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Consumer lawyers keep busy as creditors push for payment

by [Michelle Lore](#) Associate Editor

As debt collectors push harder for collection of outstanding bills in a down economy, the attorneys representing consumers are getting busier.

Minneapolis attorney Nick Slade said there's been a definite rise in the number of calls he's been getting from consumers who feel they are being harassed by debtors.

"People don't have money, and debt collectors are trying harder to collect so there's more harassment," he said.

As the economy has worsened, debt collectors have gotten more desperate to recover at least some what they say they are owed, according to Minneapolis attorney Sam Glover. He said that the vast majority of calls he gets from harried consumers are genuine, and he doesn't hesitate to sue when debt collectors step over the line and become abusive and harassing.

"I cannot take all the legitimate cases I hear about. I think all of my colleagues would say the same thing," he said. "There's more work than we can possibly do."

Old debt

In addition to an increase in calls about harassment, consumer attorneys say they are hearing from more and more people who are getting sued by debt collectors.

Slade said that debtors are suing out bad debt more quickly now than in the past — they aren't passing it on or allowing it to sit around anymore. But consumer attorneys are responding, he added, and getting more aggressive in defending people who are being sued over old debt.

The problem, according to Slade, is that debt collectors often lack, or refuse to turn over, documentation necessary to defend a claim. There may be questions over the amount of the debt, or issues of assignment and whether the creditor

actually owns the debt or has the right to collect on it, he said.

Minneapolis consumer attorney Todd Murray is fielding a lot of calls as well, many relating to issues surrounding garnishment.

"My phone is ringing nearly daily with people looking for help," he said. "There are a lot of people out there who the economy has hit pretty hard and who are having problems with debt collection."

Some of the garnishment issues involve creditors who've obtained default judgments based on improper service, while others involve banks who've attached exempt funds.

According to Murray, garnishment statutes tend to favor creditors, particularly the statutes involving exemptions.

"A lot of time exempt funds are seized ... and the process to resolve it is sort of this ping-pong process," he said. "This often can take weeks to resolve and meanwhile the account is frozen and overdraft fees pile up."

Part of the problem, Slade explained, is that when a garnishment is served on a bank, it attaches funds in the

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consumer's account without looking at the source of the funds. Under federal law, Social Security and some veteran's benefits are exempt, but for years banks have been attaching those funds anyway, claiming they don't know the source, he said.

But, Slade continued, now those funds are coming in electronically and are tagged as Social Security or veteran's benefits, so banks can no longer claim innocence.

Practitioners say that efforts are under way to amend the garnishment statutes to work out some of the problems that have arisen.

"Lobbyists for the creditors and banks are working with Legal Aid on amending the garnishment statutes to 'streamline' the process," said Glover.

Arbitration clauses

Also before the Legislature right now is the issue of mandatory arbitration — creditors like it, consumers don't.

Creditors are trying to get the Uniform Arbitration Act passed in Minnesota, which would preserve the ability of businesses to insert mandatory binding arbitration provisions into consumer contracts, Glover explained.

"At the federal level, it looks like mandatory binding arbitration provisions are an endangered species, but many creditors are trying to preserve such provisions through state legislation," he said.

Consumer law attorneys have long been concerned with mandatory arbitration provisions, in part because they contend the arbitration process is perceived as being "creditor friendly."

Slade said that people frequently sign consumer contracts containing arbitration clauses without realizing they are giving up rights by going that route. It's well documented that there's an inherent bias in the arbitration system against consumers, he said.

"Arbitration for consumers is a terrible thing. There are all kinds of problems," he said.

Murray added that while creditors are pushing hard to keep the arbitration process in place, many consumer advocate groups have targeted mandatory arbitration as "No. 1" on their list of things to change.

Joint accounts

Also causing some commotion in the consumer law area is some recent caselaw relating to the garnishment of joint accounts.

In a 2007 decision, *Enright v. Lehman*, the Minnesota Supreme Court determined that a creditor may not garnish funds held by a nondebtor in a joint bank account with a debtor unless the creditor proves by clear and convincing evidence that the nondebtor intended to confer ownership of the funds on the debtor. The decision sent shock waves through the debt collection community.

"That was a fairly big change from the way things had been going here and what earlier caselaw said you could do," said Slade.

In a more recent case in federal District Court in Minnesota, *Phillips v. Messerli & Kramer, et al.*, at issue is whether creditors who garnish or levy a nondebtor's funds in a joint account have converted those funds and, if so, whether that is a violation of the Fair Debt Collection Practices Act.

"Apparently, I caused quite a stir," said Glover, who brought the suit on behalf of the consumer in *Phillips*. "The banks and collection lawyers are regularly meeting to figure out how to deal with [these issues]."

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