

# STATE OF COLORADO

Department of Law

## COLLECTION AGENCY BOARD

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Laura E. Udis  
Executive Director  
Jack L. Kinkel  
Deputy Administrator

January 8, 1991

RE: Rule 2.03

Dear

This letter is in response to your January 4, 1991 letter inquiring about Rule 2.03 of the Collection Agency Board rules. You specifically asked about Rule 2.03(3).

Rule 2.03(3) refers to the situation in which a creditor's contract with the consumer indicates that collection costs will be added to any unpaid debt upon default. If such a contract is then assigned to a collection agency, the agency may only retain the collection costs described in the creditor's contract with the consumer. No standard commission may also be retained. However, if the agency has written permission from the creditor, the agency may keep the collection costs provided in the contract between the creditor and consumer and the standard commission it would otherwise collect. I presume that when the debt amount is assigned by the creditor to the agency, the amount assigned would include the collection costs specified in the contract between the creditor and consumer.

Even if the contract between the creditor and consumer provides that a collection agency may collect collection costs, this is allowed only if it is legal for the contract to include collection costs. As an example, collection costs may not be added to consumer credit transaction under the Uniform Consumer Credit Code. There may be other instances where the law prohibits the addition of collection costs upon default. Rule 2.03 does not attempt to describe or limit those situations. The creditor must determine when the addition of collection costs is legal in drafting its contracts with consumers.

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In addition, while the addition of collection costs may not be prohibited by law, the law may require that the amount of collection costs be reasonable, or comply with some fixed percentage or amount. Rule 2.03 likewise does not address the amount of collection costs. Again, this should be determined by the creditor with the consultation of an attorney if necessary.

Finally, Rule 2.03(2) prohibits collection agencies from suggesting that their clients (creditors) add collection costs to contracts unless collection costs are specifically allowed by law. For example, the treble damages bad check collection law allows an agency recovering the face amount of a bounced check to add collection costs of 20% but not less than \$20.00.

I hope this clarifies the rule. This letter represents our enforcement position but does not constitute a formal advisory opinion of the Collection Agency Board. See § 12-14-113(5), C.R.S. (1990 Supp.).

Sincerely,



LAURA E. UDIS  
Executive Director

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