

CR 92-129

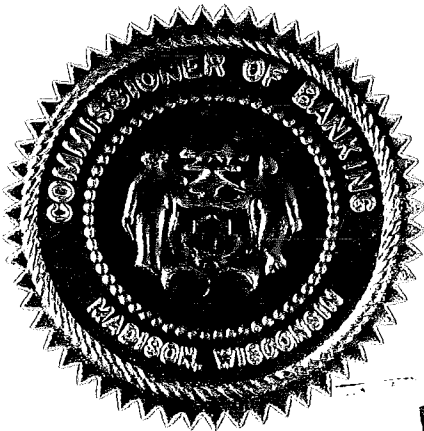
STATE OF WISCONSIN)
)
OFFICE OF COMMISSIONER OF BANKING)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Toby E. Sherry, Commissioner of Banking and custodian of the official records of said office, do hereby certify that the annexed rule relating to collection agencies was duly approved and adopted by this office on the 14th day of December, 1992.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department of the Office of Commissioner of Banking in the City of Madison this 14th day of December, 1992.



Toby E. Sherry

Toby E. Sherry
Commissioner of Banking

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Analysis of Proposed Rule

Section 1

Bkg 74.001(1) defines the term actual process of collection to standardize a long-standing interpretation and clarify that term as it is set forth in Bkg 74.08. "Active office" is defined at (2) to clarify how a collection agency is to comply with Section 218.04(4) and to ensure that the office has, in fact, a place for examination of records for debtors and creditors, as well as examiners.

Section 2

Bkg 74.01 is amended to eliminate the outdated Justice of the Peace rule as well as to eliminate the use of a private residence for an office. The Office of Commissioner of Banking has noted that agencies in private residences tend to move into living quarters to expand their offices into living quarters if attached to a private residence.

Section 3

Bkg 74.01(3) is created to eliminate relocation of a collection agency without prior notice to the Office of Commissioner of Banking and to also provide the office with timely notice so as to examine the proposed relocated quarters for approval as meeting the office requirement rules.

Section 4

Bkg 74.02(1) is amended to eliminate the unnecessary review of certain documents.

Section 5

Bkg 74.02(2) is amended to clarify the various record retention options available to a collection agency as well as to accommodate new technology.

Section 6

Bkg ~~75~~⁷⁴.02(2)(b) is amended to accommodate the fact that it is difficult for computers to comply with the red ink requirement as well as the specific typesize requirement of the original rule.

Section 7

Bkg 74.02(2)(c) is amended to clarify that a creditor may get pre-judgment interest and that there must be a written agreement between the debtor and creditor in order to collect that interest.

Section 8

Bkg 74.02(3) is created to eliminate paperwork by collection agency licensees where a creditor indicates that such paperwork is unnecessary. However, the information that was contained in the paperwork must be maintained by the licensee for review by the Office of Commissioner of Banking.

Section 9

Bkg 74.03(1) (e) is amended to accomodate the licensee with respect to changes in computer technology and the fact that collection agency licensees are now using computer-generated check registers in their recordkeeping procedures.

Section 10

Bkg 74.04 is amended to take into account a change made in the collection agency law at Section 218.04(9m) (b) and the creation of Section 218.04(9) (g) which allows for trust accounts to be placed with financial institutions other than banks. The rule is also structured to provide the financial institution must be able to provide sufficient records to permit adequate examination by the Office of Commissioner of Banking pursuant to Section 218.04(7) (b), Stats.

Section 11

Bkg 74.05(1) (d)5 is repealed because it is duplicative of Bkg 74.05(1) (d) (4).

Section 12

Bkg 74.05(1) (f) is amended to accomodate the fact that computers are printing checks without check stubs.

Section 13

Bkg 74.05(1) (g) is created to address collection agencies which act as letter writing services and clarify what documentation they need to record. That information helps examiners determine the contingent liability of a letter writing collection agency.

Section 14

Bkg 74.05(2) (e) is created to address computer technology and allow use of computer-generated receipts.

Section 15

Bkg 74.06 is amended to clarify to a client or purchaser of collection agency services the exact rates to be charged.

Section 16

Bkg 74.09(2) is amended to prohibit collect calls by a collection agency to a debtor. It does permit the collection agency to obtain reimbursement for actual disbursements associated with NSF checks. It also allows the collection agency to serve process.

Section 17

Bkg 74.09(3) is amended to eliminate the limitation that the note involved could be only a judgment note.

Section 18

Bkg 74.10(2) is amended to permit the collection agency to generate schedules on computer-generated forms for the annual report as long as those computer-generated forms have been approved by the Office of Commissioner of Banking.

Section 19

Bkg 74.13 is amended to clarify how a collection agency could engage in preparing a summons and complaint.

Section 20

Bkg 74.15 has been repealed and recreated to ensure that the data processing system being used has sufficient recordkeeping capabilities to allow the Office of Commissioner of Banking to do a proper examination of the collection agency. Subsection (2) is created to ensure that there is a proper back-up for collection agency records to avoid the possibility that the Office of Commissioner of Banking could not perform an examination as well as to protect the interests of the client, the debtor and the collection agency itself.

Initial Regulatory Flexibility Analysis. This proposed rule shall have no effect on small business.

Initial Fiscal Estimate. This rule shall have no impact upon the workload or operations of the Office of Commissioner of Banking.

Contact Person. Questions about this rule may be addressed to Holly Daum, Legal Division, P.O. Box 7876, Madison, Wisconsin 53707-7876, (608) 266-1621.

TEXT OF PROPOSED RULE

Under the authority vested in the Wisconsin Office of Commissioner of Banking by s. 218.04(7)(d), Stats., the Office of Commissioner of Banking proposes to create s. Bkg 74.001, 74.01(3), 74.02(3), 74.05(1)(g), 74.05(3), amend s. Bkg 74.01(1), 74.02(1), 74.02(2), 74.02(2)(b), 74.03(1)(e), 74.04, 74.05(1)(f), 74.06, 74.09(2), 74.09(3), 74.10(2), 74.13 repeal and recreate Bkg 74.15 and repeal Bkg 74.05(1)(d)5 relating to collection agencies.

SECTION 1. Bkg 74.001 is created to read:

Bkg 74.001 Definitions. In this chapter: (1) "Actual process of collection" in s. Bkg 74.08 means: regularly receiving payments at periodic intervals, or debtor contacted within last 30 days and promise of payment received, or an account referred for legal actions where the collection agency has advanced legal costs. A collection agency and its client may by written contract agree to a different actual process of collection. This subsection first applies to contractual relationships entered into between a collection agency and its client after the effective date of this rule . . . [Revisor inserts date].

(2) "Active office" in s.218.04(4), Stats., includes meeting the following minimum conditions:

(a) Shared office space which is open and staffed the minimum hours required by s. Bkg 74.01(2);

(b) Staff person is available for service of process and to maintain minimum records available to the clients, debtors and

the commissioner;

(c) Minimum records, which are to be updated at least monthly, including an alphabetical listing by name and address of all clients serviced in Wisconsin, a listing of all accounts placed showing the client, debtor name, date and amount originally listed, current balance, and date of last payment received by the agency;

(d) Sufficient space to conduct examination of additional records to be produced to evidence compliance with all rules and regulations;

(e) The collection agency license shall be displayed at the active office.

SECTION 2. Bkg 74.01(1) is amended to read:

BKG 74.01 Office requirements. (1) SHARED OFFICE SPACE.

The office of a collection agency shall not be shared or have a common waiting room with a practicing attorney or a justice of the peace, loan company or be located in a private residence unless the collection office is used solely for business purposes, has an outside entrance and can be isolated from the remainder of the residence. Any collection agency located in a private residence on the effective date of this subsection . . . [Revisor inserts date], may continue operations at that private residence until the time it is licensed at a new location. While located in a private residence, the collection office is to be used solely for business purposes, have an outside entrance and be isolated from the remainder of the residence. If other

approved business is conducted in the same office as provided for in s. 218.04(4)(b), Stats., the accounting records of such other business shall be kept separate from the accounting records of the collection agency.

SECTION 3. Bkg 74.01 (3) is created to read:

BKG 74.01 (3) OFFICE RELOCATION. Licensee shall submit to the commissioner of banking for approval thirty (30) days or more prior to the licensee's contemplated change of its place of business written notice of the relocation. The notice shall include a diagram of the proposed office location showing the location of the office in relation to all adjacent offices and any connecting entryways and common waiting areas.

SECTION 4. Bkg 74.02 (1) is amended to read:

BKG 74.02 (1) FORMS TO BE APPROVED. All ~~agreements,~~ ~~contracts,~~ ~~listing sheets,~~ ~~acknowledgments forms,~~ debtor notices ~~or form letters,~~ ~~or any other forms whatsoever~~ to be used by any licensee in conducting its business shall be submitted to the office of the commissioner of banking for its approval, and no such form ~~or agreement~~ shall be used until approved. A folder containing the file copy of all approved forms including the approved schedule of irregular office hours, if any, must be maintained in the licensed office in the order in which the forms were approved.

SECTION 5. Bkg 74.02 (2) (intro.) is amended to read:

BKG 74.02(2) FORM OF AGREEMENT WITH CREDITOR. Upon receipt of any account for collection, the licensee shall furnish the creditor or forwarder with an agreement, listing or acknowledgment, a duplicate or copy of which shall be kept in the office of the licensee. The duplicate or copy may be maintained by computer or optical disk in a format acceptable for retention of these records and approved by the commissioner. This agreement, listing or acknowledgment shall:

SECTION 6. Bkg 74.02(2) (b) is amended to read:

Bkg 74.02(2) (b) Confirm the rate of charge and any other terms or conditions binding thereon. The licensee ~~shall~~ may not charge a higher commission rate on interest or other fees collected than is charged on the principal amount unless an agreement is executed by the creditor and the licensee authorizing such higher rate, with said rate agreement being printed in ~~red ink and~~ a more conspicuous manner than the rest of the agreement form, by use of larger type size and in at least eight point type with the rest of the agreement form being printed in a contrasting color. The licensee, if so authorized, ~~shall~~ may not retain said higher rate of charge until the principal amount listed as owing has been collected in full;

SECTION 7. Bkg 74.02 (3) is created to read:

Bkg 74.02(3) An acknowledgement containing the information required by sub (2) need not be sent to the creditor or forwarder

for each listing if:

(a) It provide a written statement indicating their desire not to receive the acknowledgment;

(b) There is a written agreement between the licensee and the creditor or forwarder confirming the rate of charge and any other terms or conditions binding both parties; and

(c) Information required by this section is maintained by the licensee.

SECTION 8. Bkg 74.03(1)(e) is amended to read:

Bkg 74.03(1)(e) The number and amount of the remittance check. Where the use of a computer does not accommodate the reference of the check number on the remittance statement, a check register is to be prepared to coincide with the remittance statements issued. The check register must show the date of the remittance statement, client or forwarder's name, amount of the check, and the check number.

SECTION 9. Bkg 74.04 is amended to read:

Bkg 74.04 TRUST FUND ACCOUNT. Each licensee shall deposit in a trust fund account in any a local or approved bank financial institution promptly after collection, sufficient funds to pay all moneys due or owing all creditors or forwarders. Said trust fund account shall be used only for this purpose. The account may take the form of an interest bearing savings account or instrument provided it is identified as a "trust account". Sufficient funds must be maintained in or made available to the

trust checking account on which remittance checks are drawn to pay all checks when presented. The licensee must have sufficient documentation from the trust checking account available to make an adequate examination.

SECTION 10. Bkg 74.05(1)(d)5 is repealed.

SECTION 11. Bkg 74.05(1)(f) is amended to read:

Bkg 74.05(1)(f) The numerically numbered check stubs or equivalent check register corresponding with all trust account and operating account checks shall be maintained in the office of the licensee. Cancelled checks together with voided or unused checks (adequately explained) must be filed in numerical order after the bank statement has been reconciled each month.

SECTION 12. Bkg 74.05(1)(g) is created to read:

Bkg 74.05(1)(g) A record of all unused prepaid collection transmittals or listing forms sold, setting forth:

1. Name and address of the client or purchaser.
2. Date, number or quantity and price of transmittals or listing forms sold each client or purchaser.
3. Number and date client or purchaser used transmittals or listing forms.

SECTION 13. Bkg 74.05(3) is created to read:

Bkg 74.05(3) As an alternative to producing the additional records for examination at the active office, the licensee may

produce such records at an office out of state provided all expenses of the examiner to travel to and from the out of state location will be paid as actual costs of the examination.

SECTION 14. Bkg 74.06 is amended to read:

BKG 74.06 DISCLOSURE OF RATES IN ADVERTISING. If any mention of rates is made in any form of advertising or on any form used by a licensee, the full rate or rates charged shall be stated as a percentage or dollar amount. No collection agency shall advertise, print, display, publish, distribute or broadcast or cause to be advertised, printed, displayed, published, distributed or broadcast, in any manner, any statement or representation with regard to collection agency rates which is false, misleading, or deceptive, or which omits to state material information with respect to collection agency rates to make the statements therein not false, misleading or deceptive.

SECTION 15. Bkg 74.09(2) is amended to read:

BKG 74.09 (2) COLLECT WIRES OR COLLECT TELEPHONE CALLS TO DEBTORS PROHIBITED. Collect wires or collect telephone calls to debtors are not permitted unless the collection agency identifies itself by having the telephone operator advise the debtor that the call is from a collection agency. Actual charges assessed by a financial institution on a check returned to the licensee for any reason may be added to the account of the debtor provided the charge is not the result of a licensee prematurely depositing a post-dated check and the licensee complies with s. 403.806,

Stats. A licensee may assess a charge for service of process costs not exceeding those assessed by the sheriff of the county in which process is served. A licensee may not charge the debtor any other handling charge, mileage costs or other out-of-pocket expenses incurred in the collection of an account.

SECTION 16. Bkg 74.09(3) is amended to read:

BKG 74.09(3) EVIDENCES OF INDEBTEDNESS SIGNED BY DEBTOR.

Any ~~judgment~~ note, mortgage or other instrument which the licensee may have the debtor sign must be payable to the order of the creditor or jointly to the order of the creditor and the collection agency. All such instruments must be completely filled in as to terms and conditions at the time the instrument is signed. If the instrument is made payable only to the order of the licensee, the licensee must then remit on the account to the creditor the same as if it had been paid in full.

SECTION 17. Bkg 74.10(2) is amended to read:

(2) The above schedules are to be furnished only on forms provided or approved by the office of the commissioner of banking.

SECTION 18. Bkg 74.13 is amended to read:

Bkg 74.13 UNAUTHORIZED PRACTICE OF LAW. No collector or other employe of a licensee ~~shall~~ may in attempting to collect an account, engage in the practice of law. This includes but is not limited to the preparation of a summons or complaint or the

appearance on behalf of any creditor, except when called as a witness by the plaintiff's attorney in open court, before any court including the clerk of any small claims court in an action on the debt or in garnishment proceedings. It is not considered the practice of law for an employe of a licensee to prepare a summons or complaint under the direction of an attorney which will subsequently be signed and filed by the plaintiff's attorney. This section does not prohibit the appearance of an owner or officer of a ~~non-corporate licensee~~ licensed collection agency in court for the purpose of obtaining judgment on a debt owed to the licensee directly.

SECTION 19. Bkg 74.15 is repealed and recreated to read:

Bkg 74.15 USE OF DATA PROCESSING. (1) **SYSTEMS APPROVAL.**

Data processing procedures shall be submitted to the office of commissioner of banking with sample print-outs or reports to show how the licensee will comply with the record requirements of this chapter before using the system. The commissioner may approve data processing records and procedures which vary from the requirements of this chapter if adequate information is available for examination purposes.

(2) **SYSTEMS BACK-UP.** Back-up of data entries are to be made on a daily basis and back-up of all records on the system is to be made once each week. All systems back-up tapes or disks are to be stored for safe keeping at a site away from the office of the licensee and the Office of Commissioner of Banking notified of that location. The records being maintained must be

verifiable at time of examination.

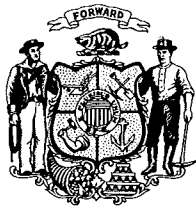
The rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2) (intro.), Stats.

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Tommy G. Thompson
Governor



Toby E. Sherry
Commissioner

Richard L. Dean
Deputy Commissioner

State of Wisconsin
Office of Commissioner of Banking

101 East Wilson Street • 5th Floor • P.O. Box 7876 • Madison, Wisconsin 53707-7876 • (608) 266-1621 • FAX (608) 267-6889

December 14, 1992

MR GARY POULSON
ASSISTANT REVISOR OF STATUTES
30 WEST MIFFLIN SUITE 702
MADISON WI 53703

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DEC 15 1992

Re: Clearinghouse Rule 92-129

Revisor of Statutes
Bureau

Dear Mr. Poulson:

Attached please find a certified copy and one additional copy of this rule for publication in the Administrative Code. The rule was submitted to the Senate on November 4, 1992 and the Assembly on November 5, 1992. Neither the Senate Committee on Aging, Banking, Communications and Taxation nor the Assembly Committee on Financial Institutions and Insurance took any action with respect to the Rule within 30 days of referral.

Sincerely,

A handwritten signature in cursive script that reads "Toby E. Sherry".

Toby E. Sherry

TES/LMS/hd
Enclosures