

CAB Rule Committee Meeting Notes

Zoom Conference October 29, 2020.

Meeting began at 12:06 p.m. Pacific Time

In Attendance:

Committee Members

Mark Case, Washington State Collection Agency Board Member – Industry member

Scott Kinkley, Washington State Collection Agency Board Member – Public member

David Reid, Director of government affairs and regulatory policy for the Receivables Management Association.

Kevin Underwood, Collection Agency Attorney, Linebarger Goggan Blair & Sampson –Gig Harbor,

WA

Kirk Miller, Consumer Rights Attorney- Spokane, WA

Sam Leonard, Collection Attorney – Seattle, WA

Andy Madden, ACA International vice president of government and state affairs.

Program Staff

Kim Hall, Administrative Assistant 3

Grace Hamilton, Investigator 3

Julie Konnersman, Management Analyst

Kathe McDaniel, Assistant Administrator

Rick Storvick, Administrator

Elizabeth Lagerberg, Assistant Attorney General, Board Advisor

- Mr. Storvick opened with welcoming all the members, thanking them for their efforts and covered the purpose of the meeting. Mr. Storvick spoke in detail to the rule making process, explaining next steps for presenting the finalized draft language to the CAB and requesting approval to file a CR102. Mr. Storvick outlined that the CR102 will include the hearing date information and timeline for the public comment period prior to the hearing, as well as the opportunity for public comment during the hearing. After the hearing, a CR103 would need to be filed and that includes the concise explanatory statement which includes the board's responses to comments received during the official comment period and any that are received during the hearing. He also explained the comments solicited for the language review during this meeting are being responded to today. When the CAB approves the CR103 it will be forwarded on to the Code Reviser's Office for filing and completion.
- Ms. Lagerberg facilitated the review of public comment received. The committee received 6 comments from one Washingtonian and 1 other comment from a member of the AGO Consumer Protection unit.
 - Comment number #1 was in reference to WAC 308-29-085(3)(b) The employee must read and agree to comply with the licensee's IT Security Policy and any updates. The

concern: if requiring an employee to agree to "any updates" is an agreement to agree which isn't unenforceable under Washington law. The committee agreed that this section refers the requirement the employee will be informed regarding any updates. The employee may choose not to comply with updates to the security policy, but then would not be allowed to use the virtual office.

- Comment # 2 was in reference to WAC 308-29-085(3)(h) Physical records must be stored and maintained at the business location and may not be stored at the virtual office. Employees may not print or store physical records in the employee's virtual office. The concern: questioning was intent to create a new requirement that a licensee must maintain physical records by stating "physical records must be stored and maintained at the business location"? Discussion led by Mr. Underwood and Mr. Kinkley agreed the language was a bit redundant as the rules for keeping records secure at the business location are already in place. The committee agreed and the first sentence was removed.
- Comment #3 was in reference to WAC 308-29-085(3)(b) It must be located within the United States and within 100 miles of the licensee's business office AND WAC 308-29-085(4)(a) Prior to being eligible to work remotely, the employee must have completed a training program at the licensee's business office, which covers topics including compliance, confidentiality, monitoring and security; and must have worked for the licensee for a minimum of thirty (45) days prior to working remotely. The concern: would the limitations of 100 miles within business location and minimum in house training of 45 days violate existing ADA laws? Mr. Kinkley, Mr. Leonard and Mr. Underwood all agreed there would be no violation. ADA requirements would supersede any stated requirement in the Collection Agencies Act. The committee agreed. However the commenter agreed to provide a brief regarding the ADA's effect on the proposed amendment for the CAB to consider during their Special meeting.
- Comment #4 was in reference to WAC 308-29-085(3)(f) An employee must be advised that the employee's collection agency activities are subject to review and calls to and from the virtual office will be monitored and recorded AND WAC 308-29-085(7) Call Monitoring. Licensees must record and monitor all calls initiated or received by their employees while employees are working remotely and must maintain copies of these recordings and make them available for inspection upon request. All calls must comply with RCW 19.16.250 (13)(c), (18), and (19). The concern: As currently written, the amendment is unclear if RCW 9.73.030 is still applicable or if WAC 308-29-085(3) and WAC 308-29-085(7) creates a new right for the licensees to record calls. Mr. Underwood, Mr. Reid, Mr. Kinkley and Mr. Miller shared known business practices. Stating that if a Washington collector is reaching out to another state in regarding to collection activities, they are required to follow that states laws with regard to monitoring and recording laws. Language is written to allow for this practice, and reference to 9.73 RCW was added for clarity. Committee in agreement.
- Comment #5 was in reference to WAC 308-29-085(8) Non-Disclosure. Neither the employee nor the licensee shall conduct any activity that would indicate or tend to indicate the employee is working from a virtual office AND WAC 308-29-085(8)(c) Holding out in any manner, directly or indirectly, by the employee or licensee, an

address that would suggest or convey to a consumer that the virtual office is a licensed collection agency location or "branch office", including receiving licensee's mail, or storing books or records at the virtual office AND RCW 23.95.455 The only duties under this chapter of a registered agent that has complied with this chapter are:

- (1) To forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand pertaining to the entity which is served on or received by the agent;
- (2) To provide the notices required by this chapter to the entity at the address most recently supplied to the agent by the entity;
- (3) If the agent is a noncommercial registered agent, to keep current the information required by RCW 23.95.415(1) in the most recent registered agent filing for the entity; and
- (4) If the agent is a commercial registered agent, to keep current the information listed for it under RCW 23.95.420(1). The concern: One of the duties of a registered agent is keeping their address up to date, if the employee is also the registered agent for the collection agency, how will they be able to maintain the secrecy of their remote location while still complying with their duties as a registered agent in keeping their address up to date with the Washington Secretary of State? How will they be able to accept service of process while maintaining this secrecy? Mr. Underwood led discussion and the committee is in agreement that an employee performing collection activities is not a registered agent under this definition.

- Comment #6 was in reference to WAC 308-29-010(4) "Employee" is a person employed by a licensee and shall not be deemed a "collection agency" or a "branch office" as defined in RCW 19.16.100 (5)(a) so need not have an additional license or certificate to perform collection activities on behalf of the licensee whether working from a business office or from the employee's virtual office. The concern: definition of a "person" includes an "individual, firm, partnership, trust, joint venture, association, or corporation" and made recommendation to change language from "person" to "natural person" for clarification. Mr. Kinkley and Mr. Reid agreed. Committee accepted the change.
- Comment #7 was in reference to WAC 308-29-010 Definitions (4): This seems implied but I wanted to clarify that contractors and employees of contractors are not included in the definition of "employee." The concern: again the definition of a "person" as stated above in comment #6. The committee agreed the change to in language to "natural person" satisfied this concern.

➤ **Work Assignments for the next meeting:**

- There are no more assignments for the committee. The committee's work is concluded with this effort.
- DOL will place finalized draft rule language in the CAB packets for their review and consideration at the Special Board meeting scheduled for November 3rd via ZOOM.

➤ **Public Comment & Guest: (2)**

- Zack Echlin- Mr. Echlin appreciate the discussion and consideration of his comments. He further shared concerns based around his ADA comments and agreed to provide a brief for the CAB to consider.
- Chester Baldwin- no comment.