accounting and other professional expenses and fees on those families, unnecessarily draining off assets that could otherwise go to the family. It would be far more respectful of the surviving family to honor its choice not to initiate probate proceedings by contacting the person handling the financial affairs of the deceased outside of probate, as recognized under state law. The FTC’s approach, unlike that suggested by the NCLC, avoids imposing an unwanted and costly probate proceeding that could delay resolution of the estate.

The NCLC Comment assumes, without any supporting evidence, that sending an initial letter with debt information will somehow mislead survivors or relatives into paying debts for which they have no obligation.<sup>3</sup> As pointed out by these Commenters, the FDCPA specifically

---

<sup>2</sup> NCLC comment at p. 4.

<sup>3</sup> The Wall Street Journal November 21, 2010 article also incorrectly states that a collector must give proof of the debt within 5 days of contact when it is a requirement to give the initial notice under 15 U.S.C. § 1692g within 5 days of the initial communication with the “Consumer”.

allows letters to be sent to executors and administrators and the initial notice can be specifically tailored not to mislead survivors or relatives.

The orderly payment of debts by survivors is documented as far back as the Magna Carta.<sup>4</sup> Abandoning efforts to collect these debts does not make them go away. These debts will be paid by someone – be it the creditor who takes a loss, other consumers who make up the difference in higher costs or citizens who pay taxes for government bailouts.<sup>5</sup>

### Conclusion

With regard to the proposed Policy Statement, surviving family members will *not* be misled by more information, but they certainly are likely to be misled by less. We believe that debt collectors should make a clear statement to family members that they are not seeking payment of the debt personally from those family members. We also believe that debt collectors should be able to explain the purpose of their calls and letters to family members so there is no mystery, uncertainty, or even fear about why the collector is contacting them. Accordingly, the FTC is requested to consider that less confusion or misleading of survivors and friends will occur if the initial validation is sent to the estate as Commenters have proposed.

Respectfully submitted,

Barbara A. Sinsley

Manuel H. Newburger

David Medine

---

<sup>4</sup> The Magna Carta has a specific provision addressing and even giving priority to the collection of deceased debts.

<sup>5</sup> On average, today's consumer has a total of 13 credit obligations on record at a credit bureau. These include credit cards (such as department store charge cards, gas cards, and bank cards) and installment loans (auto loans, mortgage loans, student loans, etc.). Nearly 37% of credit card holders carry more than \$10,000 of non-mortgage-related debt as reported to the credit bureaus. (Statistics from [www.myfico.com](http://www.myfico.com)) If a person dies owing this debt and his estate contains sufficient assets to pay them, why should they not be paid?