Popular Threads on Solosez

How Long Must I Send Statements?

I have two former family law clients who owe me money. I am not charging interest. For how many months need I continue to send statements? Although I probably will not, I would like to retain the option of filing suit against them at some point in the future.

I generally send them twice, then call. If nothing comes from that I send a follow up letter that says either: 1) I know you are having trouble, but intend to pay (if I don't expect them to laugh when they get the letter) and I will save postage on reminders and check on the account in 90 days; or 2) If I do not have payment within 10 days I will forward this to the collection agent we use, who is IC Systems (so they know it is not a bluff); or 3) if hopeless, just quit sending the statements.

Recovery after 90 days is almost impossible. Spend your time on reminders to GET THE MONEY UP FRONT. But I still have a system when I forget.

Ted A. Waggoner, Rochester, Indiana

To disabuse anyone of a common misconception: There is no actual requirement that anyone send anyone a statement for anything (in the absence of a written agreement to the contrary, of course). You don't have to bill someone before you sue them to enforce a debt. Its just a practicality: You are more likely to get paid if you send bills.

The benefit of billing is that, if an objection to a bill is not timely raised, the burden of proof as to the reasonableness/appropriateness of the charges shifts to the debtor. (See "Account Stated" and "Timely Dispute", among other terms).

Ergo, since it seems that you are just looking for permission to do what you are entitled to do:

I hereby ABSOLVE you, attorney_____ , of any further invoicing requirements to your two deadbeats!

Mary L. C. Daniel, Winchester, Virginia

To back up what Mary Daniel said, it's true that you don't have to bill someone to enforce a contractual debt. However, if you do, and the recipient does not object, you will have a cause of action for account stated. Here is some language from a brief I wrote involving an account stated claim under New York law:

Under New York law, an "account stated" refers to a promise by a debtor to pay a stated sum of money which the parties had agreed upon as the amount due. E.g., Ally & Gargano, Inc. v. Comprehensive Accounting Corp., 615 F. Supp. 426, 428-29 (S.D.N.Y. 1985). The promise, which

may be either express or implied, must be founded upon previous transactions creating the relationship of debtor and creditor. E.g., id.; Chisolm-Ryder Co., Inc. v. Sommer & Sommer, 70 A.D.2d 429, 431, 421 N.Y.S.2d 455, 455 (4th Dep't 1979).

An account stated may be implied when a creditor sends a statement of account to a debtor and the debtor, who has a duty to examine the statement to ascertain whether it is correct or not, keeps it for a reasonable time without objecting to the correctness of the account. E.g., Chisolm-Ryder v. Sommer & Sommer, 70 A.D.2d at 431, 421 N.Y.S.2d at 455. An objection to an account stated that is first made only after litigation on the account stated has been commenced is, as a matter of law, not made within a reasonable time. Regent Partners, Inc. v. Parr Dev. Co., Inc., 960 F. Supp. 607 (E.D.N.Y), aff'd, 131 F.3d 131 (2d Cir. 1997); Polygram, S.A. v. 32-03 Enterprises, Inc., 697 F. Supp. 132 (E.D.N.Y. 1988). The account stated need not necessarily be based on a final statement of account: invoices that are submitted on a regular basis can also create an account stated. See Hackensack Cars v. Lifestyle Limousine, 1990 U.S. Dist. LEXIS 6391, at *11; In re Ralph Lauren WomensWear, Inc., 204 B.R. 363, 375 (Bankr. S.D.N.Y. 1997).

Here, not only did Castco fail to object to the account stated within a reasonable time, it made assurances of payment and, indeed, rendered a number of partial payments of the balance due. Both partial payment and assurances of payment after receipt of an account stated are evidence of assent to the account stated. Itar-Tass Russian New Agency v. Russian Kurier, Inc., 1999 U.S. Dist. LEXIS 1101, at *13-*14, *16, *17, *19 (S.D.N.Y. Feb. 4, 1999) (partial payment); Hackensack Cars v. Lifestyle Limousine, 1990 U.S. Dist. LEXIS 6391, at *11 (defendant's testimony that he would pay outstanding notes if he had the money to pay them and, indeed, did pay four of ten promissory notes, constituted admission of account stated); Ally & Gargano v. Comprehensive Accounting, 615 F. Supp. at 429 (where defendant expressed assurances that it would try to pay balance due and made partial payment of balance, it "openly acknowledg[ed] that it owed [plaintiff] the balance due"); In re Ralph Lauren WomensWear, Inc., 204 B.R. at 375 (repeated assurances of payment); Galbreath-Ruffin Corp. v. 40th and 3rd Corp., 19 N.Y.2d 354, 367, 280 N.Y.S.2d 126, 134, 227 N.E.2d 30, 36 (1967) (partial payment); Morrison Cohen Singer & Weinstein, LLP v. Ackerman, 280 A.D.2d 355, 720 N.Y.S.2d 486 (1st Dep't 2001) (partial payment coupled with assurances of payment; defendant's general complaint that bills were mounting and she could not afford to pay them was not a sufficient objection to account); Emerick Assocs. v. Classic Tool Design, Inc., 260 A.D.2d 875, 688 N.Y.S.2d 792 (3d Dep't 1999) (dicta; defendant indicated that it would pay balance due, but that plaintiff would have to be patient); Speciner v. Parr, 252 A.D.2d 554, 675 N.Y.S.2d 648 (2d Dep't 1998) (partial payments).

Moreover, "under the account stated doctrine[,] all items that could have been, but were not, disputed are deemed settled because if certain items in an account rendered are objected to within a reasonable time, and others are not, the latter are to be regarded as covered by such an admission." In re Rockefeller Center Properties, 272 B.R. 524, 545 (Bankr. S.D.N.Y. 2000), aff'd sub nom NBC v. Rockefeller Ctr. Props, 266 B.R. 52

(S.D.N.Y. 2001), aff'd, 46 Fed. Appx. 40 (2d Cir. 2002) (internal quotation and citation omitted); see also Jim-Mar Corp. v. Aquatic Constr., Ltd., 195 A.D.2d 868, 870, 600 N.Y.S.2d 790, 791 (3d Dep't), appeal denied, 82 N.Y.2d 660, 605 N.Y.S.2d 6, 625 N.E.2d 591 (1993) (neither defendant's communication to plaintiff about potential backcharges for fabrication errors, which plaintiff promptly responded to and corrected without further complaint by defendant, nor its offer of partial payment constituted objections to payment of account rendered).

Furthermore, where the plaintiff has set forth a prima facie claim for account stated, the defendant must come forward with documentation of any alleged objection made to the account, and cannot rest on conclusory and unsubstantiated allegations, lacking in detail, that it earlier objected to the account stated. See Lankler Siffert & Wohl, LLP v. Rossi, 287 F. Supp. 2d 398, 408 (S.D.N.Y. 2003) (Sweet, J.).

Lisa Solomon, New York

Gee, if I had only known that absolution powers came with the license. :)!!

Robert J. Maynes, Idaho Falls, Idaho

It’s nothing special -- we do a lot of that kind of thing on Solosez, giving people permission that they don't actually need, blessings for doing what's Right instead of what others tell them to do, that sort of thing. You also have this power -- look inside yourself!

Mary L. C. Daniel, Winchester, Virginia

I.. have...seen...the ..LIGHT!

Jake Blues

This is an interesting subject, and one with some caselaw to consider. The Indiana Supreme Court held that failure to properly bill (per the fee agreement) can be a violation of Rule 1.4(a) - Duty to Inform Client.

"With four of the clients, the Commission charged a violation of Rule 1.16(d) for not promptly returning unearned retainer funds upon termination of his services. It also charged that by not sending monthly billing statements to two of the clients as required by the attorney-client contracts, the respondent failed to keep two of the clients informed of the status of their cases in violation of Rule 1.4(a). As to one client, the Commission charged that the respondent violated Rule 1.15(b) by failing to timely provide a full accounting regarding the advanced retainer payments when the client terminated the respondent's services. ...

"We therefore approve and adopt the hearing officer's conclusions that the respondent's conduct violated Rules 1.4(a), ..."

Kendall http://www.in.gov/judiciary/opinions/previous/archive/03240401.bed.html was disciplined for lots of things, including not billing his clients and thereby keeping them informed.

So bill your clients!!

Ted A. Waggoner, Rochester, Indiana

Back to Popular Threads