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THE ART OF COLLECTIONS IN A DOWN ECONOMY: SIMPLE OFFICE PROCEDURES CAN REAP BENEFITS FOR YOU AND YOUR CLIENTS

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When driving through California's main streets and thoroughfares, it is sobering to see the number of storefronts and businesses that have cleared out, with the empty spaces replaced by giant "For Lease" signs in the windows. The downtrodden economy has affected, and will continue to affect, every fabric of our society.

One of the segments hit the hardest is the solo and small firm law practice. With capital influxes drying up and nowhere to turn for a personal bailout, many have had to shutter their dreams. Not being able to collect from clients for services rendered is a major reason many solo and small firm practices are being forced to close their doors. Yet, remedies are available to collect what is owed. With simple law practice and management techniques, attorneys can assist their clients in getting back on track.

Clients who have promptly paid in the past are allowing payables to exceed 30, 60, 90 or 120 days. When a friendly reminder from the attorney or a past due notice does not get the job done, attorneys should consider taking their collections efforts to the next level.

Receipt of a letter from an attorney, emblazoned with the firm's letterhead, may be sufficient to get the attention of a client. Many individuals will respond to a letter from an attorney because of the fear of a lawsuit, effect of a judgment on their credit rating, or even the thought that the individual's public perception will be diminished.

Often, an attorney letter is all it takes for an overdue invoice to be paid. A form letter can be generated and saved in your firm's word processing directory and customized as needed. A follow-up telephone call to the individual from the responsible partner will show persistence and will put added pressure on the individual to pay. Although an attorney cannot talk to a defendant who is represented by counsel, there is no prohibition on direct contact before a lawsuit is filed if the individual is not yet represented. The only caveat is that the attorney must not run afoul of the Fair Debt Collection Practices Act (See <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre27.pdf>).

Once a telephone call is placed to the debtor or a letter is sent, various calendaring tools can provide systematic follow up that may lead to payment of the invoice. Classic methods included using a "tickler" or "accordion file" and the placement of a copy of the letter or memo regarding the phone call at 7-, 14-, and 30-day intervals. Other methods

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include setting calendar entries on desktop, cloud-based, or mobile calendaring software to remind the attorney of the need to follow up the correspondence in the future.

At this juncture, the work incurred for the attorney's time (drafting a demand letter and a telephone call or two), can be accomplished in an hour or less and is therefore usually justified. If these tactics are successful, the majority of unpaid invoices will be collected. What if these additional tactics are not successful?

A decision must be made: does the size of the unpaid invoice warrant sinking more money into the endeavor to collect? Does the debtor have assets that are collectible? (Investigation of the debtor's assets can be achieved through free Internet searches or on paid legal services software sites) Is there potential for future business from the client? Was the client referred by a trusted source? The decisionmakers of your firm must analyze the pros and cons of pursuing unpaid invoices. Every situation is different and there are no bright line rules. However, if the decision is made to proceed, simple processes can help collect the unpaid fees.

Fee Arbitration

Most local bar associations provide an attorneys' fees dispute arbitration and mediation program. These programs allow clients and attorneys to resolve disputes

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concerning fees and costs charged by the attorney through an informal, low-cost alternative to the court system. Most cases take approximately four to six months to complete. These programs provide a procedure by which a client may resolve fee disputes with his or her attorney efficiently and without the necessity and expense of hiring a second attorney.

The Mandatory Fee Arbitration Program provides the opportunity to have a neutral arbitrator decide the

appropriate amount of attorney's fees for professional services. Fee Arbitration is mandatory for the lawyer if the client elects to have the dispute resolved through an MFA program.

Business and Professions Code Sections 6200-6206 require attorneys to arbitrate fee disputes and to provide written notice of the client's right to arbitrate prior to or at the commencement of any proceeding against the client. Once an attorney sends a client a written notice of the right to arbitrate (a form can be found here: <https://www.sfvba.org/UserFiles/File/public/NOTICEOFCLIENTSRIGHTTOARB.pdf>), the client has 30 days from the date the client received the form to file a request for arbitration on the forms provided. If the client requests arbitration, the bar association will provide the attorney and client with the necessary information to proceed. However, if the client does not file within 30 days, it may constitute a waiver of the client's right to request or maintain arbitration. Further, if the client does not elect to arbitrate the dispute, the attorney can proceed with the collection efforts outlined below.

Small Claims

A sole practitioner can sue in Small Claims Court for \$7,500.00. *See* Cal. Code Civ. Proc. §116.221. A corporation or business can sue for \$5,000.00. *See* Cal. Code Civ. Proc. §116.220. A Plaintiff may only file two (2) cases each year for more than \$2,500.00. *See* Cal. Code Civ. Proc. §116.231; <http://lasuperiorcourt.org/smallclaims/ui/>. Small Claims Court is informal, without the customary rules of evidence. There are no juries. Although lawyers are customarily excluded from representing clients in Small Claims Court, if a law firm or attorney is the Plaintiff, the attorney or a member of the firm can litigate the claim. In Los Angeles County, Small Claims can be filed online. *See* <https://lasuperiorcourt.org/efiling/Login.aspx>.

Upon filing a Small Claims action, the defendant is entitled to file a cross-claim. Depending on the relationship with the client, it is entirely possible that the client will cross-claim for fees previously paid that they felt were unwarranted.

Limited Jurisdiction

When the debt is over \$7,500 but less than \$25,000, a complaint can be filed in the Limited Jurisdiction

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Courts of the Superior Court. See Code Civ. Proc. §§85-100. Once the complaint is filed and served on the defendant, a judge will be assigned and the defendant will have 30 days from the date of service to file a responsive pleading. Again, if the debt is undisputed, the defendant will likely not bother to respond. However, the hope is that the complaint filing will force the defendant into either paying the full amount of the claim or settling for a mutually acceptable amount.

Unlimited Jurisdiction

When the debt is for over \$25,000, a complaint can be filed in the Unlimited Jurisdiction Courts of the Superior Court. An attorney will draft an initial complaint. As with cases in Limited Jurisdiction, if the defendant fails to appear, the default can be taken and collection efforts ensue. However, if the defendant files a response to the Complaint (which may include a Cross-Complaint), the case will continue.

If a judgment is entered by the Court and the judgment debtor refuses to pay the judgment willingly, the attorney can attempt to collect. An attorney can take a number of actions to enforce the judgment. These include:

- Garnish the judgment debtor’s wages until the debt is paid;
- Levy execution on the debtor’s bank accounts so the judgment debtor’s bank accounts will be accessed to pay the judgment;
- Record an Abstract of Judgment. A lien is placed on any real property owned by the judgment

debtor. If the property is sold or refinanced, the creditor should be paid out of proceeds before the title can be transferred;

- Record a personal property judgment lien with the Secretary of State;
- Require a “till tap.” Money is removed by a sheriff from the cash register of a judgment debtor’s business;
- Place a “keeper” in the debtor’s business. Here, a sheriff will remain in the judgment debtor’s business and collect all funds until the judgment is paid. This can include cash, checks and credit card drafts; or
- Conduct a judgment debtor’s examination. The judgment debtor appears in court to answer questions, under oath, about money and property that can be used to pay the judgment. The attorney can subpoena documents such as bank statements, pay stubs and property deeds.

With the assistance of the legal system, and simple law practice and management techniques, receivables can be collected efficiently so that solo and small law firms can put more money in their pockets—and increase their chances of survival—even in these economically uncertain times.

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