

ILLEGAL DEBT COLLECTION PRACTICES

OFFICE OF THE COMMAND JUDGE ADVOCATE

CAMP SHELBY JOINT FORCES TRAINING CENTER

CAMP SHELBY, MS.

It is 10 PM and you have just gotten off the phone with a debt collector. It was his fourth call of the day and, with each call, his tone of voice and choice of words got more and more threatening. The caller even stated he will be calling your command in an attempt to force you to pay the debt. You are now beginning to wonder if there is any way to protect yourself, your family, and your Army career from callers like this. Chances are extremely good that the caller is violating the federal Fair Debt Collections Practices Act and similar state laws, including the State law in this area.

Application. The federal law applies to all debt collectors; that is, those hired to collect a debt for some one else. For example, Household Finance may hire a collection agency to obtain payments on a delinquent furniture loan. Federal law requires debt collectors to provide information, to refrain from harassment, and to refrain from contacting third parties, e.g., your command, except in very limited circumstances. Failure to obey the federal law exposes the debt collector to possible suit for money damages, payable to the victim of the harassment.

Restrictions. To begin with, the collector cannot lie about who he is. The collector must identify the creditor and the debt and advise that any information provided may be used in debt collection. The collector must advise the debtor that the debtor can request verification of the debt prior to any further collection efforts. Additionally, the collector must advise the debtor of methods available to stop further attempts to communicate with the consumer. Generally, a written notice by the debtor sent to the collector that the debtor refuses to pay the debt or that the debtor wishes the collector to cease further communications will suffice.

Debt collectors cannot harass debtors, such as by using offensive language or by making an unreasonable number of telephone calls or calls at unusual or inconvenient times or places. Generally, 8 AM - 9 PM at the debtor's location is presumed convenient. If the collector knows the debtor is represented by an attorney and has the attorney's name, address, and telephone number, contact is allowed only through the attorney. Calls to the debtor at his work place are prohibited if the collector knows that the employer prohibits the debtor from receiving such communications.

Third Parties. Unless the debtor consents, collectors are prohibited from contacting third parties, such as your command, to collect a debt. Debt collectors can contact people to locate a debtor, but they cannot let those people know they are pursuing a debt collection.

State Law. While the federal law, discussed above, applies only to people hired by a creditor to collect a debt, state law may provide additional protections and should always be reviewed. The state law may apply to creditors as well as debt collectors, thereby, placing restrictions upon the

creditor (such as GMAC, Sears, or your landlord) or have additional protections from the collector.

Q: WHAT DEBTS ARE COVERED?

A: Personal, family, and household debts are covered under the Act. This includes money owed for the purchase of a car, for medical care, or for charge accounts.

Q: WHO IS A DEBT COLLECTOR?

A: A debt collector is anyone, other than the creditor or the creditor's attorney, who regularly collects debts for others.

Q: HOW MAY A DEBT COLLECTOR CONTACT ME?

A: A debt collector may contact you in person, by mail, telephone, or telegram. However, a debt collector may not contact you at inconvenient or unusual times or places, such as before 8 a.m. or after 9 p.m., unless you agree. A debt collector may not contact you at work if your employer disapproves. (The military services consider military supervisors or commanders to be "employers." Thus, a debt collector who contacts you at your installation office or work site, where your commander or supervisor prohibits it, violates the law).

Q: CAN I STOP A DEBT COLLECTOR FROM CONTACTING ME?

A: You may stop a debt collector from contacting you by writing a letter to the collection agency telling them to stop. Once they receive this letter, they may not contact you again except to say there will be no further contact. The debt collector is allowed to notify you that some specific action may be taken, but only if the debt collector or the creditor usually takes such action.

Q: MAY A DEBT COLLECTOR CONTACT ANY OTHER PERSON CONCERNING MY DEBT?

A: If you have a legal assistance or private attorney, the collector may not contact anyone but the attorney. If you do not have an attorney, a debt collector may contact other people, but only to find out where you live or work. The collector is not allowed to tell anyone other than you or your attorney that you owe money. In most cases, collectors are prohibited from contacting any person more than once.

Q: WHAT IS THE DEBT COLLECTOR REQUIRED TO TELL ME ABOUT THE DEBT?

A: Within 5 days after you are first contacted, the debt collector must send you a written notice telling you the amount of money your owe, the name of the creditor to whom you owe the money, and what to do if you feel you do not owe the money.

Q: IF I BELIEVE I DO NOT OWE THE MONEY, MAY A DEBT COLLECTOR CONTINUE TO CONTACT ME?

A: The debt collector may not contact you if you send the collector a letter within thirty days after you are first contacted saying you do not owe the money. However, a debt collector can begin collection activities again if you are sent proof of the debt, such as a copy of the bill.

Q: WHAT CONTROL DO I HAVE OVER SPECIFIC DEBTS?

A: If you owe several debts, any payment you make must be applied to the debt you choose. A debt collector may not apply a payment to any debt you feel you do not owe.

Q: WHAT CAN I DO IF THE DEBT COLLECTOR BREAKS THE LAW?

A: You have the right to sue a debt collector in a State or Federal court within one year from the date the law was violated. If you win, you may recover money for the damage you suffered. Court costs and attorney's fees also can be recovered. A group of people may sue a debt collector and recover money for damages up to \$500,000.

Q: WHO CAN I TELL IF THE DEBT COLLECTOR BREAKS THE LAW?

A: In addition to this Federal law, many states have their own debt collection laws. Federal agencies rely on consumer complaints to decide which companies to investigate. You can assist these enforcement efforts by contacting the appropriate government office.

Q: WHAT TYPES OF DEBT COLLECTION PRACTICES ARE PROHIBITED?

A: Harassment. Debt collectors may not harass, oppress or abuse any person. For example, debt collectors may not:

1. Use threats of violence or harm to property or reputation.
2. Publish a list of consumers who refuse to pay their debts (except to a credit bureau).
3. Use obscene or profane language.
4. Repeatedly use the telephone to annoy someone.
5. Telephone people without identifying themselves.
6. Advertise your debts.

B. False Statements. Debt collectors may not use any false statements when collecting a debt. For example, debt collectors may not:

1. Falsely imply that they are an attorney or government representative.
2. Falsely imply that you have committed a crime.
3. Falsely represent that they operate or work for a credit bureau.
4. Misrepresent the amount of the debt.
5. Indicate that papers being sent are legal forms when they are not.
6. Indicate that papers being sent are not legal forms when they are.

C. Additional prohibitions: Also, debt collectors may not say that:

1. You'll be arrested if you do not pay the debt.
2. They will seize, garnish, attach, or sell your property or wages, unless the collection agency or the creditor intends to do so, and it is legal.
3. Actions will be taken against you which legally may not be taken.
4. Give false credit information about you to anyone.
5. Send you anything that looks like an official document which might be sent by any court or agency of the United States or any state or local government.
6. Use any false name.

Q: WHAT TYPES OF DEBT COLLECTION PRACTICES ARE CONSIDERED UNFAIR?

A: Debt collectors may not engage in unfair practices in attempting to collect a debt. For example, debt collectors may not:

- A. Collect any amount greater than your debt, unless allowed by law.
- B. Deposit a post-dated check before the date on the check.
- C. Make you accept collect calls or pay for telegrams.
- D. Take or threaten to take your property unless this can be done legally.
- E. Contact you by postcard.
- F. Put anything on an envelope other than the debt collector's address and name. Even the name can't be used if it shows that the communication is about the collection of a debt.

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All information compiled from materials provided by the Judge Advocate General's School of the Army and Legal Assistance website, as well as, information provided by other Army Legal Assistance Offices and by information provide by the FTC.