



CAMPUS COUNSEL

A legal blog written for administrators, HR professionals, in-house counsel, and deans at colleges and universities

Do Your Student Account Policies/Forms on Collection Cover Costs of Outside Agencies?

FEBRUARY 3, 2014

In January 2014 the 11th Circuit (Federal Court of Appeals in Alabama, Florida, Georgia) held, in *Bradley v. Franklin Collection Services, Inc.*, that charging the debtor (owing medical bills) the percentage-based fee, rather than actual costs of collection, violated the Fair Debt Collection Practices Act as the debtor could only be charged with the “actual costs of collection” thus preventing the costs assessed by a collection agency from being included in the collected debt. The decision was based on the contract with the debtor promising to pay only costs of collection, contrasted with another debtor of the same creditor who promised to pay: “all costs of collection including reasonable interest, reasonable attorney’s fees and reasonable collection agency fees”. The latter provision was sufficient for the debtor to be assessed the collection agency fee. The court indicated, by reference to another decision, that an approach that specifically provided for collection fees based on a percentage of the debt would authorize collection. This decision is being looked at by agencies who service debts in various states including Massachusetts, although it is not yet evident how it may apply in Massachusetts. The concern is that if denied recovery, the collection agency will seek recovery of its fees from the creditor, such as the educational institution.

CLIENT TIP: *Be sure that the wording in your billing policies (included in on line policies, course catalogues, and forms) and in student contracts when they enroll include the right to charge additional collection agency fees, including on a percentage-based approach, to be consistent with your own practices and to avoid paying out-of-pocket costs of collection.*