

## **FAIR DEBT COLLECTION PRACTICE ACT OVERVIEW**

### **Debt Collection Violation Cases**

#### **Violation of Federal and State Laws**

There are Federal and State laws that protect consumers against debt collectors. These laws control what debt collectors must do and what they cannot do in attempting to collect a **consumer debt**. A “consumer” debt is one primarily incurred for personal, family, or household purposes. These particular laws do not cover collection on a “business” debt. (Other laws do, however we will not discuss them here).

The Fair Debt Collection Practices Act (**FDCPA**) is a Federal Law that applies in every state. Most states also have their own laws regarding debt collection. For instance, the state law in California is the Rosenthal Act. The following information will point to the FDCPA and Rosenthal Act. If you live in another state, a local attorney can easily compare your State law if any, to the FDCPA and note the specifics that apply.

#### **Who is a “Debt Collector?”**

Under the FDCPA, collection companies, debt-buying companies (DBC) and collection attorneys are all considered “debt collectors.” Under the Rosenthal Act, in addition to these, a direct creditor is also considered a Debt Collector.

## **What are Violations?**

A debt collector calling your work or relatives and revealing that they are trying to collect a debt from you is a violation of the FDCPA. Also, using abusive, insulting, racially demeaning, or profane language. Threatening to garnish wages, take assets, or even to sue can be violations.

For a more comprehensive list of common violations, go to our website [www.efaganlaw.com](http://www.efaganlaw.com). Click on the **Downloads** tab on the Home Page and then on click on “Free Do-It-Yourself.” You can download The Most Important FDCPA/Rosenthal Violations article.

## **How can I protect myself or fight back?**

1. Save every letter you get from a debt collector or a direct creditor.
2. Keep a log of all calls you receive. Date, time, and who said what. Get the name of the caller each time.
3. Note down how calls and letters make you feel – upset, afraid, sleepless, etc.
4. Make note of anyone else who is affected adversely by the letters and/or calls.
5. Send a letter to the debt collector asking that they stop contacting you. Send it by certified mail, return receipt requested.

One violation may not be worth pursuing a suit. Often debt collectors will continue to harass, however.

## **What are the penalties for a Debt Collector who violates either or both laws?**

If you decide to sue a Debt Collector, you only have to prove that the Debt Collector violated the law. You do not have to show that you lost any money because of the violation, or suffered any distress. The FDCPA is quite consumer-oriented to deter

wrongful practices of debt collectors. There are three possible types of damages (“money”) the court can award to the person suing.

1. **Statutory Damages:** This can be from \$100 to \$1,000 for each type of violation. If someone sues you on a debt that is too old for instance, this comprises a violation of five different sections of the FDCPA. In California, it also violates two sections of the Rosenthal Act.
2. **Actual Damages:** This means money out of your pocket for such things as mileage for a trip to the doctor to alleviate stress, and any medical cost including medicine, legal advice, accounting advice, mental counseling, and the like.
3. **Emotional Damages:** This covers a wide range of mental distress that you underwent because the Debt Collector may have threatened you, called you frequently, abused you and the like. The worse the Debt Collector has acted toward you, the more potential liability it has.

### **Who can sue Debt Collectors?**

Anyone who is affected by the Debt Collector’s violations can join in a lawsuit involving the FDCPA with the person the Debt Collector is trying to collect from. For instance, in one of our cases, a Debt Collector called our client’s father and violated the law several times. Our client and the father joined in the lawsuit. In another instance, a mother of six young children was harassed by a Debt Collector who was wrongfully threatening to sue her husband as soon as he came back from Iraq. The distress of the mother in turn caused upset among the children, all of whom are joined in the suit along with mother and father.

The same applies in California under the Rosenthal ACT. In some states, however, only the Attorney General can bring a suit after a consumer files a complaint. That does not preclude an individual from suing under just the FDCPA, however.

### **Does everyone who sues get damages?**

There are twelve Federal Circuits (Districts) across the country. Each Circuit sets the law for a group of states. In two Federal Circuits that cover seven states,<sup>1</sup> Courts have limited the recovery of Statutory Damages to \$1,000 **per case**. That is regardless of how many violations occurred, or how many people were affected. However, the issue has not been decided in the other nine Federal Circuits. Our position is that Congress intended that the Debt Collector be liable to each person for each violation that applies. That makes more sense. In all Circuits, however, it is possible for individual to recover actual damages and emotional damages.

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<sup>1</sup> Michigan, Ohio, Kentucky, Tennessee, Georgia, Alabama, and Florida