

Defending State Suit & Initiating Federal Suit against Debt Collectors

Re-titled and excerpted from the article Credit Card Debt: Its Trials and Tribulations

Sue or Be Sued

Nothing that you read in any legal action is believable. You must challenge or question every last particle of the documents. *The Devil is in the Details.*¹ You not only have to read for what is there, you also have to read for what is missing, and believe me, a lot is missing.

Being Sued in State Court (An Overview)

A civil suit is a table with four legs: two opposing parties (2 legs), Subject Matter Jurisdiction (1 leg), and a Competent Fact Witness (1 leg). If any one of the Legs is missing, the pleading fails to make the *prima facie* case. It may surprise you that there is almost always one leg missing; more often it's two legs missing. What is also amazing is that **Attorney's have been doing this for so long, they think it's legal.**

Leg 1: The Plaintiff

This is the other guy, the creditor, the plaintiff, the creep suing you by and through his attorney.

Perhaps the Attorney bought the debt, is suing in the name of the original creditor, [a fraud upon the court](#). This can be difficult to prove. You will have to rely upon discovery to get your proof.

Leg 2: The Defendant, you

Not too long ago, the AG for New York State ordered over 100,000 credit card cases dismissed for lack of proper service, or "Sewer Service" as it has become

known. A similar situation came up in Maryland involving over 3,000 cases. There is little doubt that this goes on in every county of every state.

Anyone being sued must be served according to the local and state rules. Courts have little tolerance for improper service and will abandon any judgment obtained without proper and perfect service. The same law firm sued a person in California four times, and each time the judgment was vacated and the case dismissed all because of lack of proper service. The same debt, the same law firm. Talk about a slow learner!

Leg 3: Subject Matter Jurisdiction, a.k.a. SMJ

Are the pleadings sufficient to invoke the Court's authority to act? Rarely! Most often the Complaint lacks sufficiency to invoke the Court's authority to Act. Many times the Complaint will allege a breach of contract where no contract is on the record. It may use the common law complaint of Account Stated where there has been a dispute. Or, the complaint may have absolutely no evidence in support of its claims (That is, the complaint is true only because the Attorney says it is true and attorneys, while in representative capacity, are prohibited from stating facts, they would be testifying.²). Subject Matter Jurisdiction is a legal theory that is most difficult to grasp.

A motion to dismiss for failure to state a claim, is actually a Subject Matter Jurisdiction challenge. No claim, no SMJ, no authority for the Court to act.

Leg 4: Competent Fact Witness

Courts will often render a judgment from a pleading with only an [affidavit](#). This is usually provided for in the Rules of Civil Procedure and is allowed up to and until that Affidavit is challenged.

An Affidavit is an "out of court, sworn statement" to the facts of the matter asserted. Without a Witness to attest to the statements within the affidavit, it is nothing more than hearsay. The Affidavit must be challenged and shredded so that it ends up being struck from the record. Once this has been successfully done, the table will be minus two legs (legs 3 & 4). If there is no Affidavit or Witness, the Court lacks SMJ. There is no one there to state the facts of the matter.

Summary

The process of destroying a suit for credit card debt is not hard. It does take some study and work, but once you have become skilled can be done in a matter of minutes, instead of hours. Defeating this sort of complaint or action will take some effort, but anyone with as little as an 8th grade education can do it! The only problem I see that you could run into is a Judge that refuses to conduct Court according to the rules.

All you need is the ability to read and write, the ability to speak, and the ability to analyze, and a copy of your local rules. When I say local rules, I am referring to the local rules of civil procedure and local rules of evidence.

Remember, Reading, Comprehension and Retention are not exclusive to Bar Card Attorneys!

[Here is a case that proves the point, they just don't have a claim or standing.](#)

¹ *Credit for this quote goes to Mr. Ross Perot, presidential candidate.*

² "Statements of counsel, in their briefs or their arguments are not sufficient for a motion to dismiss or for summary judgment." *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647, "Statements of counsel are not facts before the Court," see FRCPA Rule 52(a) and *United States v. Lovasco* (06/09/77) 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752, *Holt v. United States* (10/31/10) 218 U.S. 245, 54 L. Ed. 1021, 31 S. Ct. 2.

Suing in Federal Court (An Overview)

There are three different consumer laws you need to be aware of FDCPA, FCRA and TCPA. The TCPA is, perhaps, the most difficult set of statutes to wrap your hands around, while the FCRA runs a not too close second.

The TCPA, a.k.a the Telephone Consumer Protection Act, has numerous caveats that can easily lead to confusion. The FCRA, the Federal Consumers Reporting Act, has a section for “private cause of action” that limits what violations you can actually cite as a reason to sue.

The clearest and easiest law to take action on is the FDCPA, that is the Federal Debt Collections Practices Act. These statutes are known as “statutes of strict liability.” This means that you do not have to show intent. If they violate, they are liable for the violation, whether they intended to or not. They did it!

There are many of these statutes, and a Debt Collector will almost always violate three or more restrictions on their behavior. In fact, you would be hard pressed to find a situation where they violated less than three statutes.

The down side to the FDCPA and that is no matter how many violations may occur, by law, you can only recover a maximum of \$1000. Doesn't matter if they have violated ten times, you can only recover \$1000. That is, \$1000 per defendant.

At the same time, you can recover “actual damages”, costs, attorney's fees if any, and court costs. Recovering “actual damages” can present a little difficulty, but not a great deal of difficulty. You will have to show “actual damages” whereas damages for the violation are presumed.

Here comes the hard part! You will have to read, study, read, study and do it all again and again. It is not enough for you to know the laws, you must understand, even own them; like freckles on the back of your hands. It will take about 3 months of real effort for most people to get these laws down patt. Some will get it faster, some will take more time. It does call for many people to think differently than they have ever before thought, and that is the hard part!

Along with the FDCPA, FCRA and TCPA there are rules that need to be read, studied and understood. They are the Federal Rules of Civil Procedure and the Federal Rules of Evidence. The rules of evidence being the easiest to read and understand, while the rules of civil procedure the more difficult. You will have to know not only the laws you are acting under, you will need to know your way around a courtroom via the rules of procedure and evidence. This is not to say that you will have to

become a great orator, no, rather you will have to structure your complaints so that they will invoke the power of the court to act.

I am sure at this point you may be feeling a little overwhelmed, be assured, doing this is not nearly as difficult as the preceding writings would seem to indicate. If you were to sit down and write out instructions on the simplest task, that simple task would look daunting. Every U.S. District Court has a pro se package. Ask your District Court Clerk for a copy or, you can go online and download a copy. It will usually contain all the instructions you will need to file your very own Federal case. I would also suggest that you download a copy of the local court's rules. These change from courthouse to courthouse.

In those local rules they will tell you how to style your case, that is the header that shows the Plaintiff and Defendant. They will also tell you what type of paper to use, ruled, numbered, ruled with number or just plain paper. For instance, California requires that you use recycled paper.

The pro se package will usually contain a form for proceeding in forma pauperis. That means to proceed without having to pay the \$350 filing fee. There are two forms, the short and the long. I would suggest that unless you and your spouse are filing, that you use the short form. This is a motion that you file at the time you file your case. The court will have to rule on your motion (application) and that could take a few days or a few weeks. No telling how long they will take. When proceeding in forma pauperis, some courthouses will allow you not pay the filing fee but will have to bear the expense of service of the summons. Again, this will be revealed within the local rules.

There are approximately fifty-three (53) statutes that are frequently violated. Yes, there are more, but fifty-three is a good enough number of rules for you to select from. Remember, as said before, you would be hard pressed to find less than three violations perpetrated by a debt collector and/or his attorney.

There is one other consideration to keep in mind. That is the Statute of Limitations. The FDCPA as a one year statute of limitations. That is you only have one year from the last violation to file your Federal suit. Don't wait too long! Also, try to have as many violations within your suit, just in case one does get tossed out.

In the article I am attaching a template you can use to structure your case. It is laid out in such a way as to support you with what is wanted and needed in your pleadings and where it should go.

{excerpted from voidjudgments.net}