

UPDATED: 2014

To the Point: Telephony and Voicemail

Answers from Ask the Attorney



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Contributors



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Telephony & Voicemail

1) What is the impact of the recent Meyer v. PRA appeal as it relates to the dialing of cell numbers?

The decision came out on 12 October 2012 [[download here](#)]. The claim in the Meyer case was that there were calls being made to a cell phone using an auto dialer. And as part of the decision, there was a motion for provisional class certification and a preliminary injunction. The U.S. District Court out in California granted that. That decision was appealed. And the Ninth Circuit affirmed that decision.

In doing so, the Ninth Circuit also addressed the Telephone Consumer Protection Act (TCPA). First and foremost, what do you need to show express consent? And as the Ninth Circuit stated in the opinion, the cell phone number has to be provided to the creditor at the time the underlying transaction was initiated. So, if it's a credit card application, you want to make sure the cell phone number was provided on the credit application. And if it's put on that application, and the creditor sends it over to the debt collector, it's presumed then that the debt collector is standing in the shoes of the creditor and it is permissible to call. The issue that you can run into, of course, is when the number wasn't provided initially with that credit application or the initiating document. You want to make sure that the information you're getting from your client, from the creditor, is complete. You need to know where and when they got that number.

An interesting wrinkle...

Does the Meyer v. PRA case extend to manual dialing as well?

Don Maurice, Maurice & Needleman: I have two clients right now who have been sued out in California claiming that calls being made, it's agreed that they were made with a manually dialed to a cell phone number, that those violated the TCPA. Now, I can tell you I'm quite confident these two clients are going to ask us, one, to send out a Rule 11 letter and seek sanctions, and then file a motion to dismiss.

So, I don't think that it's going to apply to manually dialed calls. And there's nothing in the TCPA that would make me think that. My interpretation of the Meyer case is that it's going to apply to auto dialer calls, not to the manually dialed calls.

The Meyer case is not over. It was just an appeal regarding the class certification and the injunction issues. There are still motions to dismiss or motions for summary judgment that could be filed. It's not even clear if this decision is going to be appealed to the Supreme Court. Most importantly, though: It's not dead by any means. So, there's always risk involved with the TCPA. Agencies must tread carefully while making that business decision.