

**NOT FOR PUBLICATION
UNTIL RELEASED BY THE
SENATE COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION**

**STATEMENT OF
DWAIN ALEXANDER, II
SENIOR CIVILIAN ATTORNEY
REGION LEGAL SERVICE OFFICE, MID-ATLANTIC
UNITED STATES NAVY
BEFORE THE
SENATE COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION
ON
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Mr. Dwain Alexander, II

Mr. Alexander is the senior supervisory civilian attorney and subject matter expert for the Region Legal Service Office, Mid Atlantic in Norfolk Virginia.

He is a native of Kansas City, Missouri. He earned his Bachelor of Science Degree from Creighton University in 1982 and his Juris Doctor from Creighton University School of Law in 1989. After law school he joined the Navy Judge Advocate General's Corps.

Mr. Alexander left active duty in 1996 and affiliated with the Reserves where he attained the rank of Captain. He retired from the United States Navy in September of 2013.

At the Region Legal Service Office, Mid-Atlantic, Mr. Alexander is responsible for legal assistance program development, where he tracks local, state, and federal legislation impacting the provision of legal services. He provides comments on legislation and agency rulemaking and drafts legislative proposals related to the covered areas of practice. He develops and maintains inter-service and civilian partnership programs with the American Bar Association, the Armed Forces Disciplinary Control Board, the National Association of Consumer Advocates, the National Consumer Law Center, the Virginia State Bar, and local Bar Associations. He mentors, trains, and contributes to the professional development of enlisted and staff attorneys at the Navy's largest Region Legal Service Office.

Mr. Alexander also provides legal services to servicemembers and their families. His primary areas of practice are estate planning, consumer law, and family law. He has represented thousands of clients over his 24 years of service with the Navy. Mr. Alexander is a frequent speaker at conferences and legal education courses. He is a subject matter expert on servicemembers' rights, the Servicemembers Civil Relief Act, automobile transactions and automobile fraud.

Mr. Alexander is the consumer law advisor for the Navy Region Mid-Atlantic, Armed Forces Disciplinary Control Board. He is a member of the American Bar Association's Standing Committee on Legal Assistance for Military Personnel and currently serves as Chair of the Military Law Section of the Virginia State Bar and Co-Chair of the National Association of Consumer Advocates, Military Consumer Justice Project. He is a contributing author for several legal publications, including the National Consumer Law Center's publication on *Collection Actions* and the American Bar Association's *Legal Guide for Military Families*.

Chairman Rockefeller, Ranking Member Thune, and distinguished members of this Committee, as a legal assistance attorney in the United States Navy, I am honored and humbled to have the privilege of representing the Navy's Judge Advocate General's Corps and the servicemembers we support.

I am a civilian legal assistance attorney, who, like all uniformed and civilian legal assistance attorneys, works to support and enhance sailor and mission readiness by addressing their legal readiness issues.

Legal issues can be very distracting for many individuals. But for active duty servicemembers, legal distractions can be dangerous and potentially fatal. We need our servicemen and women focused on their primary mission - national defense. Legal assistance services that we provide include estate planning, family law and consumer law. Between these areas of practice, we cover the majority of servicemember legal readiness needs.

For estate planning services, we draft documents that ensure servicemembers' final wishes are expressed. For family law matters, we provide advice and counsel on a wide range of domestic topics to help servicemembers and dependents understand their legal rights and responsibilities. For consumer law, we engage opposing parties, explain the law, and the servicemembers' rights. Consumer law stands out as the most complex and contentious. Of the three broad areas of legal assistance, consumer law matters attack servicemembers' finances. This can have a negative impact on the individual, his family, his personal and unit morale, and in the end, mission readiness and effectiveness. This reflects the reality that while our clients have the desire and ability to engage in commerce as a consumer - and engage they do, the majority of our clients are young and lack the necessary financial savvy needed to avoid some consumer traps.

I once had a client who purchased two vehicles in one day. While this may sound perplexing, consider military psychology. Servicemembers have been trained to follow authority. If someone appearing to act with authority tells you something you want to hear like, "the first vehicle was from a bad dealer and you could get into trouble for buying it" or "the contract is not final because you have temporary plates," and "I'm a retired master sergeant - I will take care of you and return your car so you can buy mine." Our experience indicates that there is a very good chance that servicemember will comply and become liable for a second financial obligation. This situation is unsustainable.

In this particular case, I was able to cancel both contracts. The next day the Carrier Air Wing Commander came in to thank me and explain the impact to his mission. He said that I saved a crew member. The sailor was being trained to be a shooter on the deck of an air craft carrier. If he had to pay for two vehicles, he would not have any money. When his shipmates went out he could not go. He would be working just to pay bills and would begin to act out. He would become a disciplinary problem, and in six months they would probably have to separate him. The negative impact of consumer law on mission readiness is that the expense, training and manpower investment the sailor represents is lost, as is his role in mission accomplishment.

This sailor is my typical consumer client. They are young and the majority are junior in rank. Most have only a high school education. Their pay is guaranteed - recession proof, furlough proof, public knowledge, and easy to garnish. They have been removed from familiar surroundings and family support systems, and have been trained to respect and respond to authority – a critical mindset that is vital to the operation of the military. To illustrate - whether we ask the sailor to swab the deck or charge an enemy position, there is no option for open debate. Our sailors are transient, moving every two to three years, so little history of the consumer environment is retained and passed on. Their job is a 24/7 professional occupation and an integral part of their life. Threats by merchants to contact their command with assertions of breach of contract or debt dodging reflect on their conduct and judgment and are perceived as potentially career ending. These factors combine to make the servicemember not only a “high value target” in the consumer market place, but also very vulnerable to attack by unscrupulous actors.

The key weapons I see used against servicemembers in my practice are: Predatory lending, arbitration clauses, Servicemembers Civil Relief Act waivers, and aggressive debt collection.

There are many predatory lending schemes – from the traditional “payday lenders”, to predatory lending related to the automobile industry. Consumer education on pay day lenders has reduced the negative impacts on our clients. However, an emergency or a few bad financial decisions and the payday “non-loan” may appear to be a good option. Another type of predatory lending loans procured automobile dealerships acting as loan brokers. Loan applications made by dealerships can contain false information increasing the income of the servicemember. These loans can be for up to 140 percent of vehicle’s value. The dealerships can receive kickbacks from lenders in the forms of finance charge sharing. Vehicles can be “power booked” to artificially increase its value. When the primary and secondary market will not provide sufficient funds dealerships can require supplemental secondary loans to add money to the contract. This process makes our sailors the equivalent of a money delivery system to the auto and lending industry. I had a client who purchased a vehicle for \$11,000.00, the max loan amount from the traditional creditor. The dealer wanted more money for the vehicle so he sold the client a dash mounted GPS for \$2500.00 financed through a secondary subprime lender. Other clients are told that additional funds are needed for taxes. In another case the dealership sold the vehicle for \$5,700.00 but added on a service contract for \$3,069.00.

Arbitration is another area of concern. The issue with the arbitration is that many servicemembers will not pursue their rights. Arbitration can have high costs and require hearings in inconvenient forums. It is also an unknown process to the servicemember consumer. They do not know the law and when told, “you cannot sue me because you signed an arbitration agreement” they may not pursue their claim. Many auto dealerships have arbitration provisions in their contracts. I recently saw a case in which the sailor purchased a vehicle “As-Is.” He made extensive inquiries about the condition of the vehicle prior to purchase and was informed it was in good condition. After purchase he found the vehicle had substantial damage that should have been disclosed under the Federal Trade Commission’s Buyers Guide. The contract had an arbitration provision. This dealership used the arbitration provision to avoid liability.

Arbitration is essentially a waiver of the servicemembers right to expeditiously resolve matters in trial. In Virginia most of these issues could be addressed in small claims or general district court in 45 days at a cost of \$48.00. General District Court has a jurisdictional of cap of \$25,000.00.

The Servicemember's Civil Relief Act is a great consumer protection statute for the military. It acknowledges the importance of the servicemember's focus on the mission and provides tools to balance the Nation's interest in national security with individual rights. It places aspects of civil law matters that could impact mission readiness in the hands of commands and servicemembers. However, one section exception eviscerates any protections; the Section 517 Waiver. The unlimited and unconditioned use of the waiver takes readiness out of the hands of servicemembers and commanders and places it in the hands of landlords and merchants. In Virginia there is a standard form lease, VAR 200. This is a 14 page residential lease that provides a reservation of right by the landlord to require a waiver of the SCRA at a later time. There are also countless other waiver forms with waivers ranging from total to single item like default protection (Section 521), eviction protection (Section 531) or Lease termination (Section 535). As an attorney, I can argue the inapplicability or unlawful nature of the waiver based upon the knowledge at the time of execution and the involuntary nature of the contract provision; my clients will not. They will honorably acknowledge that they signed a waiver and accept the penalty.

Once there is an obligation the servicemember can fall prey to aggressive debt collection procedures. The type of collection process will usually include threats to contact the command or actually contact with the command. Because of the importance of the security clearance and the competitive nature of promotion, negative comments to a servicemember's command will be perceived by the servicemember as a threat to his or her career in the Navy. This gives creditors great leverage with collections of valid and invalid obligations. For example, one client who had transferred from the west to the east coast had settled an obligation with a creditor. That debt was resold to another collection company who contacted the servicemember. He had just moved and could not find his paperwork. Rather than have the creditor contact his command, as they had threatened, he paid them \$1,000.00.

There are two keys to addressing the problems protection and education. No amount of education can address the arbitration provision or waiver when the use is legal and pervasive. A decision between signing a waiver with this landlord or living far away or in an unsafe area is a choice between two bad options. With arbitration there frequently is no choice. The perception that aggressive debt collection will impact a servicemember's career is very real to the servicemember. Knowing your rights is the first step in meaningful participation in a market economy. My office is working with the FTC to make their library of informative videos on consumer law available to servicemembers in infomercial format in lobbies, waiting rooms, and on ships so that while sailors are waiting for the next evolution in their day they can receive consumer law tips. We also provide symposiums on consumer law for military attorneys, financial counselors and servicemembers.

We are doing our best to educate on their rights and to protect servicemembers when their rights are violated. It is important that the law provide the tools necessary to allow

servicemembers and those who fight for servicemembers to win in an engagement where the enemy is consistently changing.