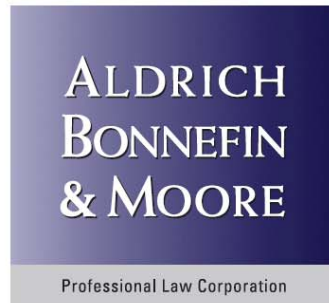


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Ninth Circuit Holds FDCPA Statute of Limitations Subject to Discovery Rule

Recently, the Ninth Circuit issued an opinion in which the court held that the one year statute of limitations under the Fair Debt Collection Practices Act (FDCPA) is qualified by the discovery rule. In *Magnum v. Action Collection Service*, 575 F.3d 935 (9th Cir. 2009), the court found that because the FDCPA is qualified by the discovery rule, the FDCPA's one year statute of limitations does not begin to run until the aggrieved party learns or should have learned of the FDCPA violation. As such, the Ninth Circuit held a lawsuit commenced within one year of the date on which the aggrieved party learns of the violation is timely even though it is more than one year from the date of the violation.

In *Magnum*, the plaintiff was a police dispatcher for a city in Idaho. The city's police chief was at a local grocery store, where he saw the plaintiff's name on a list of individuals the store would no longer accept checks from. The chief asked police department staff to conduct an internal investigation to determine why the plaintiff's name was on the list and whether she had engaged in any conduct that violated the department's policies relating to moral character.

As part of the internal investigation, police department staff contacted a debt collector who, on December 8, 2004, furnished the department with copies of insufficient fund checks written by the plaintiff (conduct which the plaintiff alleged violated the FDCPA). The investigation revealed that the plaintiff had written at least twenty-six checks which were dishonored due to insufficient funds. Police department personnel interviewed the plaintiff on December 14, 2004, which was the date the plaintiff first learned that the debt collector had furnished her employer with information about her. A year later the plaintiff filed a complaint against the debt collector alleging violations of the FDCPA. The debt collector claimed that the statute of limitations under the FDCPA had run. The trial court agreed granting summary judgment for the debt collector.

On appeal the Ninth Circuit reversed the lower court decision. The Ninth Circuit held that the plaintiff's lawsuit against the debt collector was not barred by the statute of limitations. The court reasoned that if the debt collector had violated the FDCPA, it did so on December 8, 2004 when it provided police department personnel with copies of the plaintiff's insufficient funds checks. However, the plaintiff did not learn of the violation until her interview on December 15, 2004, so the court stated that since the FDCPA's statute of limitations was qualified by the discovery rule she could sue as late as December 15, 2005, one year after she

01/22/2010

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learned or should have learned of the FDCPA violation. Since the plaintiff filed her suit on December 14, 2005 the court held that the action was timely.

The Ninth Circuit's decision in *Magnum* appears to stretch the one-year statute of limitations under the FDCPA, to give potential plaintiffs more time in which to bring alleged claims. Since the court held that the FDCPA is qualified by the discovery rule, in light of *Magnum* the FDCPA's one year statute of limitations does not begin to run until the aggrieved party learns or should have learned of the FDCPA violation.