

Call for Justice, LLC—United Way 2-1-1 Training Paper Session 2: Consumer Protection Resources and a Few Words About Unemployment Protection

Speaker on April 12 and 13, 2012: John Freeman, Supervising Attorney of the Minnesota Legal Services Coalition, State Support

Featured Speaker's Topic

This month, John Freeman will discuss LawHelpMN.org, the website of the Legal Services Coalition which serves the state of Minnesota. **LawHelpMN.org is one of our standard “fallback” referrals**, so it will be an especially informative session!

A question and answer session will follow the presentation.

Consumer Protection Resources

What is Consumer Protection?

The phrase, “Consumer Protection,” is exceedingly broad and encompasses laws covering everything from regulating how a debt may be collected to protection against unfair advertising practices to laws pertaining to identity protection. There are a number of nonprofit agencies and governmental organizations charged with consumer protection functions.

Debt Collection

Debt collection is one of the most common problems facing consumers. There are numerous federal (and some state) laws regulating debt collection. The most well-known law is the **Fair Debt Collection Practices Act** (sometimes referred to as the “**FDCPA**”) which regulates most entities attempting to collect a debt. Among the most notable features of the law are that it is illegal for debt collectors to:

- Use obscene or abusive language
- Call before 8 a.m. or after 9 p.m.
- Call you at work if they know your employer doesn't allow personal calls
- Threaten you with arrest or criminal charges
- Contact you directly if they know you have an attorney
- Make a letter look like it's from the government, the court or a lawyer
- Fail to give you the name of their agency
- Threaten to take any legal action that they don't actually plan to take
- Give you legal advice, like: “You have no legal defense to this debt.”

The process of collecting a debt follows a pretty standard pattern. First, the creditor sends the debtor a written notice which by law, must state the amount of the debt, the name of the creditor (bank, credit card company, finance agency, etc.) to whom the debtor owes money, and a statement that the amount stated in the notice is accurate unless the debtor disputes the debt or amount within 30 days. Usually, the notice also states something to the effect “this is an attempt to collect a debt.”

Assuming the debtor doesn’t dispute the debt, the collection agency will either start phoning the debtor or sending additional letters—usually at 30, 45, 60, and 90 day increments. At some point (usually around the 180 day mark, but it could be sooner), the collection agency may hire an attorney to sue the creditor. Usually, just before filing a lawsuit, the collection agency will tell the debtor that suit is imminent unless the debtor pays up or starts some kind of repayment plan.

RED FLAG: United Way 2-1-1 will likely receive a call when the debtor first receives a letter or as he/she gets additional collection letters or phone calls. It is important to advise the caller that the problem likely won’t go away, and that the caller needs to obtain legal assistance. As we’ve discussed before, legal problems are far more manageable in their infancy than when they turn into legal emergencies. Most importantly, if the debtor has been sued, it’s crucial that the debtor answer the lawsuit or the debtor will lose important rights.

A debtor does have some rights. Under the FDCPA, the debtor can end the harassing phone calls or letters by **writing to the collection agency and telling them to stop.** After getting that letter, the collection agency can only call or write to say what legal action they plan to take. If the debtor disputes the debt in the first place (must be in writing), the creditor must stop trying to collect the debt until they send proof that the debtor owes the debt.

Another benefit of contacting an attorney is that once the debtor has a lawyer, the collection agency can only communicate with the debtor’s lawyer, and not with the debtor him/herself.

Garnishment—A Messy Predicament

In the event that a collection company sues, and the debtor doesn’t answer the lawsuit (or if the debtor answers but loses in court), the collection company can **garnish** (take money from) the debtor’s bank accounts or wages or force the sale of property the debtor owns.

Some monies and property are **exempt from garnishment.** The collection agency/their lawyer cannot take money in accounts that originated from **Social Security, SSI, MFIP, GA, MA (Medical Assistance), Earned Income Tax Credit (EITC) or any other program based on need.** They also can’t take any of the debtor’s wages if he/she was on any of those programs in the prior 6 months.

Other exemptions: **only 25% of wages can be garnished (and sometimes not even that much); some assets are protected, like a car worth up to \$4200, electrical devices up to \$9450, and a home. (Note: banks seeking to foreclose on a mortgage can force the sale of a home).**

In the event there is a judgment by a credit card company or other non-mortgage company, they would be entitled to collect against the proceeds of any house sale once the debtor sold his or her home in the ordinary course. Thus, simply thinking the problem will go away isn't good—if the debtor sells their house ten years after the judgment, they will have to pay the judgment plus interest and other costs. **Again, it's better to deal w/the problem now.**

Most people also don't know that once a collection agency has a judgment, the agency's attorney can serve the debtor with a questionnaire asking the debtor to identify his/her bank or financial accounts and any assets that may be covered by the debt. The debtor needs to answer those questions; **if he/she refuses, the collection agency can apply for a contempt of court order and arrange for the debtor to be arrested and jailed until the questions are answered.**

Another problem with garnishment is that once a collection agency has a judgment, a bank will **"freeze"** the debtor's account without giving the debtor notice. **The debtor will not have access to funds while the account is frozen. This means that if the debtor writes checks against the account, the checks will bounce, and the debtor will incur overdraft fees and other charges.** Even if money in the account is exempt from garnishment, neither the bank or the collection agency may know this, forcing the debtor to then take affirmative action to get the money back.

Obviously, garnishment can be messy predicament for any debtor.

RED FLAG: If someone is already at the point where they're subject to garnishment, they absolutely need to see an attorney. It may be too late for them, but there are various exceptions under the law that they may be able to take advantage of.

Debtor Resources

Hennepin County:

Mid-Minnesota Legal Assistance (MMLA) (612-332-1441)(up to 200% of Federal Poverty Guidelines)

Volunteer Lawyers Network (612-752-6677)(up to 187%?)

Hennepin County Lawyer Referral and Information Service (612-752-6666)(probably above 200%).

Minneapolis Bankruptcy Advice Walk-In Clinic

Frequency: The first, third and fifth Thursdays of every month, 11:00am to 1:00pm.

Location: 7th Floor of the U.S. Federal Courthouse, 300 S. 4th Street, Minneapolis, 55415

Details: First-come, first-served walk-in bankruptcy advice offered in 15-minute sessions with an attorney. Contact: 612-752-6677.

Hennepin County Consumer-Debt Collection Lawsuit Defense (Operated by VLN)

Frequency: Clinic times vary.

Location: Call (612) 752-6677 for details.

Details: Appointments required, and clients must provide relevant paperwork in advance. Attorneys help clients with completing court paperwork, including Answers, Garnishment Exemption Forms, and Motions to Vacate Default Judgments. Sessions are between 60 and 90 minutes long. Spanish, Somali, Hmong and Vietnamese interpreters available.

Contact: Please contact (612) 752-6677 to be screened for an appointment.

Legal Access Point Clinic (LAP)

Frequency: M, T, Thur. 9-3; W, F 9-1.

Location: Hennepin County Government Center, 300 S. 6th Street, Minneapolis

Details: Staffed by VLN volunteer attorneys and some Hennepin County Lawyer Referral and Information Service Attorneys; on a first come, first served basis.

Contact: 612-752-6677. No need to call in advance; person in need can just show up.

University of Minnesota Consumer Bankruptcy Clinic

Frequency: Contact (612) 625-5515 for further information.

Location: University of Minnesota Consumer Bankruptcy Clinic
229 19th Avenue South, #285, Minneapolis, 55455

Details: Students at the University of Minnesota Law School (with attorney supervision) provide pro bono services to individuals in serious financial difficulty contemplating filing for bankruptcy or who are otherwise involved in a bankruptcy case. Students also represent debtors seeking a hardship discharge of student loans, debtor-defendants in adversary proceedings, and sometimes individual creditors.

Contact: (612) 625-5515.

Lyndale Neighborhood Clinic (By Cooper & Reid Law Firm)

Frequency: At least monthly (call for details)

Location: Lyndale Neighborhood Community Center, 3537 Nicollet Avenue, South, Minneapolis, 55408

Details: provides general legal advice (including debtor and consumer advice) to Lyndale neighborhood residents in 20 minute increments. There is no charge for this service.

Ramsey County:

Senior Law Project (elderly—ages 60 plus)(651-224-7301; hours 9-noon)

Southern Minnesota Regional Legal Services (651-222-4731)(up to 200%)

Ramsey County Attorney Referral Service (651-224-1775)(probably only above 200%)

St. Paul Bankruptcy Advice Walk-In Clinic

Frequency: The second and fourth Thursdays of every month, 11:00am to 1:00pm.

Location: 2nd Floor of Warren E. Burger Federal Building & U.S. Courthouse 316 North Robert Street, St. Paul, 55101

Details: First-come, first-served walk-in bankruptcy advice offered in 15-minute sessions with an attorney.

Contact: 612-752-6677.

Complaints about debt collectors may be made to the **Minnesota Department of Commerce in Saint Paul (651-296-2488)(consumer.protection@state.mn.us)** and the **Federal Trade Commission, Bureau of Consumer Protection (1-877-FTC-HELP [1-877-382-4357] or www.ftc.gov)**.

Identity Theft

We will have a specific training session on identity theft and related topics in the future, but because a number of questions have arisen (and because we're on the general topic of Consumer Protection Resources), we wanted to briefly address the growing problem of identity theft.

There aren't many local nonprofit legal provider resources for dealing with identity theft. In Minnesota, your best bet is to refer the caller to the **Minnesota Attorney General's Office (651-296-3353)**. Outside Minnesota, there is the **Identity Theft Resource Center (1-800-400-5530, no cost victim assistance)** and the **Internet Crime Complaint Center (<http://www.ic3.gov/>)**.

We're sure you're aware, but we'll mention it anyway: under the **Truth in Lending Act**, a person can't be held responsible for charges to a credit card they never requested or applied for and received. Additionally, the most that anyone ever has to pay for unauthorized charges is \$50.

At a future session, we'll go more in depth on identity theft. Stay tuned!

Unemployment Compensation/Protection

In Minnesota, laid-off or terminated employees file for unemployment compensation benefits with the Minnesota Department of Employment and Economic Development (DEED). In the ordinary course, employees who lose their jobs through no fault of their own are entitled to weekly unemployment compensation benefits. However, this is not the case for employees fired for "**misconduct**" on the job or who have voluntarily resigned.

Under Minnesota law, "employee misconduct" means any intentional, negligent, or indifferent conduct on the job or off-hours job-related behavior that clearly display (1) a serious violation of the employer's reasonable standards of behavior or (2) a substantial lack of concern for the employment.

Misconduct doesn't include unsatisfactory performance; a single incident that doesn't significantly impact the employer; poor performance due to inability; good faith errors in

judgment; absence because of illness or injury with proper notice to the employer; or conduct as the result of the employee being a survivor of domestic abuse.

RED FLAG: Employment cases are notorious for “he said/she said” situations where a termination decision hinges on many stated and unstated (and provable and not-so-provable) factors. The idea of “misconduct” is very subjective and not always cut and dry. For that reason, it’s always good to apply for unemployment benefits regardless of the reason for the job separation. **The separated employee doesn’t need an attorney to apply for unemployment.** They simply need to contact a DEED office and fill out the paperwork. However, the process for obtaining unemployment benefits doesn’t start until they actually complete the paperwork.

How a Contested Case for Unemployment Transpires

Once separated from employment, the employee applies for unemployment benefits with LEED. In their application, the separated employee states the reason they’re out of work.

In turn, the former employer is given notice of the separated employee’s application for benefits. The employer is given an opportunity to contest or accept the claim. If there’s a contest, DEED issues a written eligibility determination and includes information about each party’s appeal rights.

Within 20 days of the initial DEED eligibility determination, the separated employee or the employer may appeal LEED’s decision about whether or not to pay unemployment benefits. If the separated employee was originally granted benefits, he/she will continue to receive benefits during the appeal process. **NOTE: if the employee later loses the appeal, the employee will be required to pay back the benefits he/she received.**

Assuming there’s an appeal, an Unemployment Law Judge hears the dispute by telephone. The usual issue is whether the employee was fired for misconduct. The hearing is like a mini-trial in which the parties fax or email documents in advance and have witnesses on their end of the telephone. **Each party may have an attorney represent them, but it’s not mandatory that an attorney appear. Inequities usually occur when the employer has an attorney but the employee doesn’t.**

After the hearing, the Judge will issue a ruling on whether the appeal is justified/whether or not benefits are to be awarded. Following that ruling, the parties have a right to appeal the ruling to the Minnesota Court of Appeals, and possibly, the Minnesota Supreme Court.

RED FLAG: As with any caller involved in any form of litigation, it’s important that the caller speak to an attorney before the hearing with an Unemployment Law Judge. It may be that an attorney can’t actually represent the separated employee (due to eligibility reasons or other factors), but certainly a half hour to discuss how the hearing will actually transpire is valuable

education. We suggest that you urge callers in this situation to do everything possible to talk to an attorney before the hearing.

Unemployment Protection Resources

The resources for dealing with unemployment claims are relatively limited.

Hennepin County:

Mid-Minnesota Legal Aid (MMLA) (612-334-5970) will speak with a separated employee who is scheduled for a hearing, but they won't do so if the hearing has already occurred.

Volunteer Lawyers Network will do full representation on the hearing and first appeal with the client at 125% of Federal Poverty Guidelines. In fact, VLN advises that they have more volunteer attorneys willing to assist with unemployment claims than actual clients.

Minneapolis Park Avenue Walk-In Clinic

Frequency: Thursdays (except holidays), 3 p.m. to 5 p.m.

Location: Park Avenue Methodist Church 3400 Park Avenue South
Minneapolis, MN

Details: First-come, first-served basis with a volunteer attorney on Employment Law. To qualify for services at the clinic, you must be a low-income resident of Hennepin County who does not have an attorney. **Up to 300%**. Interpreters available in Spanish, French, Russian, Polish, Portuguese, and Igbo.

Contact: 612-825-6863.

Tubman Self Represented Clinic and Family Law Clinic

Frequency: Several times a week, by appointment only.

Location: Evening appointments are available in St. Paul, Bloomington, St. Louis Park, Maplewood and Minneapolis. Morning appointments are available at the Minneapolis site only. Call for directions to Law Clinic locations.

Details: Not a walk-in clinic, must call beforehand. Offers 30 minutes with an attorney to discuss employment issues. The appointment is \$20 (\$15 if prepaid), with a fee waiver available for individuals that have a **monthly income less than \$564**.

Contact: (612) 870-2426.

Ramsey County:

Southern Minnesota Regional Legal Services

We continue to investigate other resources in Ramsey County and will update you as we learn more.

This Month's Tips

1. Remind the caller that contacting the court may not help them if they've received a Summons and Complaint about a debt (or anything else). Remember, that in Minnesota,

lawsuits don't need to be filed with the court system for them to be effective. Just because the court has no listing of a case or garnishment doesn't mean that the caller can ignore the lawsuit or garnishment papers. They must respond to the lawsuit in order to protect their accounts from being garnished.

2. We are discovering that it's not easy to search all nonprofit provider web sites using key words. Your callers may have the same problem. For example, rather than using phrases like "unemployment compensation," or "job loss benefits," some legal providers utilize the more generic term "government benefits" when specifying the areas in which they provide legal services. The Call for Justice web site will attempt to address these kinds of issues, but it will be sometime before we get that included. In the meantime, be aware of this problem. Our suggestion is to urge the caller to actually call the legal provider rather than rely on the web site.
3. The Call for Justice web site is a valuable resource which to direct to your callers. In particular, we're finding that the various clinics (remember, "clinic" is a very broad phrase) may be an under-utilized resource. We will have an entire section devoted to "Legal Advice Clinics."
4. **RANDOM UNRELATED TIP:** Last month, we talked about how one of two "fallback referrals" should be the Court Self Help Centers (with the other being LawHelpMN.org). We have since heard that some unscrupulous actors have been charging people for copies of forms and other documents that anyone can obtain for free from the courts. Remind your callers that self-help forms are free.

Thanks for your input and attention!

Ellie and Jillian

Contact:

Ellie Krug, Executive Director

ellen.krug@callforjustice.org

www.callforjustice.org

(612) 333-4000