

Court Decision Muddies Debt Collector Communications, American Banker, ft. Richard Perr

Richard J. Perr, co-managing partner of KD's Philadelphia office and chair of the Consumer Financial Services practice group, was quoted in an American Banker article written by Kate Berry, published on May 11, 2021.

A recent appeals court ruling is threatening to wreak havoc on the debt collection industry while raising questions about the viability of the Consumer Financial Protection Bureau's debt collection rule set to take effect within months.

In a surprise ruling in April, a three-judge panel of the 11th U.S. Circuit Court of Appeals said a debt collector violated the Fair Debt Collection Practices Act when it used a third-party vendor to issue an official notice to a consumer about an outstanding debt.

The decision reversed a lower court's ruling to dismiss the lawsuit, meaning the case could be sent back to reach an eventual outcome. Still, the appeals court said the collector ran afoul of the prohibition on disclosing a debtor's information to a third party.

Some suggested the CFPB doesn't need to make any changes to the rule. They point out that the lower court could still decide in favor of the defendant.

"There's nothing that should impact the CFPB's adopted debt collection rule from being implemented on schedule," said Richard Perr, co-managing partner at Kaufman Dolowich & Voluck, who represents the debt collector in the case, Preferred Collection. "There's no question that the opinion upsets the apple cart and gives plaintiffs license to go to other circuits and see how far they can push it. But this decision only says that the case can continue and if it were to be litigated it would become a disputed factual record."

Perr said modern communications typically do not involve the public disclosure of consumer information because no live person actually looks at the data sent electronically by debt collectors to third-party vendors.

"The data is transmitted in an imperceptible, ministerial fashion that doesn't involve the disclosure to human eyes," said Perr. "Clearly there is no harm to the plaintiff in this case or in any case involving a letter vendor."

Since the CFPB has acknowledged the widespread industry use of letter vendors, many have been left guessing about the impact of the ruling.