

Partnership Representative and Adjustments

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U.S. Supreme Court Will Decide Key FDCPA Statute of Limitations Issue

Written by [Maryia Y. Jones](#), [Ethan G. Ostroff](#),
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The Supreme Court agreed to hear a consumer's appeal from the Third Circuit's ruling that his claims under the Fair Debt Collection Practices Act were time-barred despite being brought within one year of discovering the violation. The circuits have been split on whether the one-year statute of limitations under the FDCPA begins to run when an alleged violation takes place or when it is discovered. The split has caused a lot of uncertainty about potential liability under the FDCPA and, on February 26, the Supreme Court granted certiorari in a case squarely presenting the issue.

We previously reported on [*Kevin Rotkiske v. Paul Klemm, et al.*](#), No. 16-1668 (3d Cir. May 15, 2018). There, Kevin Rotkiske sued Paul Klemm, claiming that a judgment obtained by Klemm against Rotkiske in 2009 violated the FDCPA. However, Rotkiske did not file his FDCPA claims until 2015 – five years outside of the FDCPA's one-year statute of limitations. In response to Klemm's motion to dismiss, Rotkiske asserted that his FDCPA claims were timely because he did not find out about the

judgment until 2014. The trial court dismissed Rotkiske's claims and he appealed.

The Third Circuit affirmed the dismissal and held that the plain language of the statute controls. In particular, the FDCPA requires that actions for violations of the statute must be brought "within one year from the date on which the violation occurs." 15 U.S.C. § 1692k(d). Although the language leaves no room for argument, the plaintiff's bar has claimed over the years that the discovery rule should apply. The Fourth Circuit and the Ninth Circuit have agreed. On the other hand, the Eighth Circuit, Eleventh Circuit, and now Third Circuit have rejected this reading of the statute and have held that the one-year statute of limitations begins to run from the time of the alleged violation, not its discovery.

In his petition to the Supreme Court, Rotkiske argued that the result reached by the Third Circuit was unjust and "absurd." In response, Klemm emphasized that courts could prevent any unfairness by applying the doctrine of equitable tolling in FDCPA cases involving a defendant's fraudulent or concealed conduct which would effectively stop the statute of limitations from accruing until the violation is discovered.

It is hoped that a Supreme Court decision in this case will bring long-awaited certainty to the issue of the FDCPA's statute of limitations.

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