

JUN 05 2008

Wiley v Drakulich 06-16030MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

N.R. Smith, Circuit Judge, dissenting:

I dissent. The language of 15 U.S.C. § 1692g(a) does not allow us to impute one debt collector's compliance with the Fair Debt Collection Practices Act ("Act") to another debt collector who admittedly failed to provide the written notice required by § 1692g(a). As the Supreme Court noted in *Heintz v. Jenkins*, 514 U.S. 291, 294 (1995), Congress enacted a version of the Act in 1977 that expressly exempted attorneys from the statutory definition of a "debt collector." The Supreme Court also recognized in *Heintz* that "[i]n 1986, however, Congress repealed this exemption in its entirety, Pub.L. 99-361, 100 Stat. 768, without creating a narrower, litigation-related, exemption to fill the void." *Id.* at 294-95. Then in 2006, Congress once again amended the Act to except legal pleadings from its statutory definition of "initial communication." *See* 15 U.S.C. § 1692g(d). In November 2004, when Drakulich served the complaint and summons, the Act provided no exception for attorneys representing debt collector clients.

Despite the fact that no such exception existed when Drakulich served the complaint and summons, the majority creates an exception "[i]n light of the nature of the relationship" between Drakulich and his client Business & Professional Collection Services ("B&P"). The majority creates this exception without any statutory basis. Further, there is nothing special about the relationship between

Drakulich and B&P that justifies the majority's decision excusing Drakulich from complying with the Act. Instead, as an attorney representing a debt collector in litigation, Drakulich was himself a debt collector subject to the Act's many requirements. *See Heintz*, 514 U.S. at 294. While I might sympathize with the majority's position, there is no statutory basis for it.