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Untapped Revenue Source for the Solo Practitioner: The Fair Credit Reporting Act

INTRODUCTION AND PURPOSE OF ARTICLE

A solo practitioner, regardless of specialty, can earn money and assist clients by using the Fair Credit Reporting Act¹ (FCRA). While this article is directed to the solo practitioner, it applies equally to any lawyer in a small firm setting. This short article is not designed to explain all aspects of the FCRA but instead is to open our minds to the possibilities so we can investigate potential claims.

Frequently clients, friends, or acquaintances will inquire about issues or problems with their credit reports. Such credit issues can lead to potentially valuable cases as well as the opportunity to provide a welcome service to our clients or friends.

HOW DO CREDIT REPORTS AFFECT OUR CLIENTS?

Credit reports are regulated by the FCRA. Because credit reports have a huge impact on an individual's ability to obtain a loan, an apartment lease, certain jobs, or even insurance, a serious negative entry on a credit report can lead to denial of loan application, rejection of an application at an apartment complex, denial of certain governmental jobs, and excessively high insurance rate quotes. This is fair if the serious negative entry is accurate.

THE PROBLEM – INACCURATE CREDIT REPORTS

However, credit reports are not always accurate. According to a recent Consumer Reports article, at least 70% of credit reports contain errors. This shows us that we all have a large number of potential clients who need our help. Such errors can range from the relatively minor ones, such as a

¹ 15 USC Section 1681.

misspelled name, all the way the very serious issue of identity theft, which is the fastest growing crime according to the FBI.

FIRST STEP – REVIEW CLIENT’S CREDIT REPORTS

The first step in addressing the situation is to review our client’s credit report from each of the three major credit-reporting agencies: Equifax, Experian, and TransUnion. The simplest method for obtaining these reports is to complete and mail a request form at the Federal Trade Commission's website, www.ftc.gov/bcp/online/include/requestformfinal.pdf. The client can also obtain his or her credit report at www.annualcreditreport.com or by calling toll free at 877-322-8228. These are the truly “free” ways for our clients to get all three reports.

SECOND STEP – WHAT OUR CLIENTS NEED BEFORE THEY CAN CORRECT AN ERROR

The second step is for our client to review the credit report from each of the major agencies. If a client identifies an error, ask the client to provide written documentation that demonstrates that there is, in fact, an error. For example:

- If the client claims she is the victim of identity theft, she should obtain a police report and complete an identity theft affidavit (www.consumer.gov/idtheft/pdf/affidavit.pdf).
- If the client claims that an account, which was discharged in bankruptcy, is still reported as an outstanding debt with a balance on her credit report, she should provide you with a copy of the bankruptcy petition and the discharge order.
- If your client claims the account was paid off and should not show a balance owing, then she should produce the check or letter or other documentation showing that the account was, in fact, paid off.

The bottom line is that the client needs to show you, and ultimately the consumer reporting agencies and the furnishers of information (i.e. the creditor reporting the information), that the entry on her credit report is wrong.

THIRD STEP – HOW TO DISPUTE AN ERROR

The dispute must be made directly to each credit-reporting agency that reported the error. This is a critical step, despite the fact that common sense might dictate that the dispute be made only with the creditor or "furnisher" who reported the false information to the credit agencies. However, under the FCRA, reporting the error directly to the furnisher does not create an actionable duty on the part of the furnisher. In order to subject the furnisher to a duty to investigate under the FCRA, the dispute must first be made directly to the credit reporting agency² (Equifax, Experian, or TransUnion), and the agency must then transmit notice of the dispute to the furnisher.

WHO SHOULD WRITE AND SIGN THE DISPUTE LETTER?

There is a debate among consumer lawyers as to who should write and send the dispute letter. Some advocates believe the lawyer should prepare the letter and should send the letter under the lawyer's signature. Others believe the lawyer should help prepare the letter but the client should sign it. Finally, others believe that the client should do everything on her own during the dispute process.

While there are good arguments (and some not so good) for each approach, the best approach in my judgment is to help the client prepare a dispute letter but have the client sign the letter. This will help ensure that the letter contains the necessary information but it avoids some silly defenses that sometimes the reporting agencies use if the letter has your signature on it. For example, some reporting agencies have decided that any letter with a lawyer's signature is not "directly from the consumer" and thus can be ignored or that any lawyer letter is a "credit repair letter"³ and can be deemed as frivolous and ignored.

YOUR CLIENT BRINGS YOU THE RESULTS OF THE INVESTIGATION – NOW WHAT?

Finally, after your client receives the results of the investigation (usually within 30 days of the dispute), determine whether the dispute was successful. If so, let your client know of the successful resolution. The

² Often the best practice is to "cc" the dispute letter to the furnisher as this may encourage it to correct the problem. If the furnisher does not correct the problem, then the furnisher must explain why it ignored not only the dispute letter but also the notification from the reporting agency.

³ One final suggestion is to not charge any fee as this may make you a "credit repair" organization which subjects you to some rather stringent federal requirements. *See* 15 U.S.C. Section 1659.

client will usually be very grateful for your assistance in getting her credit report cleared of an error. We always hope and trust that happy clients lead to referrals so make sure this “happy client” knows the type of work you do, in addition to helping people with FCRA issues.

If the investigation does not correct the error, then either obtain better supporting information and documentation and dispute the error again⁴ or sue the furnisher, the reporting agency, or both.

WHAT IS THE STANDARD FOR LIABILITY?

If you determine that a lawsuit is appropriate, the FCRA standard is “negligence” – did the furnisher or credit agency conduct a reasonable investigation based on the facts already in its possession along with the supporting information you provided? The more information you provide in your client's favor, the greater the likelihood that a reasonable person would conclude that the entry should have been changed or deleted.

DO THESE CASES HAVE ANY VALUE?

FCRA cases have value because they allow for the recovery of attorney's fees, actual damages - including mental distress, and sometimes punitive damages. Some experts calculate the amount of actual economic damages as a multiple of the client's income. One suggestion is as you start out, take cases that have better liability (i.e. it is obvious that the error should have been removed) even if the damages are somewhat weak. This will help make sure you will get something out of the case and remember, if you win the case, you should get your fees awarded by the court.

HOW DO I GET THESE CASES?

Based on these considerations, how can a solo practitioner obtain these cases and assist the client while generating additional revenue? Obviously, you should suggest that your current and former clients pull their credit reports. They should also be encouraged to let their friends and families know about the option of pulling free credit reports as well.

⁴ You will either get it corrected or give the reporting agencies and/or furnishers more rope to hang themselves. One mantra of consumer lawyers is “notice, notice, notice” to enhance the value of cases.

In addition, attorneys in the following specific areas may find something that will trigger a nice marketing plan to obtain some of these cases:

BANKRUPTCY ATTORNEYS

After an account has been discharged through bankruptcy, it may nonetheless wrongfully appear on a client's credit report as an outstanding debt. Dispute the account and then sue the furnisher either under a discharge violation theory (the credit report showing money owed is an attempt to collect the debt) and/or under the FCRA. You might also consider the FCRA when representing victims of identity theft who need serious work done on their credit as opposed to bankruptcy protection as sometimes consumers become so frustrated with identity theft issues that they seek bankruptcy.

CORPORATE ATTORNEYS

Can you make a short presentation to your business clients' employees⁵ so that they will know how to check their credit reports? Can your business client set you up for a presentation at a business group meeting where you can point out that when employees face errors, particularly identity theft errors, this tends to take a significant amount of energy and time away from the business so that the employee can deal with the issue. It is better to catch the problem early and to have a lawyer for the employee to contact than to have the employee struggle through this on his own while at work.

CRIMINAL DEFENSE ATTORNEYS

Criminal defense clients, as well as their friends and family, may have mistakes on their credit reports. Thus, a "criminal case" client might also have a "civil case" under the FCRA. Do not overlook this source of business as your criminal defense clients also deserve to have accurate reports. Have your clients, their friends, and their family obtain their credit reports to review for possible errors.

DIVORCE ATTORNEYS

Divorce lawyers are well aware that spouses sometimes cheat on each other. Sometimes the cheating spouse will steal the identity of the faithful spouse to secretly open accounts. For example, Jack and Jill are married. Jack has

⁵ You will have to consider whether you can ethically represent an employee of one of your clients or if this will create any conflict problems for you down the road. However, even if you cannot represent the employees, you can still provide a valuable service in making the presentation, which will remind the business client of the value that you bring to the relationship.

a girlfriend on the side. Jack steals the identity of Jill to open two credit card accounts in her name but with the bills going to a secret P.O. Box. After the divorce divides the debts (which will not list these secret accounts), Jill may discover the accounts when Jack stops making payment on them. You can assist your clients by reviewing their credit reports to look for accounts that they do not recognize or for evidence that some creditor has obtained your client's credit report without your client's permission.

ELDER LAW ATTORNEYS

Elderly clients can be particularly vulnerable to unscrupulous family members and health care workers. It is therefore advisable to review their credit reports at least annually. Are there accounts appearing on the credit reports that your client does not recognize? Have there been inquiries for credit that the client does not remember making? These are telltale signs that someone may have wrongfully attempted to obtain credit in your client's name.

PLAINTIFF ATTORNEYS

Personal injury clients should examine their credit reports to see if they need assistance in resolving errors. You have all of these clients and you may find some decent cases within your existing client list.

Apply the skills you have obtained in litigating cases to consumer cases. You know how to conduct discovery, how to try cases, etc. which gives you an advantage dealing with the reporting agencies and furnishers who often times do not expect to face solos who are willing and able to litigate cases.

One combination of FCRA and personal injury is if a personal injury client has been unable to pay bills because of her injuries - include the loss of her good credit as part of her damages. Consider sending collection notices (particularly related to initial medical treatment) to defendants requesting them to pay the bill or be responsible for the credit damage. This might even motivate them to protect your client's credit if they understand that they can be held legally responsible for credit damage. Perhaps you can add some value to the typical car wreck case by having a new twist to it.

WHERE TO GET DETAILED HELP

This article has been designed to provide a general overview of FCRA cases and how they can be incorporated into your practice. More information can

be found in the excellent and easy to use FCRA manual published by the National Consumer Law Center (NCLC). You can visit the NCLC website at www.nclc.org. Once you acquire sufficient knowledge and expertise in handling FCRA cases, you will experience the double benefit of providing a valuable service to your clients while increasing the profitability of your law practice.

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