



## FORT SILL LEGAL ASSISTANCE



# DEBT COMPLAINTS AGAINST SOLDIERS

### MILITARY CONSEQUENCES OF INDEBTEDNESS FOR SOLDIERS

Members of the military services are expected to pay their just financial obligations in a proper and timely manner. Whenever possible, indebtedness disputes should be resolved through amicable means. Generally, DoD Components have no legal authority to require members to pay a private debt or to divert any part of their pay for satisfaction of a private debt, except for: (1) proceedings against the Soldier under the Uniform Code of Military Justice (UCMJ), (2) acting on judgments to enforce alimony/child support, and (3) establishing involuntary allotments for collection of court judgments. A Servicemember's failure to pay a just financial obligation may result in disciplinary action under the UCMJ. This may include Article 134 where indebtedness (1) prejudices good order and discipline, (2) discredits the service, or (3) violates a federal law. A Soldier may also be subject to a claim pursuant to Article 139 of the UCMJ, whereby a commander may deduct from a Soldier's pay to make restitution for wrongfully taken property.

### COMMUNICATIONS WITH A SOLDIER/DEBTOR'S CHAIN OF COMMAND

The Fair Debt Collection Practices Act (FDCPA) is a federal law that regulates how debts may be collected. It was designed to eliminate abusive, deceptive, and unfair debt collection practices. This law makes a distinction between "debt collectors" and "creditors." It provides that a "creditor" is a person or entity to whom a debtor owes money, but a "debt collector" is a person or entity which regularly collects consumer debts for another person or business or uses some name other than its own when collecting its own consumer debts. Debt collectors are in the business of collecting debts that are owed to creditors.

Department of Defense Instruction Number 1344.09, **Indebtedness of Military Personnel** (dated 1 February 2022), allows creditors to contact the Soldier's chain of command to assist in collecting the debt. Creditors are not required to first have a court order or the Soldier's permission before contacting command. Debt collectors, on the other hand, are not allowed this same access to the chain of command. A debt collector must have the Soldier's permission or a court order before he or she can contact a Soldier's command. The one limited exception that allows a debt collector to contact the Soldier's chain of command is for the limited purpose of obtaining locator information. In such a case, informing the command or other third parties that the information is sought for debt collection is prohibited.

A commander's assistance in indebtedness matters, however, will not be extended to those creditors: (1) who have not made a bona fide effort to collect the debt directly from the military member, (2) whose claims are patently false and misleading, or (3) whose claims are obviously exorbitant.

In those cases in which the indebtedness of a military member has been reduced to a court order or judgment, an application for an involuntary allotment from the Soldier's pay may be made by the judgment creditor and mailed to the Defense

Finance and Accounting Service (DFAS) for processing. The military member will be notified of the application for the involuntary allotment and allowed an opportunity to respond. An involuntary allotment from a military member's pay, however, is not permitted in any indebtedness case in which (1) exigencies of military duty caused the absence of the Servicemember from the judicial or administrative proceeding at which the judgment was rendered, or (2) the judgment was obtained without compliance with the procedural requirements of the Servicemembers Civil Relief Act (SCRA).

### **A DEBT COLLECTOR'S COMMUNICATIONS WITH A DEBTOR**

The FDCPA requires a debt collector to provide the debtor with certain basic information about the debt. If that information was not provided in the initial communication, all of the following information must be sent to the debtor in written form within five days of the initial communication: (1) the amount of the debt, (2) the name of the creditor to whom the debt is owed, (3) notice that the debtor has 30 days to dispute the debt before it is assumed to be valid, (4) notice that upon such written dispute, the debt collector will send the debtor a verification of the debt or a copy of any judgment, and (5) if the original creditor is different from the current creditor, notice that if the debtor makes a written request for the name and address of the original creditor within the 30-day period, the debt collector will provide that information.

If the debtor chooses to dispute the existence or amount of the debt, the debtor must do so within 30 days of receiving this notice. However, the failure of the debtor to dispute the validity of the debt within this 30-day period may not be construed by any court as an admission of liability by the debtor. Once a debt is disputed, the debt collector must stop communicating with the debtor until the debt is verified and a copy of that verification is mailed to the debtor.

A debtor who refuses to pay a debt should make those intentions known to the debt collector in writing. Once the debt collector has written notification that the debtor does not plan to pay the debt, the debt collector should cease communications with the debtor. The debt is not forgiven, however, and a debt collector can still file a lawsuit to recover the amount that is owed. A debt collector may still communicate with a debtor for the limited purpose of notifying him of plans to pursue a lawsuit.

### **LIMITATIONS ON A DEBT COLLECTOR'S COMMUNICATIONS**

While a debt collector is allowed to communicate with a debtor, the FDCPA limits where, when, and how these communications may occur.

- Communications may not be at unusual times, such as before 8:00 a.m. or after 9:00 p.m.
- Communications may not be at the debtor's place of employment if the debt collector has reason to know that the employer prohibits such contact.
- If the debtor is represented by an attorney, the debt collector should communicate only with that attorney.

- A debt collector cannot use or threaten to use violence against the debtor, and must refrain from obscene or vulgar language. Repeated and continuous calling with the intent to annoy or harass the Soldier/debtor is also not allowed.

In addition, a debt collector, in collecting a debt, may not use any false, deceptive, or misleading representation. Specifically, a debt collector may not

- Falsely represent or imply that he or she is vouched for, bonded by, or affiliated with the United States or any state, including the use of any badge, uniform, or similar identification.
- Falsely represent the character, amount, or legal status of the debt, or of any services rendered, or compensation he or she may receive for collecting the debt.
- Falsely represent or imply that he or she is an attorney or that communications are from an attorney.
- Threaten to take any action that is not legal or intended.
- Falsely represent or imply that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person, unless such action is lawful and intended by the debt collector or creditor.

*These are only some of the practices prohibited by the FDCPA. If you have questions or feel that a debt collector has violated your rights under this law, visit the Fort Sill Legal Assistance Office.*

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**This Information Paper provides only basic information and is not intended to serve as a substitute for personal consultation with a Legal Assistance Attorney. To schedule an appointment with a Legal Assistance Attorney, please contact the Legal Assistance Office at (580) 442-5058. The Fort Sill Legal Assistance Office is located on the 4th Floor of Building 4700 (Welcome Center) at 4700 Mow-Way Road, Fort Sill, Oklahoma 73503.**