December 11, 2025

Department of Financial Protection and Innovation, Legal Division
Attn Clothilde V. Hewlett
Commissioner of the Department of Financial Protection & Innovation
2101 Arena Blvd.
Sacramento, CA 95834

Re: Invitation for Comments on the Debt Collection Licensing Act Proposed Regulations PRO 05-21

On behalf of the California Creditors Bar Association ("CCBA"), we appreciate the opportunity to submit comments to the California Department of Financial Protection and Innovation ("DFPI") on the above-referenced Invitation for Comments on the Debt Collection Licensing Act Proposed Regulations.

In the proposed regulations, our primary concern lies with the ability of the DFPI to regulate attorneys. The CCBA generally agrees that obtaining a license from the DFPI can be required. However, the State Bar of California is the only entity that is legally allowed to regulate attorneys in California. Having an additional agency such as the DFPI regulate the conduct of attorneys goes beyond the scope of what an agency can do. The only appropriate conduct the DFPI can and should take regarding a DFPI licensed attorney or law firm is to refer the incident to the State Bar of California.

The State Bar of California requires other agencies to report inappropriate conduct of an attorney to the State Bar. "The duty to inform the State Bar of various incidents falls on attorneys

and **on a variety of other agencies and groups**: Institutions, such as insurance agencies, banks and courts, must report incidents involving attorneys licensed in California" (Emphasis Added).[1]

Attorneys in California, regardless of what area of law they practice, are regulated exclusively by the **State Bar of California**, under the authority of the California Supreme Court. The Supreme Court has "inherent authority to regulate the practice of law, including the power to admit and to discipline attorneys." (*In re Attorney Discipline System*, 19 Cal.4th 582, 592 (1998).) The State Bar is the administrative arm of the Court and is charged with licensing, discipline, and oversight of attorneys. (Bus. & Prof. Code §§ 6000–6049.5.) Because attorney regulation is constitutionally vested in the Supreme Court and the State Bar, DFPI oversight of attorneys would be duplicative and legally improper. Indeed, after consultation with the American Bar Association, the Consumer Financial Protection Bureau reversed its position on proposed federal 'meaningful involvement' regulations based on the argument that only State Bars[2] should regulate attorneys. The CFPB's link explaining its decision to decline to interfere with State Bar regulation of attorneys is at this link: Fair Debt Collection Practices Act Reform. A good history of that position that also contains a link to the ABA's letter to the CFPB can be found at Fair Debt Collection Practices Act Reform. As the American Bar Association stated, "Courts—not federal agencies or opposing parties—are best able to regulate and discipline attorneys engaged in the practice of law.".

Should there be an issue brought to the attention of the DFPI of a creditor attorney or law firm that needs to be regulated and investigated, the proper course of action would be for the DFPI to refer the matter to the State Bar of California. Having an additional regulatory body investigate and regulate attorneys' conducts is outside the DFPI's scope and is improper.

> The State Bar of California's mission is to protect the public and **includes the primary functions of licensing, regulation and discipline of attorneys**; the advancement of the ethical and competent practice of law; and support of efforts for greater access to, and inclusion in, the legal system. (Emphasis Added)[3]
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> Created by the Legislature in 1927, the State Bar is an arm of the California Supreme Court, protecting the public by licensing and regulating attorneys.[4]

The California State Bar is the only proper venue which regulates attorneys by, "investigat[ing] complaints against attorneys and determine[ing] whether lawyers accused of unethical conduct should be disciplined. When complaints are filed with the State Bar, they are investigated by the California State Bar Office of Chief Trial Counsel."[5]

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[1] The State Bar of California: Lawyer Regulation https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Lawyer-Regulation

[2] We use the general term "State Bars" to reflect all regulatory agencies throughout the nation that are the regulatory arms of the state courts, although some of them might use a name other than "state bar," such as Massachusetts's Board of Bar Overseer and the Office of Bar Counsel.

[3] The State Bar of California: Our Mission: What We Do https://www.calbar.ca.gov/About-Us/Our-Mission

[4] The State Bar of California: Our Mission: What We Do https://www.calbar.ca.gov/About-Us/Our-Mission

[5] The State Bar of California: Lawyer Regulation https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Lawyer-Regulation

We understand that there is the temptation to think about attorney conduct during litigation as different and separate from attorney communications prior to litigation. However, even pre-litigation communications are regulated and governed by the California State Bar and the California State Bar Act. (*See* Bus. & Prof. Code section 6077.5 (governing communications by attorneys, not just litigation communications).)

Creditor Law Firms Engage in Activities That Can Only Be Performed by Licensed Attorneys.

Section 18501.1(h) (Third draft of PRO 05-21 DEBT COLLECTION LICENSING ACT) states "An attorney collecting a debt on behalf of and in the name of a client solely through activities that may only be performed by a licensed attorney is not subject to licensure under the Debt Collection Licensing Act." (emphasis added)

Falsely representing that the debt collector is an attorney or that a communication is from an attorney is prohibited or misleading conduct. (15 U.S.C. § 1692e(3); Civ. Code §§ 1788.13(b)–(c), 1788.17. See also CC §1788.16 (misdemeanor to simulate authorization by attorney).) Thus, only a licensed attorney can represent themselves as such, whether in pre-litigation communications with a debtor or during litigation. Indeed, courts have found that a corollary to the prohibition of falsely representing a communication is from an attorney is the implication that an lawyer has been meaningfully involved in communications from the lawyer or law firm which bear the lawyer's name. Attorneys are responsible for the conduct of their non-attorney employees and must supervise their non-attorney employees. (Cal. R. of Prof. Cond. 5.3; *see* Bus. & Prof. Code 6077.5.)

It is thus a simple syllogism that pre-litigation communications from at attorney bearing the attorney's name can only be performed by a licensed attorney and, thus, would be exempted conduct under the proposed regulations. An attorney within a creditor's rights firm conducts or supervises all work within the law firm. As such, this work is considered within the scope of the practice of law. When a creditor law firm opens a file, it does so only as a licensed attorney does, which would include evaluating a cause of action and other attorney work product to evaluate the best course of action for the client. e.

An example of a law firm's work on a client matter would be as follows:

1. Open a file, send the required model validation letter under attorney letterhead, and wait the validation period before next step.
2. Send out a Code of Civil Procedure section 1033 cost letter before filing suit.
3. File suit.
4. Secure judgment, which requires communication with the consumer defendant (our defense counsel) by rules of court and statutes, under certain circumstances.
5. Post judgment work, which also requires direct communication with the consumer judgment debtor, even if represented by counsel.

Each step described above, bearing the lawyer's name, works hand in hand together, **can only be performed or supervised by a licensed attorney**.

Creditor attorneys sending pre-suit demand letters in the name of the attorneys can only be engaged in by licensed attorneys and are part of the litigation preparation process, not independent debt collection. These letters establish the legal claim and provide notice to the debtor; serve as a prerequisite to filing suit in many cases; and are drafted and sent in the attorney's capacity as legal counsel, not as a commercial debt collector. These communications serve the court purposes of communication between the parties, including settlement communications.

Courts recognize that demand letters are part of the litigation process, as they are often introduced as evidence of notice and good faith before filing a complaint. Thus, pre-suit letters are inseparable from litigation and fall under the exclusive regulation of the California State Bar.

Post-judgment collection efforts (such as calls, letters, garnishment notices) are similarly part of the litigation process. They are not "standalone" debt collection but enforcement of a court judgment. Just as pre-suit demand letters prepare for litigation, post-judgment communications execute the results of litigation. Both are **litigation-related activities** and therefore should remain outside DFPI's jurisdiction. (*Rusheen v. Cohen*, 37 Cal. 4th 1048, 1063-64 (2006) (litigation privilege applies to post-judgment enforcement efforts); *Rubin v. Green*, 4 Cal. 4th 1187, 1194 (1993) (litigation privilege applies to prelitigation communications because they relate to anticipated litigation).)

The CCBA wants to stress the point that Section 18501.1(h) applies to all law firms, regardless of what area of law they practice – including creditor rights law firms. Creditor right law firms – like all other law firms – abide by the same legal ethics and cannons as other law firms when working up any case that comes into its office. Therefore, under the DFPI's own text, any law firm (including creditor law firms) cannot be subject the DFPI Licensing Act.

Document Retention Requirements

The proposed requirement to retain audio recordings for three years is excessive and impractical, particularly for smaller law firms.

*Operational burden***:** Maintaining audio files for three years imposes significant storage costs. Smaller firms typically retain recordings for one to two years, consistent with training needs and client protection. After all, the statute of limitations regarding debt collection claims under the FDCPA or Rosenthal FDCPA is one year. (15 U.S.C. § 1692k(d); Civ. Code § 1788.30(f).)

*Risk considerations***:** Most issues arising from client calls are identified within one year. Extending retention beyond this period does not materially enhance consumer protection but does create unnecessary strain for firms.

The CCBA is recommending to limit audio recording retention to **one year**, or at most **two years**, to balance consumer protection with practical compliance.

Conclusion

The DFPI's proposed rule should respect the constitutional and statutory framework that places attorney regulation exclusively under the judicial branch of government, who has tasked the State Bar of California with discipline authority. DFPI should limit its role to licensing and referral of misconduct to the State Bar; acknowledge and implement the totality of "litigation" activity performed by law firms, including creditor rights law firms; and revise the audio retention requirement to avoid undue burdens on law firms.

Respectfully submitted,

Harvey Moore,

President, California Creditors Bar Association