United States Code

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE

PART VI - PARTICULAR PROCEEDINGS

CHAPTER 176 - FEDERAL DEBT COLLECTION PROCEDURE

SUBCHAPTER A - DEFINITIONS AND GENERAL PROVISIONS

U.S. Code as of: 01/19/04

Section 3002. **Definitions** As used in this chapter:

(1) "**Counsel for the United States**" means - (A) a United States attorney, an assistant United States attorney designated to act on behalf of the United States attorney, or an attorney with the United States Department of Justice or with a Federal agency who has litigation authority; and (B) any **private** attorney authorized by contract made in accordance with section 3718 of title 31 to conduct litigation for collection of debts on behalf of the United States.

[Does the word "means" signify a "definition" or a "general provision"? Does the word "means" signal a "code" rather than a definition? A "term of art"?

The word "and" between subsection "(A)" and "(B)" implies that both (A) and (B) must be present for a person to act as "counsel for the United States".

If the "counsel for the United States" must establish that status by "contract," who's the contract with? Why use a "contract" rather than a "power of attorney"? What's the difference between "contract" to represent and a "power of attorney"? Does one contract entitle the signatory to act as "counsel" in any case that comes up? Or is there one contract per case? I wonder what the terms of that contract might be?

If there's a generic contract, I wonder if it might be read to conflict with the "counsel's" duties in a particular case. Could it be that the "contract" breached fundamental provisions of the Constitution? Inquiring minds should want

to read the "contract" under which the U.S. attorney might be working to prosecutor. I'll bet that contract might be revealing.

31 USC 3718 is fairly lengthy. I haven't read it, but here it is:

United States Code TITLE 31 - MONEY AND FINANCE SUBTITLE III - FINANCIAL MANAGEMENT CHAPTER 37 - CLAIMS SUBCHAPTER II - CLAIMS OF THE UNITED STATES GOVERNMENT

Section 3718. Contracts for collection services

(a) Under conditions the head of an executive, judicial, or legislative agency considers appropriate, the head of the agency may enter into a contract with a person for collection service to recover indebtedness owed, or to locate or recover assets of, the United States Government. The head of an agency may not enter into a contract under the preceding sentence to locate or recover assets of the United States held by a State government or financial institution unless that agency has established procedures approved by the Secretary of the Treasury to identify and recover such assets. The contract shall provide that - (1) the head of the agency retains the authority to resolve a dispute, compromise a claim, end collection action, and refer a matter to the Attorney General to bring a civil action; and (2) the person is subject to - (A) section 552a of title 5, to the extent provided in section 552a(m); and (B) laws and regulations of the United States Government and State governments related to debt collection practices. (b)(1)(A) The Attorney General may make contracts retaining private counsel to furnish legal services, including representation in negotiation, compromise, settlement, and litigation, in the case of any claim of indebtedness owed the United States. Each such contract shall include such terms and conditions as the Attorney General considers necessary and appropriate, including a provision specifying the amount of the fee to be paid to the private counsel under such contract or the method for calculating that fee. The amount of the fee payable for legal services furnished under any such contract may not exceed the fee that counsel engaged in the private practice of law in the area or areas where the legal services are furnished typically charge clients for furnishing legal services in the collection of claims of indebtedness, as determined by the Attorney General, considering the amount, age, and nature of the indebtedness and whether the debtor is an individual or a business entity. Nothing in this subparagraph shall relieve the Attorney General of the competition requirements set forth in title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 and following). (B) The Attorney General shall use his best efforts to enter into contracts under this paragraph with law firms owned and controlled by socially and economically disadvantaged individuals and law firms that are qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act), so as to enable each agency to comply with paragraph (3). (2) The head of an executive, judicial, or legislative agency may, subject to the approval of the Attorney General, refer to a private counsel retained under paragraph (1) of this subsection claims of indebtedness owed the United States arising out of activities of that agency. (3) Each agency shall use its best efforts to assure that not less than 10 percent of the amounts of all claims referred to private counsel by that agency under paragraph (2) are referred to

law firms owned and controlled by socially and economically disadvantaged individuals and law firms that are qualified HUBZone small business concerns. For purposes of this paragraph - (A) the term "law firm owned and controlled by socially and economically disadvantaged individuals" means a law firm that meets the requirements set forth in clauses (i) and (ii) of section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)(i) and (ii)) and regulations issued under those clauses; (B) "socially and economically disadvantaged individuals" shall be presumed to include these groups and individuals described in the last paragraph of section 8(d)(3)(C) of the Small Business Act; and (C) the term "qualified HUBZone small business concern" has the meaning given that term in section 3(p) of the Small Business Act. (4) Notwithstanding sections 516, 518(b), 519, and 547(2) of title 28, a private counsel retained under paragraph (1) of this subsection may represent the United States in litigation in connection with legal services furnished pursuant to the contract entered into with that counsel under paragraph (1) of this subsection. (5) A contract made with a private counsel under paragraph (1) of this subsection shall include - (A) a provision permitting the Attorney General to terminate either the contract or the private counsel's representation of the United States in particular cases if the Attorney General finds that such action is for the convenience of the Government; (B) a provision stating that the head of the executive or (!1) legislative agency which refers a claim under the contract retains the authority to resolve a dispute regarding the claim, to compromise the claim, or to terminate a collection action on the claim; and (C) a provision requiring the private counsel to transmit monthly to the Attorney General and the head of the executive or (!1) legislative agency referring a claim under the contract a report on the services relating to the claim rendered under the contract during the month and the progress made during the month in collecting the claim under the contract. (6) Notwithstanding the fourth sentence of section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)), a private counsel performing legal services pursuant to a contract made under paragraph (1) of this subsection shall be considered to be a debt collector for the purposes of such Act. (7) Any counterclaim filed in any action to recover indebtedness owed the United States which is brought on behalf of the United States by private counsel retained under this subsection may not be asserted unless the counterclaim is served directly on the Attorney General or the United States Attorney for the judicial district in which, or embracing the place in which, the action is brought. Such service shall be made in accordance with the rules of procedure of the court in which the action is brought. (c) The Attorney General shall transmit to the Congress an annual report on the activities of the Department of Justice to recover indebtedness owed the United States which was referred to the Department of Justice for collection. Each such report shall include a list, by agency, of - (1) the total number and amounts of claims which were referred for legal services to the Department of Justice and to private counsel under subsection (b) during the 1-year period covered by the report; (2) the total number and amount of those claims referred for legal services to the Department of Justice which were collected or were not collected or otherwise resolved during the 1-year period covered by the report; and (3) the total number and amount of those claims referred for legal services to private counsel under subsection (b) - (A) which were collected or were not collected or otherwise resolved during the 1-year period covered by the report; (B) which were not collected or otherwise resolved under a contract terminated by the Attorney General during the 1-year period covered by the report; and

(C) on which the Attorney General terminated the private counsel's representation during the 1-year period covered by the report without terminating the contract with the private counsel under which the claims were referred. (d) Notwithstanding section 3302(b) of this title, a contract under subsection (a) or (b) of this section may provide that a fee a person charges to recover indebtedness owed, or to locate or recover assets of, the United States Government is payable from the amount recovered. (e) A contract under subsection (a) or (b) of this section is effective only to the extent and in the amount provided in an appropriation law. This limitation does not apply in the case of a contract that authorizes a person to collect a fee as provided in subsection (d) of this section. (f) This section does not apply to the collection of debts under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.). (g) In order to assist Congress in determining whether use of private counsel is a cost-effective method of collecting Government debts, the Attorney General shall, following consultation with the General Accounting Office, maintain and make available to the Inspector General of the Department of Justice, statistical data relating to the comparative costs of debt collection by participating United States Attorneys' Offices and by private counsel.**]**

(2) "**Court**" **means** any court **created by the Congress** of the United States, **excluding the United States Tax Court**.

[It's odd that they'd exclude the US Tax Court. Why'd dey do dat? Could it be that this chapter (which deals with "Federal Debt Collection Procedures") doesn't apply to whatever kind of debt the U.S. Tax Courts are trying to collect? If that were true, it would imply that the U.S. Tax Courts were collecting a NON-"Federal" debt due to some entity *other than* the "United States"/"Federal corporation".]

(3) "**Debt**" means - (A) an **amount** that is **owing to the United States on account** of a **direct loan**, or **loan insured or guaranteed, by the United States**; or (B) an **amount** that is owing to the **United States** on account of a **fee, duty, lease, rent, service, sale** of real or personal property, **overpayment, fine, assessment, penalty, restitution, damages, interest, tax, bail bond forfeiture, reimbursement, recovery of a cost incurred by the United States, or other source of indebtedness to the United States**, but that is **not owing under the terms of a contract originally entered into by only persons other than the United States**; and includes any amount

owing to the United States for the benefit of an Indian tribe or individual Indian, but excludes any amount to which the United States is entitled under section 3011(a).

[28 USC 3011: Section 3011. **Assessment of surcharge on a debt**

(a) Surcharge Authorized. - In an action or proceeding under subchapter B or C, and subject to subsection (b), the United States is entitled to recover a surcharge of **10 percent** of the amount of the debt in connection with the recovery of the debt, to cover the cost of processing and handling the litigation and enforcement under this chapter of the claim for such debt. (b) Limitation. - Subsection (a) shall not apply if - (1) the **United States receives** an **attorney's fee** in connection with the enforcement of the **claim**; or (2) the law pursuant to which the action on the **claim** is based provides any other amount to cover such costs.]

(4) "Debtor" means a person who is liable for a debt or against whom there is a claim for a debt.

[This definition implies that the "debtor" can be *either*: 1) the person who is *actually liable*; or 2) another person who is *not* actually liable but against whom there is nevertheless a claim.]

(5) "**Disposable earnings**" means that part of earnings remaining **after all deductions** required by law have been **withheld**.

[What is the definition of "earnings"? Withholding is deducted from "earnings"; the remainder is "disposable earnings". "Earnings" are apparently taxed. If you income was not defined as "earnings," would you income be taxable?]

(6) "Earnings" means compensation paid or payable for personal services, whether denominated as **wages, salary, commission, bonus, or otherwise**, and includes periodic payments pursuant to a **pension or retirement** program.

[None of our "compensation" is currently "paid" unless it's paid in gold or silver coin.

But I'll bet that all of our "earnings" that are "discharged" with legal tender/FRNs are still "payable"—meaning they are a "promise to pay" at some

future date. Thus, we may not be taxed on what we "earn" so much as on what we are promised to be paid at some unspecified future time.

If that were true, it would suggest that arguments could be made that: 1) the alleged "earnings" discharged with FRNs will never actually be paid because the total American debt is beyond any possibility of total payment; and 2) no "payment" will ever be made because the dollar has no assured value (PL 95-147; Oct. 28, A.D. 1977) and is thus valueless ("payment" may not be possible without some "value").]

(7) "Garnishee" means a person (**other than the** debtor) who has, or is reasonably thought to have, **possession, custody, or control of any property in which the** debtor **has a substantial** nonexempt interest, including **any obligation due the debtor** or to become due the debtor, and against whom a garnishment under section 3104 or 3205 is issued by a court.

[So if the "debtor" were "ALFRED ADASK," but it was "reasonable thought" that the man "Alfred Adask" had "possession, custody or control on any property in which the "debtor"/"ALFRED ADASK" had some "substantial nonexempt interest," then "Alfred Adask" might be the "garnishee" for "ALFRED ADASK".

For several years, I've presumed that "Adask" is tricked and/or presumed into being "surety" for "ADASK". Maybe that theory is mistaken. Maybe "Adask" is deemed to be "garnishee" for "ADASK".

But, it appears that this role of "garnishee" might only apply in the instances where "ADASK" has some "substantial nonexempt interest". For example, if "ADASK" had a bank account, auto registered to its name, utilities, house, etc. registered to "ADASK," then "ADASK" might have a "substantial nonexempt interest" in those properties. If "Adask" could be reasonable thought to have possession, custody or control over "ADASK's" property, then then "Adask" would be deemed "ADASK's" garnishee.

But what if there were no record of "ADASK" having a "substantial nonexempt interest" in any property. I.e., what if "ADASK" didn't own a house, car or bank account, etc.? Could "Adask" still be deemed "ADASK's" garnishee?]

(8) "**Judgment**" means a judgment, order, or decree **entered in favor of the United States** in a court and arising from a civil or criminal proceeding regarding a **debt**.

[What about a "Judgment" that was entered in favor of the *defendant*? What is that?]

(9) "**Nonexempt disposable earnings**" means **25 percent of disposable earnings**, **subject** to **section 303 of the Consumer Credit Protection Act**.

(10) "**Person**" includes a **natural person** (including an **individual Indian**), a **corporation**, a **partnership**, an **unincorporated association**, a **trust**, or an **estate**, or any other public or private **entity**, including a **State** or **local government** or an Indian tribe.

[An "account" does not appear to be a "person"—unless an "account" can be an "entity".]

(11) "**Prejudgment remedy**" means the remedy of **attachment**, **receivership**, **garnishment**, or **sequestration** authorized by this chapter to be granted **before judgment** on the **merits** of a **claim** for a debt.

[Note that under # (4) (*supra*), the "debtor" can be either 1) the person actually liable for a debt; or 2) a person who is not liable but against whom a "claim" is made.

Note that under (11), property can be garnished against the "garnishee" before the "merits" of the claim for a debt (in which the garnishee may not be the *actual* debtor) has been decided. In other words, there is an implication that the gov-co could seize property of a "garnishee" ("Adask") based on a "claim" against the actual debtor ("ADASK") the merits of which had not yet been determined by a court—all based on some "reasonable belief" that "Adask" (garnishee) had possession, custody, or control over some property registered to "ADASK".

Get that?

IF that conjecture were valid, it would mean that the gov-co could seize your property on nothing more than the gov-co's "reasonable" belief that you possessed, held or controlled some of "ADASK's" property based on an unadjudicated "claim" against "ADASK". I.e., once they make the claim against "ADASK," they might be authorized to seize any property in the control, possession of "Adask".

Whew.

Does this conjecture conform to observed reality?]

(12) "**Property**" includes any **present or future interest**, whether legal or equitable, in **real, personal** (including **choses in action**), or **mixed property**, **tangible or intangible**, **vested or contingent**, **wherever located** and **however held** (including **community property** and property held in **trust** (including spendthrift and pension trusts)), but **excludes** - (A) property held in trust by the United States for the benefit of an **Indian** tribe or individual Indian; and (B) **Indian** lands subject to restrictions against alienation imposed by the United States.

[I suspect that the "future interests" may include whatever income you've received in the form of legal tender/FRNs which may have discharged your employer's debt but nevertheless resulted in promises to actually pay at some future date.

Future interests may also include whatever you've purchased with FRNs in that you have implicitly promised to pay at some future date and the seller has implicitly promised to give you legal title at that future date.

"Wherever located" implies that such "property" could be "in this state" or "within The State".]

(13) "**Security agreement**" means an agreement that **creates** or provides for **a lien**.

[There can be no "lien" (and thus no security agreement) based on that which is "unalienable". If we could show that our "property" was purchased with earnings derived from our "unalienable" right to Liberty, that property might not be subject to liens, security agreements, etc..]

(14) "**State**" **means** any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, or any territory or possession of the United States.

[This definition is ambiguous because it includes "the several States" and *might* thereby include the States of the Union. However, because this definition clearly includes territories, DC, etc., this definition of "States" is not a definition of the several States of the Union.]

(15) "**United States**" **means** - (A) a Federal corporation; (B) an **agency, department, commission, board, or other entity of the** United States; or (C) an **instrumentality** of the United States.

[This definition is somewhat ambiguous. However, (A) declares that "United States" means a "Federal corporation". Thus, it would seem to follow that under (B) ("an agency, department . . . of the United States") those agencies,

departments, et al must be of the "Federal corporation". The same observation would seem to apply to "instrumentalities" under (C).

OK—so what exactly is this "Federal corporation". More precisely, where is its corporate charter? Is this the "Federal corporation" that was incorporated (given "body") by The Constitution of the United States? Or was this "Federal corporation" incorporated by some other corporate charter.

If I had to *guess*, I'd guess that this "Federal corporation" *might* be the entity created by The Constitution of the United States. I suspect that all things de facto tend to be unincorporated associations. Therefore, if this is a "Federal corporation," it might be de jure—but I wouldn't bet on it.

However, if this "Federal corporation" were de jure, then the *unincorporated association* called "United States" might be an "instrumentality" of the "United States"/"Federal corporation".

But all of this is conjecture. The truth might be completely different from my speculation.]

(16) "**United States marshal**" means a United States marshal, a deputy marshal, or an official of the United States Marshals Service designated under section 564.