

Taking Collateral for Guaranty of Payment

Good morning fine folks. Does anyone take collateral from criminal defense clients for guaranty of payment? I generally charge flat fees for my criminal defense representation, and I will often work with clients and give them a payment plan. I'm getting tired of getting stiffed and having to withdraw. The easiest answer is to simply stop doing plan payments. I know this. I also know that a lot of my clients just don't have a way to come up with that kind of money up front. Any help or advice with this would be great.

I've never done it, but I know others who have. Most common collateral I've seen is the title to a car or boat (obviously fully paid off) stored in a safe or safety deposit box until the fee is paid.

Ryan Phillips, South Carolina

If I take the title to a car, if they stop paying as agreed in the contract, can I simply go get the vehicle using a tow company, or is there something more that I need to do? Obviously if I were to agree to this, I would put something in my fee agreement giving me a right to the property I would imagine.

I'm not really sure. I would imagine this is pretty much the same thing as any other type of contract with property as collateral. I imagine there are UCC or state-level requirements. You're essentially taking a security interest in the property. Holding on to the physical title, I imagine, makes things easier if you have to foreclose on the property.

Ryan Phillips

The only security I've accepted is assignment of their jail bond for a portion of their fees. They will come up with the money when they need to hire you. They already know they can get a public defender for free, but they want to hire you. If they have title to something of value, they can pawn it, get a loan, or sell it. Don't turn your office into a pawn shop and never do any work on a case until you have been paid in full.

Duke Drouillard, Nebraska

Look at your state's ethics rules concerning taking an interest contrary to a client. You may need to advise them to get independent counsel before they agree to give you a lien on property.

If you do take an interest in a car (or similar), then foreclosing on it is going to be governed by your state's UCC.

Brian H. Cole, California

Duke is **exactly** right. If a PC asks me if I take a payment plan, I ask if they have family/friends in the area. Invariably, they say "Yes." Then I tell them that I'm not a bank or credit card company and if they want my representation on a payment plan, get family/friends to lend him the money, pay me, and pay the family/friends back with a payment plan.

DO NOT EVER rep a criminal client on a payment plan. If nothing else, they'll claim ineffective assistance because you weren't paid. More importantly, you don't need the agita. Get paid, in full, up front.

Good luck

Russ Carmichael

PS I've gotten burned on bail pledges, too, if the client takes off.

I do mostly traffic & criminal defense. I really don't do payment plans anymore. I get burned virtually every time I do a payment plan. People tell me I'd get more business if I offered payment plans. I'm with Russ though.

Jason Komminos

This thread involves criminal defense engagements.

The notion of liening a person's car prompts this remark, which I may have made on this list in the past.

Divorces. Contractual performance, Money judgments. In these types of cases you might want to consider repo clauses. Not sure if you could get a judge to order it in a contested case but you should be able to obtain the repo tool clause in an agreed case. (Please do not contact me for clause templates as I doubt if I can put my hands on any without a lot of time invested.)

It will vary by state.

In a divorce, for example, why not include a repo clause to obtain performance of the payment of a money judgment? When people see their wheels being towed they seem to get creative about paying. This approach is not without potential problems. If reposing a car there may be ongoing car payments to worry about, etc.

In other words, if you have them by the keys their wallet is quick to follow.

Again, I think I have made these comments before. When getting a repo be sure that law enforcement is on notice of the repo as to when and where. In Texas repos are ok if not 'breaching the peace.' Best if the vehicle is out in public somewhere. It can get dicey if the vehicle is on private property, particularly behind a locked gate or door. Make sure the wrecker driver makes a list of the contents of the vehicle. I had one where the vehicle contained a rifle. In most cases I counsel against riding along on the repo.

I am speaking here about individuals and their personal dealings. If we get into corporations, partnerships and LLCs, the subject is more complicated for a variety of reasons. I realize those entities make purchases where conventional UCC provisions help secure payment. Here we are speaking of securing payments for services. (I do not handle UCC work so do not know if the UCC addresses securing payments for services.)

Happy July 4th to all. Enjoy . . .

Rob V. Robertson, Texas

I think this would be very problematic in a divorce case, as potentially all property is up for grabs as part of the marital estate. In that situation, you're taking an interest in the subject matter of the litigation.

Ryan Phillips

Here in Mass at least there is an attorney lien statute that will assist to provide some protections in a family law matter.

Phil A. Taylor, Massachusetts

Duke is correct here. Also, taking and dealing with the collateral will likely be more difficult and complicated than seeking to withdraw.

Payment plans are okay when payment completed before you need to work.

Let them beg and borrow from someone that knows them well, and not from you. If their friends/family will not loan them money, why would you?

Phil A. Taylor

Regarding title to a vehicle as collateral -- a certificate of title does you no good if the client (or whoever) simply takes the car to a shady scrapyard that will crush it and pay cash--title or no title.

There's an easier way to skin that cat: in addition to getting the title, simply insist on also having the keys and that the car be parked at your office or at a storage facility etc.

Also 1000% agree with previous posts about payment plans re: crimdef. I, too, live in a very rural and poverty-plagued area. I get it that 2, 3, or

5000 up-front retainer ain't exactly chicken feed, especially for people on a fixed income and the like. But, business is business. The only exception that I make is if the client can at least come up with 50%+ of my up-front retainer, then I -might- agree to accept the remainder over the course of 3 or 4 payments, but even then that rare arrangement depends on the case type/seriousness/workload and my general, subjective 'read' of the person sitting in front of me in how likely this person will be able to make good on their promise or if I'm just being BS'd.

General rule though? Don't sell yourself short -- you are a lawyer. If you wanted to be a bill collector, you could do so. That (likely wasted) time chasing \$\$ is that much less time and attention you have to put towards other cases for paying/paid clients, thus, arguably, those clients' cases indirectly suffer as a result.

My modus operandi summed up = if people wanna dance, they gotta pay the band...

Seth Combs, Kentucky