

How to Work with an Unresponsive Attorney

Good afternoon Firm.

I am writing to request advice for dealing with unresponsive opposing counsel. A complaint has been filed against my client in which opposing counsel wants to attach a lien to my client's home and order it sold in order to satisfy a debt.

I have left several voice messages and sent several email notes to opposing counsel to discuss payment of the debt, but, to date, have not received a response. Tomorrow, I intend to pay a visit to opposing counsel's office in attempts to speak with him.

Does anyone have any advice for working with this attorney?

Warmest regards-

Why would you show up at his office unannounced? There is a good chance he isn't there.

If he has filed a complaint, then you file a response to the complaint. You send him a letter or email with the response and propose a settlement offer.

In most states, if your offer is in writing, he is bound to present it to his client. If they accept it, great. If they don't, prepare to litigate it.

Jonathan Stein, California

This sounds like an attorney who took the case for very low money and you are eating into his profit margin by wanting to talk to him. Does your client have enough equity to exceed your state's homestead exemption? If not, I might approach it from that perspective. In other words, helping him understand that taking payments will get him much more than trying to foreclose.

Michelle Kainen, Vermont

My next step would be to carpet bomb - via e-mail (with read receipt), fax and mail.

I've never had an OC just drop by.

Deb Matthews, Virginia

You could try CPR. Otherwise, chill out and wait for the hearing. Make at least three attempts to contact OC and document how/when/why. At hearing, advise judge of your attempts to meet and confer; request a continuance. If

you appear too anxious to get ahold of OC, it may encourage Plaintiff to hold a hard line and not negotiate at all.

Duke Drouillard, Nebraska

I've never just dropped by anyone's office either. I am merely trying to obtain additional information.

I will rethink my visit.

Warmest regards-

Amber Nicole Ying, Indiana

I'll concur with Duke's advice and emphasize the need to document attempts to reach OC. In some courts here I've noticed the perverse outcome that the guy who shows up gets blamed for the guy who doesn't appear/respond.

John Leonard, Connecticut

Please do not take offense at this question, but:

Over what period of time have you left these voice messages and sent emails?

I ask because just recently, an opposing counsel left two voicemail messages and sent two emails -- in the course of LESS THAN ONE DAY. She then sent a huffy email to me and the clerk complaining that both of us were ignoring her attempts to continue her client's hearing. Of course, she apparently didn't realize that the day she picked to do that was a court day, we were both in court all day except for a less-than-hour lunch break, and neither of us have a deputy or secretary. Nor has she apparently realized that her reaction is designed to get her a less than stellar reaction.

I'm not saying that is what you did here, but it does help to stop and think how long it has been. Too often we (and I include myself) expect quick responses and further expect that other people have the same priority that we place on our cases, when some mindfulness adherents and other practitioners have adopted the position that absent an emergency, emails take no more priority or urgency than regular mail used to take.

And then, a partner I used to work for took the position that, absent an emergency, he took all calls in the order received. If somebody couldn't wait and thought they could jump the line by sending another email/leaving another voicemail, their position in the queue slipped to the last communication they left.

OTOH, many members of the bar around here used to drop in on each other fairly often, and it was usually unannounced and a chance to sit down for a cup of coffee and catch up. If someone stopped and the other was not in, it was not a big deal. But it used to be considered congenial and neighborly (and was more commonly practiced the more rural the lawyers -- so consider the source), and the demise of that practice is something I mourn.

FWIW,

Anita Fuoss, South Dakota

I would not behave as your adversary has behaved because (1) I try to maintain good relations with other lawyers whenever possible and (2) that kind of behavior is seldom in the client's best interest. However, to the best of my knowledge, your adversary does not owe you or your client a legal or ethical obligation to respond to telephone calls or emails or to "work with" you.

You say that a complaint was filed. Was the complaint served on your client? If it was served, then you should timely serve and file defendant's answer to the complaint or any motion that may be appropriate in the circumstances.

I am not familiar with a complaint "to attach a lien to [defendant]'s home and order it sold in order to satisfy a debt" (unless, perhaps, this is an attempt at a plain language notice to a defendant of what could happen in the action). Ordinarily, a plaintiff files a civil action to collect a debt. If plaintiff prevails, a judgment is entered for the money owed. A judgment becomes a lien on the judgment debtor's real property in any county in which proof of the judgment is filed. A judgment creditor can foreclose on the lien to satisfy the judgment. Does Indiana have a procedure that expedites this process?

Since your adversary has implicitly declined your invitations to talk, use writing (e.g., email or a letter) to communicate anything you want to communicate to your adversary.

If you are not experienced in civil litigation, consider associating with, or referring the case to, someone who is.

Steven Finell, California

Good morning Anita.

No offense taken at all. I appreciate your advice.

I have been making contact attempts for one month - not harassing with daily telephone calls, but spacing my attempts over each week. It's a little frustrating, but a great reminder to me to continue to always respond to those who contact me in a timely manner.

Thank you to ALL of you for always providing great advice and needed levity!

Warmest regards-

Amber Nicole Ying, Indiana

Picking up on What Duke has said, it may be a part of a psychological campaign. You have probably told or intimated that you will assist client in resolving matter. Client thinks that you can resolve matter, now you cannot even contact opposing counsel. Increases uncertainty on client, client starts losing trust in attorney. I have had new client make phone call to opposing counsel to attempt to talk to him or her despite telling them not to do so.

A practiced collection attorney will usually have an upper hand - they have been in more wars than you have, they may have spoken to your client more often than you have.

Asking for a continuance. An idea: will it cost your client more money in fees to you? Talk to client and be ready to talk settlement at the court hearing. You can always stop settlement discussions if you find a winning legal argument. It is unlikely but it does happen. Was service proper? etc.

Regards,

Richard P. Schmitt, Maryland

Without knowing more about the case, it is impossible to say why your adversary is not getting back to you. However, besides the other possibilities suggested, he or she may simply feel that they have a very strong position and there is no need to negotiate or at least he wants you to think that. You surely know that there is always some element of poker in any negotiation. You should also be aware, that I doubt you have

I don't know if that is the case here you think you're going to have, if after calling and reaching out repeatedly you show up at his or her office question

Robert Weiss

Sorry, hit send too fast. My point is that you're giving away a ton of negotiating position if after repeatedly trying to reach out to this person, you can show up at his office. Unless you're ready to give him everything he wants, I would not suggest that course.

Much better to aggressively litigate the case and show that you have the goods and they have a fight on their hands.

That is my opinion at least

Robert Weiss

Bottom line, do not show up at the office unannounced. It will not likely advance your client's position. Advocate for your client and set the matter up to be where you want it to be.

Send letters and note at the top Second Request, etc. This will create the track record and do not send letters, etc. less than about 3 or 4 days apart. This is a reasonable time to receive, send to client, get a response, and reply. Consider discovery or some other action that will start a clock to prompt action.

I have had similar situations and then at a hearing the OC with client appears and that is when client learns of the delays, etc. If OC not responsive to you, then OC may not be responsive to client either.

Phil A. Taylor, Massachusetts

Thank you Richard.

Warmest regards-

Amber Nicole Ying

I get this a lot from pro se litigants. They just do the go limp routine. It's frustrating. However, at least here in the Commonwealth the use of button men is frowned upon.

John Davidson, Pennsylvania

Ah well, in that case.....

Paper the file with a few regular mails so you have proof that you have tried every conceivable way to reach them. Then request a continuance, or motion to compel.

Anita Fuoss