



# Legal Briefs

From the Fort Knox Legal Assistance Office

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## DEBT COMPLAINTS AGAINST SOLDIERS

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

A third party's ability to communicate with a Soldier/debtor's chain of command is affected by several factors, the most important being whether the third party is a "creditor" or a "debt collector."

The Fair Debt Collection Practices Act (FDCPA) is a federal law that regulates how debts may be collected. This law makes a distinction between creditors and debt collectors. A creditor is defined as a person or entity to whom or which a debtor owes money, but a debt collector is a person or entity which collects debts solely for another person or business. The debt collectors are in the business of collecting debts that are owed to creditors.

DoD Instruction 1344.09 allows creditors to contact the Soldier/debtor's chain of command to assist in collecting the debt. However, the chain of command's assistance in indebtedness matters shall 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.

DoDI 1344.09 does not give that same access to debt collectors. A debt collector is prohibited from contacting third parties, such as Commanders, without a court order or the debtor's prior consent given directly to the debt collector.

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

The FDCPA requires a debt collector to furnish a debtor with written notice of the debt within five days after first communicating with him/her. The notice must identify the debt, the creditor, and how the debtor can require the debt collector to verify the debt (if the debtor believes payment has already been made or the amount of the debt is incorrect). If the debtor chooses to dispute the existence or amount of the debt, he/she must do so within 30 days of receiving this notice. Once a debt is disputed, the debt collector must stop communicating with 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, he/she should cease communications with the debtor. The debt is not forgotten, 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/her 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 0800 or after 2100. 15 USCS § 1692c(a)(1).

- If the debtor is represented by an attorney, the debt collector should communicate only with that attorney. 15 USCS § 1692c(a)(2).
- A debt collector cannot 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. 15 USCS § 1692d.

**SOURCES:**

15 USCS § 1692

DoD Instruction 1344.09 – Indebtedness of Military Personnel

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If you have any questions concerning these matters, please call the Legal Assistance Office for an appointment at (502) 624-2771 or visit our website at [www.knox.army.mil/center/sja/](http://www.knox.army.mil/center/sja/). Our hours of operation are Monday, Tuesday, Wednesday and Friday, 0900 – 1600, and Thursdays 1300-1600. The Fort Knox Legal Assistance Office is located in Building 1310, Pike Hall at the corner of Knox and Third Street.

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