

Unpaid fees & Methods of collection

Anyone tried using a collection agency to collect unpaid legal fees? What are the pros and cons of using a collection agency versus pursuing other means of collecting unpaid fees (arbitration/litigation)?

Thanks.

Dear Anonymous Unpaid Attorney,

There is nothing wrong with hiring an agency to try to collect your fees. You'll pay some sort of commission, and if you select a reputable agency, your debtor will be called frequently and within the boundaries of federal and state law. Most people want to pay their debts and a good collector will be able to sell the debtor on the benefits of paying. This is all good.

The downside to retaining a collection agency is that it has one tool - the telephone. An agency cannot do anything else but call and try to arrange payment. (Remember, we are only referring to reputable agencies. Never do business with a collection agency that is not 100% reputable.) If the debtor doesn't pay, the agency will eventually give up and you'll be back at square one.

An alternative is to hire a collection law firm right out of the gate. Larger firms have collectors, just like an agency, and must follow all rules pertaining to debt collection. Generally, usually normally, if the debt collector can't arrange payment, the collector can refer the file for suit to his next door neighbor in the cube farm, the collection attorney. The attorney should/will analyze whether it makes sense to sue and will, after consulting with you, the client. Or, you can skip the whole debt collector step and refer it to a lawyer who does debt collection as a majority or a part of, his or her practice. A couple of preliminary steps and boom - lawsuit filed. Generally, collection lawyers work on contingency.

You must be aware that most malpractice insurance carriers HATE it when you sue a client for fees because of the propensity for counterclaims for legal malpractice and /or bar complaints. I believe that the decision to sue a client for fees must be an individual decision and not be dictated by what everyone else is doing, or not doing. If you are going to sue for something like \$1000-5000, you are wasting your money and everyone's time. It's not worth taking the case and if you were to get countersued, you'd expend more time defending yourself than you'd ever collect. Otherwise, if the money is worth taking the risk of the countersuit/bar complaint. Well, don't be shy.

Good luck.

Barry Kaufman, Florida

I am owed about \$40K plus \$15k for an expert in a case. The suit is being held til the week before the two year statute runs so there can't be a counter. But I like the collection agency idea too.

Reta McKannan, Alabama

Are there privacy issues for lawyer sharing the client's info with collection agency? I heard many collection agencies need the debtor's SSN.

Dawn Padanyi

There are no privacy issues or attorney/client issues implicated in sharing debt information to a collections agency or attorney. Remember your business relationship with a client is not privileged, only the solicitation and rendering of legal advice is privileged.

That is why I never recommend putting privileged information in bills to clients.

Matthew S. Johnston, Maryland

Another benefit of the collection agencies is that they report the delinquency to the credit bureaus. It works.

Jennifer J. Riley

Regarding your comment re sol on counterclaims. In Florida the SOL may not apply if the counterclaim is filed in an action where the original lawsuit was filed within the SOL.

Dennis Chen, Florida

Yep. It can be a sticky issue in Florida.

Barry Kaufman
