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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 06-045

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]**

#### 2. Form, Style and Placement in Administrative Code

a. The department’s analysis generalizes the changes to the proposed rule. The analysis should describe the specific and individual changes made in the proposed rule. For example, the definition of “active office” (page 2, lines 11-18) eliminates the minimum records requirements in current ch. DFI-Bkg 74. There are a number of individual changes in the rule that are not specifically described in the analysis.

b. The rule preface should include the email address of the agency contact persons, the place where comments are to be submitted, and the deadline for submission of contents. [See s. 1.02 (a), Manual.]

c. Section DFI-Bkg 74.01 (1) defines the term “actual process of collection.” If the term is used only in s. DFI-Bkg 74.10, as is implied in the language of the definition, than the definition is better placed in s. DFI-Bkg 74.10.

d. Section DFI-Bkg 74.01 (2) (a) to (d) should use parallel construction. For example, par. (d) is a complete sentence, while pars. (a) and (c) are not. Also, par. (c) should conclude with the phrase “laws, rules, and regulations” and should conclude with a period rather than a semicolon.

e. In s. DFI-Bkg 74.05 (1) (c), the cross-reference should read “s. DFI-Bkg 74.11 (2) (a) to (c).” [See, also, s. DFI-Bkg 74.07 (1) (a) 1.]

f. In s. DFI-Bkg 74.07 (1) (d) 4., the slashed alternative “and/or” should be avoided. [See s. 1.01 (9), Manual.]

g. In s. DFI-Bkg 74.07 (1) (h), the introduction should conclude with the phrase “all of the following.” In general, since the entire chapter is repealed and recreated, this would be a good opportunity to make consistent the use of lists in the rule. Each introduction can make clear to the reader whether all or only one of the items in a list is required to be met and each item can conclude with a period, making further amendments on the lists simpler.

h. In s. DFI-Bkg 74.07 (1) (i), the parenthetical notations are unnecessary and should be replaced with commas. [See, also, s. DFI-Bkg 74.10 (3).]

i. In s. DFI-Bkg 74.07 (2), the first sentence is not an introduction that grammatically leads into the following subunits. Thus, the first sentence should be renumbered as par. (a) and the remaining paragraphs and internal cross-references should be renumbered accordingly. [See also s. DFI-Bkg 74.11 (2).]

j. In s. DFI-Bkg 74.11 (2), the word “through” in the first sentence should be replaced by the word “to.”

k. In s. DFI-Bkg 74.15 (2), the word “shall” should be replaced by the word “does.” [See also the last sentence of s. DFI-Bkg 74.16 (15).]

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

The rule makes numerous references to department forms. The requirements of s. 227.14 (3), Stats., should be met.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. Whenever possible, sentences should be stated in the positive voice for clarity. For example, the sentence on page 3, lines 29-30, relating to practicing attorneys employed by, and sharing office space with, a collection agency is stated in the negative and is unclear. For clarity, the sentence should read “This chapter and s. 218.04, Stats., apply to an attorney who shares office space under this paragraph.”

b. The rule should be reviewed to remove the formalistic use of words like “such” and “said.” For example, in s. DFI-Bkg 74.04 (1) (c), the final two sentences should read: “The licensee may not charge a higher commission rate ... unless the agreement authorizes the higher rate. The licensee may not retain the higher rate of charge ....”

c. Section DFI-Bkg 74.05 (1) (d) should conclude with the phrase “showing the amount due the licensee as commission and the amount due the creditor or forwarder.”

d. In s. DFI-Bkg 74.07 (1) (d) 1., the word “and” should be inserted before the word “forwarder.”

e. Section DFI-Bkg 74.11 (4) can be rewritten more clearly as follows:

If a person has a debtor-creditor relationship with a licensee where the person as a creditor has listed accounts with the licensee for collection and where the person also has accounts listed with the licensee by other creditors against the person for collection, collections effected for the person as a creditor may not be applied on accounts that the person owes unless the licensee has a written authorization on file setting forth how the moneys being collected are to be applied. A receipt and a remittance shall be issued in connection with debtor-creditor accounts so that the person as the debtor has a complete record of how moneys collected on the person's behalf as a creditor have been applied.

f. Section DFI-Bkg 74.11 (9) uses the term "consumer" and the term "debtor" apparently to apply to the same person. Consistent terminology should be used throughout the rule.

g. In s. DFI-Bkg 74.13 (1), it would be clearer to use the United States Code reference to the federal law rather than referring to SECTION 809 of the Federal Fair Debt Collection Practices Act.