

# THE NATIONAL CREDITORS BAR ASSOCIATION™

## THE NATIONAL CREDITORS BAR ASSOCIATION RESPONDS TO THE ACLU'S REPORT: *"THE CRIMINALIZATION OF PRIVATE DEBT"*

### **FOR IMMEDIATE RELEASE**

March 14, 2018

The National Creditors Bar Association (NCBA) takes exception with last month's American Civil Liberties Union (ACLU) report which proclaimed that thousands of individuals were being arrested and jailed for the debts they owe. The ACLU's report was not only factually inaccurate but was conveniently lacking in relevant truisms in an attempt to sensationalize unfortunate circumstances for individuals who fail to comply with court orders. The ACLU's lack of understanding of the legal debt collection process including its failure to acknowledge federal and state laws which govern debt collection activity, court rules of procedure and the regulations imposed both at the state and federal level result in a report that lacked fundamental credibility, but more importantly, hampers the ability of legitimate debt collectors to communicate with consumers to fairly and efficiently resolve their financial obligations.

The fact remains, debtors' prisons do not exist. There is not one consumer in this country that was put in jail for the failure to pay a debt. Our court system simply does not work that way. The Fair Debt Collections Practices Act ("FDCPA" or the "Act") mandates how a debt collector must communicate with a consumer and as well as enumerates specific prohibited conduct by debt collectors in its attempt to collect a debt on behalf of the creditor.

At the beginning of the debt collection process a statutorily mandated letter is sent to the consumer advising of the debt and their right to dispute it. If the consumer fails to communicate with the debt collector, the debt collector may make further attempts to contact the consumer either by making telephone calls or sending additional letters. If the consumer still fails to communicate with the debt collector, the creditor may decide to pursue the matter legally and a civil lawsuit could be filed against the consumer. State law as well as the United States Constitution requires that a defendant to any lawsuit must be properly served and put on notice of the claims asserted against it. A consumer then has the opportunity to file papers in court and/or appear at a hearing. If the consumer fails to appear or fails to file an opposition, a judgment can be entered against the consumer. If a consumer fails to pay the judgment, a judgment creditor has a right in certain states to obtain an order requiring that a consumer appear in court or answer papers to disclose any assets that could satisfy the judgment. The failure of a consumer to comply with a court order is called contempt of court. When this occurs only a judge, not a debt collector, can order an arrest warrant be issued until the consumer complies with the court's order. The result is the same regardless of whether the civil case involves a debt or the failure to supply discovery in some other civil claim. Judges expect that any person who comes before them to comply with their orders and the failure to do so can result in significant consequences – including but not limited to the issuance of an arrest warrant.

However, the examples cited by the ACLU are the most egregious and inflammatory scenarios meant to sensationalize rather than address the importance of communication and consumer education. Members of NCBA as well as attorneys across this country know that in order for a court to send

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The National Creditors Bar Association

202-861-0706 Fax 240-559-0959

National Office: 8043 Cooper Creek Blvd, Ste 206, University Park, FL 34201

[narca@narca.org](mailto:narca@narca.org)[www.narca.org](http://www.narca.org)

someone to jail in a civil matter, as opposed to a criminal matter, a complete and utter disregard for a court's order must have occurred. Judges use this power sparingly otherwise the penalty for contempt would become superfluous.

Litigation is the path of last resort for a creditor. The process is expensive and time consuming and results in a judgment only and not necessarily the payment of the debt. However, what the ACLU fails to recognize is that the courthouse can be the safest place for consumers if consumers chose to avail themselves of the ability to participate in the system. In court, a judge can supervise the conduct of an attorney and also ensure that the consumer, especially a self-represented consumer, has the required access to the protections the court can provide.

Since 1977, the FDCPA has expressly prohibited debt collectors from making any threat that the nonpayment of a debt can result in arrest or jail. In the last decade, numerous states have adopted strict debt collection regulations to ensure that debt collectors conduct themselves appropriately in their dealings with consumers. The Consumer Financial Protection Bureau (CFPB or Bureau) and the Federal Trade Commission have brought numerous enforcement actions against bad actors in the debt collection industry for violations of the FDCPA. For the past five (5) years, the CFPB has been actively engaged in the rulemaking process for debt collection, and the debt collection industry has been working along with the Bureau to enhance this regulatory framework. For the ACLU to suggest that the industry is not regulated or that there is little government oversight is blatantly untrue and ignores the tireless efforts by industry stakeholders to work with policymakers and regulators to enhance and improve the debt collection process.

NCBA is disappointed that the ACLU never once sought our advice or opinion about this report from the Association or its members. Instead, the ACLU painted an untrue and unfair picture of an industry whose participants devote countless hours to compliance training in order to better serve the needs of the consumers they come into contact with on a daily basis. As the nation's only bar association dedicated to creditors' rights attorneys, our perspective and truthful observations would have lent significant credibility to the ACLU's report. The ACLU would have also learned that effective and robust communication channels serve consumers far better than disseminating fear and distrust. NCBA remains committed to educating and working with consumers about the legal process to ensure that consumers make the right choices in order to avoid drastic outcomes both in and out of the courthouse.

#### Contact Information

Jim Podewitz - Communications Specialist

NARCA – The National Creditors Bar Association

Direct: 202-861-0706      Email: [jim@narca.org](mailto:jim@narca.org) Web: [www.narca.org](http://www.narca.org)

The National Creditors Bar Association ("NCBA") is a nationwide, not-for-profit bar association composed of attorneys and law firms engaged in the practice of creditors' rights law. NCBA members include nearly 550+ law firms located in all fifty states, all of whom must meet association standards designed to ensure experience and professionalism. Attorneys employed by NCBA member law firms are committed to the fair and ethical treatment of all participants in the debt collection process. NCBA attorney members practice law in a manner consistent with their responsibilities as officers of the court and must adhere to applicable state and federal laws, rules of civil procedure, state bar association licensing and certification requirements and rules of professional conduct.