

Is it legal for a debt collector to leave a phone message to collect a debt?

Maybe not, it depends on the circumstances. In most instances, when a debt collector leaves a message for a consumer to collect a debt they are breaking the law. This is why. The Fair Debt Collection Practices Act (FDCPA) requires a debt collector to disclose in their initial communication with the consumer that the debt collector is attempting to collect a debt and any information obtained will be used for that purpose. Additionally, all subsequent communications with the consumer must disclose that the communication is from a debt collector. This requirement is commonly referred to as the “mini-Miranda” disclosure. The FDCPA also prohibits disclosure that a debt is owed to a third party. To avoid disclosing to a third party, debt collectors routinely omitted the mini-Miranda from phone messages. However, things changed.

In April 2006 the United States District Court for the Southern District of New York decided that a phone message left for a consumer was a “communication” under the Fair Debt Collection Practices Act. Foti v. NCO Financial Systems, Inc., 424 F. Supp.2d 643 (S.D. N.Y. 2006). This meant that debt collectors are required to provide the mini-Miranda in phone messages or be in violation of the law. Of course, if debt collectors indeed do provide the mini-Miranda, they run the risk of violating the third party disclosure law if a third party happens to listen to the message. In subsequent legal conflicts, debt collectors argued that *Foti* must have been decided incorrectly because the law, as *Foti* would have it, would have them choose between violating one law or another, which is illogical. This didn’t seem to work. Subsequently most courts exhibited little sympathy and stated that debt collectors had no guarantee they were entitled to leave messages at all.

Debt collectors then tried to leave messages like this:

This is a message for George Berginon. If you are not Mr. Berginon, please hang up or disconnect. If you are George Berginon, please continue to listen to this message. There will now be a pause in this message.

(pause)

By continuing to listen to this message, you acknowledge you are George Berginon. Mr. Berginon, you should not listen to this message so that other people can hear it as it contains personal and private information. There will now be a pause in this message to allow you to listen to this message in private.

(pause)

This is John Smith from ABC Collection Agency. This is an attempt to collect a debt and any information obtained will be used for that purpose. Please contact me about an important business matter at [phone #].

This hasn’t been well received by the courts either.

The debt collectors will continue to call and leave messages because it is the only way they can make money. And if they continue to, they will in all likelihood be breaking law. If you think you may have incurred damages from a violation of the FDCPA stemming from a phone messages or any other possible violation, you should contact a lawyer.

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