

Stopping Debt Collection Harassment and Responding to Debt Collection Suits

Robert J. Hobbs
National Consumer Law Center

Michelle A. Weinberg
Legal Assistance Foundation of Metropolitan Chicago

Jessica Hiemenz, Odette Williamson, & Svetlana Ladan
National Consumer Law Center

Support from the Administration on Aging

Copyright 2009 National Consumer Law Center

Poll #1: Who Are You?

- A) Attorney.
- B) Housing counselor.
- C) Other type of counselor or advocate.
- D) Government worker.
- E) Other.

.

TWO TOPICS TODAY

- Responding to Debt Collectors' Threats and Calls
- Responding to Collection Lawsuits

Some Creditors Have Stronger Remedies

Secured Creditors:

- Cars - repossession
- House – foreclosure/ eviction

Federal Student Loans-Special remedies like offset tax refunds-not covered today

Unsecured Creditors and Debt Collectors Are Focus:

- Credit Cards
- Medical debts
- Cell phone bills

WE WILL LOOK AT DIFFERENT WAYS TO STOP DEBT HARASSMENT, INCLUDING:

- Negotiating with Creditors and Collection Agencies;**
- Writing a Cease Letter;**
- Complaining About Billing Errors and Other Defenses;**
- Complaining to Government Agencies; and**
- Filing Bankruptcy.**

CONSUMER RULE ONE: DO NOT LET COLLECTORS PRESSURE YOU



DEBT COLLECTORS *CANNOT* *LEGALLY* DO MUCH TO HARM A DEBTOR

They can:

- **1. Stop doing business with her.**
- **2. Report the default to a credit reporting agency.**
- **3. Begin a lawsuit to collect the debt.**

EXEMPT PROPERTY

Being Judgment Proof

- Exempt Income
 - Social Security
 - Welfare, unemployment benefits, some pensions
- Homestead Exemption
- Property Exemptions
 - Some funds in bank account
 - Old car, except for car financing
 - Some household goods

EIGHT DIFFERENT WAYS TO STOP DEBT COLLECTION HARASSMENT

1. Talk to the creditor about the situation



2. "CEASE" LETTER (SAMPLE)

Dear Sir or Madam:

I am writing to request that you stop communications to me about my account number XXX 0723 with Amy's Department Store, as required by the Fair Debt Collection Practices Act, 15 U.S.C. § 1692c(c). [*NOTE: Delete reference to the Fair Debt Collection Practices Act where the letter is to a creditor instead of to a collection agency.*] I was laid off from work two months ago and cannot pay this bill at this time.

I am enrolled in a training program which I will complete in March and hope to find work that will allow me to resume payments soon after that. Please also note that your letters mistakenly list the balance on the account as \$245. My records indicate that the balance is less than that.

You should be aware that your employees have engaged in illegal collection practices. For example, I received a phone call at 6:30 A.M. from one of them last week. Later that day I was called by the same person at my training program which does not permit personal phone calls except for emergencies. My family and I were very upset by these tactics.

This letter is not meant in any way to be an acknowledgment that I owe this money. I will take address this matter when I can. Your cooperation will be appreciated.

Very truly yours,
Sam Consumer

The Statute of Limitations

- Provides a defense
- Length of time varies by state, 5 years is common; generally 3 to 10 years
- In most states time runs from later of
 - Acknowledgement of the debt
 - A payment
 - Default

- **3. The lawyer's letter.**

- **4. Negotiating work-out agreements**
 - Negotiate lower balance
 - Negotiate lower interest & fees
 - Negotiate lower payments

- **5. Raise complaints about billing errors and other defenses.**

QUESTIONS?

Poll 2: What is your clients' experience with debt collectors?

- My clients rarely complain about debt collectors.
- I have *a lot* of clients with mild debt collection problems.
- I have a lot of clients suffering terribly from debt collector harassment.

- **6. Complaining to a government agency**
- **7. Bankruptcy.**
- **8. Sue the debt collector for illegal conduct**

COMMON ILLEGAL DEBT COLLECTION CONDUCT:

- **Cursing, obscenities, name calling**
- **Calling neighbors, relatives,
workplace**
- **False threats, like suit, arrest, jail,
taking social security or other
exempt property**

Finding an Attorney to Sue a Debt Collector

- **Attorney Directory:** www.naca.net
- **What You Should Tell Your Attorney**
 - Start a telephone call log in case litigation becomes necessary.
 - Write up a chronology of the debt collection abuse and the events leading to it
- **What If the FDCPA Does Not Apply?**

Poll 3: Do many clients come to you about debt collection lawsuits, attachment of their bank account, or garnishment of their wages?

- No.
- Yes, but only a few.
- Yes, many.

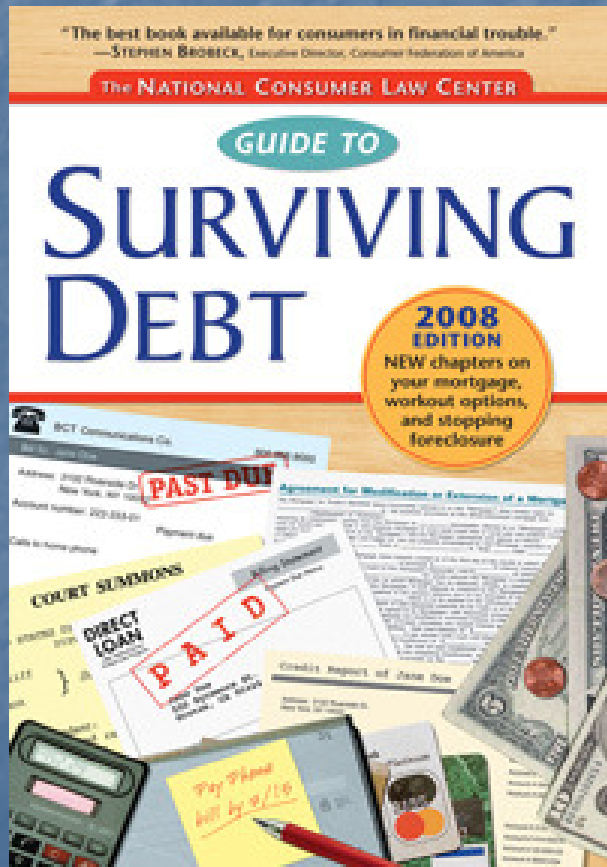
QUESTIONS?

Collection Lawsuits

- **Will the Creditor Actually Sue You?**
- **How to Respond to the Collector's Lawsuit**
- **Fighting Back by Raising Defenses and Counterclaims**
- **What a Court Judgment Against You Really Means**
- **What Property and Income Is at Risk**
- **How to Respond to a Debtor's Examination**

Resources From www.nclc.org

"The best book available for consumers in financial trouble, written by the resource center with the greatest expertise about how consumers can respond to debt collection, foreclosure, evictions and utility shutoffs." -- *Stephen Brobeck, Executive Director, Consumer Federation of America*



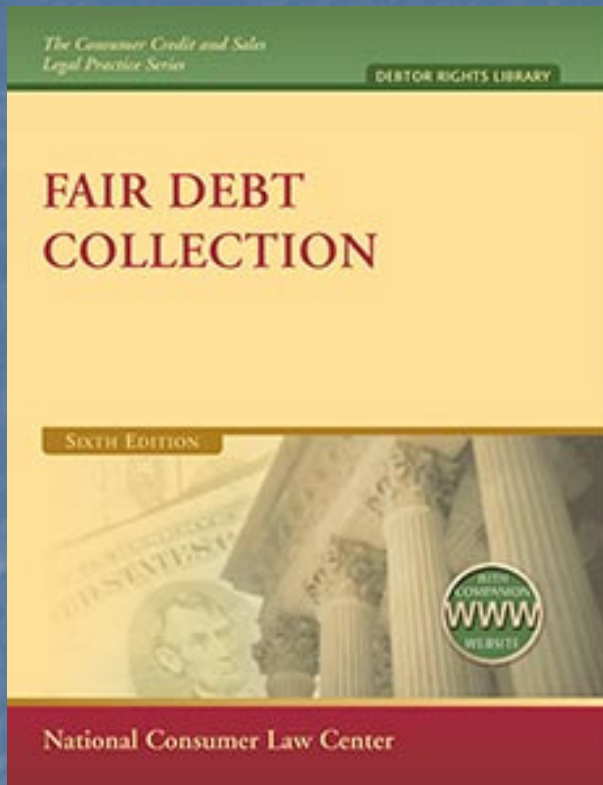
\$20.00, bulk discounts available

To See Dateline Debt Collection Harassment Report



Go to www.lawpoint.com

FOR LAWYERS



The Definitive Treatise on the FDCPA

The latest thinking and definitive analysis of the federal Fair Debt Collection Practices Act (FDCPA), the statute that dramatically alters how collection agencies and attorneys collect consumer debts, now in an all new revised edition

Thank You For Coming.

We will do our best to answer
your questions.

QUESTIONS?