What to Do If You Get Sued for Debt

If you get sued for debt, you may start to panic, but don't. Instead, take a deep breath and resolve to address the issue in a way that protects your interests. We can break litigation into three "phases" or stages, each with a few steps. This report will show you exactly how to approach the first phase and every step in it. Phase One is the beginning of the lawsuit. Phase Two is negotiation and preparation, and Phase Three – which is rarely reached in debt cases – is actual trial. This report will give you a preview of Phases Two and Three.

Introduction

A lawsuit – even a debt collection suit - taken as a whole is not totally simple, and you will be learning how to do some things along the way, but each actual step will be pretty simple and easy. If you can do it without becoming swamped and overwhelmed, it's a good idea to read the Litigation Manual (if you have it) as soon as you can. This will help you begin to form a systematic idea of what is happening. If for any reason reading the Manual doesn't work for you – because it makes you feel too overwhelmed, or if you just don't like to read that much, you can put this off. You might do better to watch the video series "Ending the Debt Nightmare." The points I want you to take from that are that:

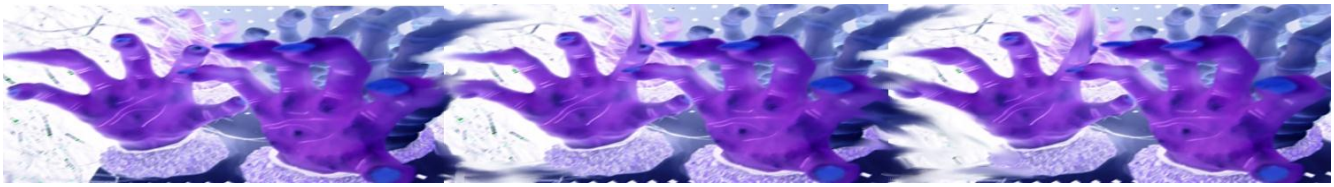
1. Debt collection lawsuits are not complicated
2. Debt collectors probably do not have what they need to win and are hoping to scare you into giving up
3. Debt cases quickly become unprofitable to the debt collectors if you fight
4. The more they think you will fight, the more likely they are to give up
5. You just need to follow some simple steps to keep fighting.

With these things in mind, let's start with Phase I of the lawsuit.

Phase I

Phase I begins with your first awareness of the suit, when it is served on you or otherwise find out about it. Since you are reading this report, you have already taken Step One.

Step One: Get Resolved Even if It Seems Scary



Take a deep breath and resolve to respond in a rational, rather than emotional (fearful), way. Law suits seem scary, but a debt collection law suit is a simple business proposition. The debt collector filed suit against you because it hopes to make a profit. It will pursue the suit as long as it thinks it will make money, and it will drop the lawsuit if it becomes aware that it will lose money if it continues to pursue you.

It's as simple as that. They don't take it personally, they're not out to get you, and they don't have any real moral point of view in the matter. It's just a business for them. You will win the case if they come to believe beating you will cost too much money – whether or not you could actually win the case (and get a judgment of victory). Fighting the case will not "make them mad" – at least not in any important way. Believe me, these guys file *millions of these suits per year*. Nothing you do will be that new to them! And their skin gets pretty thick.

Don't worry about the Petition. Don't worry about what it says or how much they say you owe. Your goal is very simple: Make it your business to show them that suing you will lose them money. In other words, you must make the debt collectors realize that they can make more profit by leaving you alone than by chasing you. **How much they say you owe actually has very little to do with this question.** To understand more about why this is so, take a look at this video: "Opportunity Costs."

Step Two: Evaluate the Situation

Read the Petition. Look at it and see how it is organized. The debt collectors could be suing you for the same amount of money in more than one way (that's called, "alternative theories") or could be suing you for more than one thing. If they're doing either of these things their case will be divided into "counts." That is, there will be a "Count I," "Count II," etc.

Counts are legally independent, but if you're being sued on alternative theories and they won, you would only owe the money once. Remember that debt collectors make their money by getting people to give up, so they try to make the petitions scary. For now, you just want to see what they say they want and why they say they should get it. **Remember that how much they say they want has very little to do with the way they will treat you.** You will have much more to say about that than they do.

Who is suing you and for how much money? The amount they want will be in what we call the "wherefore clause" which is normally the last paragraph of each "count." What do they want? What's your worst-case scenario? That means, what is the worst that can happen to you if the debt collector gets a judgment? Write that number down.

The number you wrote down, no doubt, was the amount they claim in the lawsuit. That is, you assumed that if they got a judgment from you they would collect it all – that was your worst case, right? Could they get that, though? Do you have that amount of money sitting around in an account that the debt collectors know about? (If so, you should seriously consider moving the money to a different bank if you ever start to worry about losing the case). Do they know where you work? And do you make so much that they could rapidly and easily get all they claim by garnishing your wages? You know, they can only take so much of your paycheck, depending on how much you make. Many of my clients and customers make little enough money that garnishing them would be a nightmare – for the debt collector.

So chances are that the real worst case scenario is actually much, much better than you first thought. And here's something to keep in mind: the debt collectors do not expect to get nearly as much money as they claim you owe. If you file an Answer to the Petition – and really, most times even if you don't – **they'll usually settle with you for 30 percent less than the lawsuit just for asking**. And, even if they ultimately win the lawsuit and do get a judgment, they'd probably still settle with you for 30% less than they claim you owe. That's because they don't think they can collect if you try to make it hard for them to do so. And they're right.

We are just trying to figure out a realistic "worst-case" scenario here so that you, like the debt collectors, can make an economically sensible decision.

How far "down the food chain" are the debt collectors who are suing you? Look at the petition and try to figure out who has ever owned the debt. If the party suing you is a debt collector, it means that they were "assigned" the debt (someone sold it to them). See if you can figure out who that was – was it another company you've never heard of? Or was it the person or company that originally claimed you owed it the money (called, "the original creditor"). If the company suing you is an original creditor, there is (still) a good chance they will not have the records they need to beat you. **If it is a debt collector, the plaintiff almost certainly does not have, and cannot get, the records they need to win their case**. And if the debt has been assigned more than once, there's really almost no chance at all the debt collector could ever beat you if you don't beat yourself.

That might even be true of the first company that bought the debt from the original creditor. No matter what, though, your chances of winning are excellent.

Step Three – Lawyer or No Lawyer?

In Step Three you decide whether or not you need and should hire a lawyer? Or whether you would be better off representing yourself. I have written a report on this, "Do I Need a Lawyer?" The question boils down to how bad your worst case is. If you *cannot afford to lose*, and you *can afford a lawyer* and can also find a good one (not always an easy task), then you will probably want a lawyer. Otherwise, this might be a good kind of case to handle by yourself "pro se" (legalese for "by yourself").

The rest of this Report will assume that you decided to represent yourself. Congratulations!

Step Four – Figure out Due Dates

Figure out when the Answer is due. This is probably a simple question: it probably says right on the Summons the Petition was attached to. The Summons is the document theoretically created by the court that says the debt collector is suing you and that bad things will happen if you don't answer and show up in court on a certain date. That date is your first important date – put it on your calendar and figure out how to be in court on that date. If you absolutely cannot be in court on the date specified, click here for a suggestion on What to Do to "Continue" a Court Date to a Different Date. This would be a good time to look up and get your court's Rules of Civil Procedure.

Step Five - Look Closely at the Petition and Your Possibilities

Read the Petition again. Was there an affidavit attached? Were there false statements in it? Bogus notices? Anything deceptive? If so – and there usually are – then you may have a counterclaim under the Fair Debt Collection Practices Act (FDCPA). It will be very helpful if you do. Also – did you seek verification of the debt at any point and not receive it from the debt collector? If so, that would be a claim under the FDCPA, too.

I recommend that you do a little research at this point if you can. This will begin to give you some understanding of the *legal* issues involved. I want to emphasize that the really important issues in your case the issues that will determine whether you win or lose, are almost certainly practical, economic issues. But these issues will be played out on the legal playing field, so to speak. So don't let the law overwhelm you, but you need to start familiarizing yourself with it as soon as you can. It will have a (small) effect on your Answer but figure much more importantly into the "discovery" process where you formally start trying to find the information you need to win the case and drive the debt collectors away.

Step Six – Respond to the Petition (Answer or Move to Dismiss)

Respond to the Petition. You can file a Motion to Dismiss if you think the debt collectors have not said what they needed to say (assuming it is true) in order to win their case. That is, if everything they say is true and they can prove it (two *very* different questions), have they alleged (said in their lawsuit) everything they needed to allege to allege a legal claim against you? If not, you might want to file a motion to dismiss.

If you cannot file a motion to dismiss – and also for every count that you do not seek to have dismissed – you will need to file an Answer. Simply filing an Answer is very easy – it is the least of your worries! – It really should take you about ten minutes, and in most jurisdictions you could simply hand-print "denied" (or admitted) at the end of each of the debt collector's allegations. However, I am ***not*** recommending this! It's too easy to do a better job, and doing a better job will influence the way the court and the debt collector see and deal with you for the rest of the case. My point, though, is that filing an Answer is easy, and there are few formal requirements – if any. Filing a Counterclaim is only slightly harder – you may want to explore my site for ideas of possible counterclaims.

You do have to file a copy of your Answer (and Counterclaim) with the court (and it is usually advisable to do it in person rather than trusting the mail) and "serve" a copy on the debt collector's lawyer (and first class mail is usually fine for that – but check your rules of Civil Procedure if in doubt).

If you can send some discovery along with your Answer you put yourself ahead of the game. If you cannot do that, you will want to do it without delay right after you send (or give) your Answer to the other side. You can find out about how to conduct discovery in my Litigation Manual and Forms, or through Videos available to members, or you can research the questions on my site and others.

If you can do some research and will be able to spend an hour or two on discovery, figure out what the bad guys need to prove in their case against you. You can do this by googling your state's name, plus the title they use for each count, in quotation marks (Suit on Account Owed = "Account owed")(Suit for Breach of Contract = "Breach of Contract"), plus the words "prima facie case." This will usually bring up cases where the judges say what has to be proven in order to establish that kind of claim. You want to ask questions and devote your requests for documents to those issues. You'll get samples of discovery either with the Litigation Manual and Forms or Membership, or take a look at my article on Conducting Discovery (free).

Step Seven – Prepare for Court

Preparing for your first day of court, and going there, is not difficult. What you wear is not very important, and overdressing is not a very good idea. No one expects you there is a suit or ultra-formal

attire. In some courts the lawyers must wear full suits, but in most courtrooms non-lawyers do not have to do so. As with all things involving court, though, you can check beforehand simply by calling – or even better, by going there yourself and observing. It is a good idea to go to court before the date and time you are required so that you know how much time it takes to get there and so you are at least somewhat familiar with your surroundings. My Litigation Manual goes into this in more detail, but for present purposes just be aware that you will be more comfortable if you have been there before.

Do not take anything remotely like a weapon into court! And do not make jokes about weapons with the security guards. They have very little sense of humor about that – don't try to find it.

Phase II

Phase II is the preparation and negotiation phase. The process becomes more "fluid" and less predictable during this phase, but in general you will be "moving towards trial." I put it that way (in quotation marks) because the vast majority of cases – over 90% of them – never actually go to trial and thus are not really moving toward trial at all. But don't let the fact that most cases settle without trial fool you.

There's an old saying in the law, that negotiations are conducted "in the shadow of the law." That means that what people will agree to do often closely resembles what they think a judge would *make* them do if the case went to trial. If you were absolutely sure you were going to win the case, for example, how much would you pay the other side to make it go away? Perhaps nothing at all – or perhaps only enough to save you the value of the time and effort winning would cost. Conversely, if you were sure you would lose, wouldn't you pay something more in order to avoid that?

Debt collection cases are slightly different than most cases, though, because of how much debt there is that is available for debt collectors to prove. Again, that brings up the issue of opportunity costs and greatly increases the cost of the debt collector chasing you because chasing you means *not chasing* many other people who would pay more quickly and easily than you would. Thus, rather than just attempting to show the debt collector that you would eventually win, you are also trying to show the debt collector that it faces and endless and time-consuming journey to the end. You want them to know that, win or lose, it's going to cost them a lot to keep after you.

Discovery

At the end of Phase 1 you had begun discovery, which is the formal process of seeking information from the other side that will help you win the case. It is my suggestion that you make sure you are the first one to serve discovery on the other side. This is so that you can have the time you need to pursue your discovery – and so you can see how the other side plays the game. Because they are not going to give you much of anything in response to your questions.

In reality, they won't give you anything because they do not have anything, but the game they are playing is to try to hide the fact that they started with nothing and cannot get anything. So you will receive many, many objections and then, "without waiving objections," they will give you all that they have or can get, namely some computer-generated "statements," perhaps an affidavit from some low-level employee of the debt collector claiming that the records are accurate, and possibly a generic (usually much-faded) "card-holder agreement." The statements will, as I said, be generated from

computer records (that no one from the debt collector can authenticate – that is, swear that they are accurate based on personal knowledge), and none of the rest will have any direct connection to your account at all. That is because the debt collectors have no real evidence.

Their goal is to hide that fact from you and the court.

So they will also claim to be conducting an "on-going investigation" which could yield more documents at any time. They promise they will give them to you if they find anything. Of course there is no on-going investigation, and they will never find any more documents. A main goal of the discovery process for you is to make them admit that.

Motions

Remember that your goal is to expose how little the debt collectors have or can get, while theirs is to hide that fact and try to get you to give up or quit fighting. You will use a motion to compel and, possibly, a motion for summary judgment, to smoke them out. On the other hand, they will likely try to use a motion for summary judgment to try to make you fold – or to pull the wool over the judge's eyes before you get a chance to expose them.

As you sharpen your discovery and fend off their motion for summary judgment, you will learn what you need for Phase 3, the trial phase.

Phase III

Phase III is the Trial phase, where the case actually goes to trial – the part with "fireworks" in most people's thinking. As I've said, though, most cases never go to trial – fewer than 10% of them do. In my opinion, if your case goes to trial that means you have missed the opportunity to force them out earlier – you have not convinced them that to keep chasing you is too expensive. In other words, you should not be in a hurry to get to trial. You *want* Phase 2 to take a long time and require a lot of effort. By the time you get to Phase III the debt collector thinks it can see the light at the end of the tunnel, and that represents a sort of failure for you.

But not a total failure. You still have an excellent chance to win at trial if you have managed to limit the amount of evidence the debt collector can use at trial (only what it has revealed to you, if your discovery was good) and if you have learned how evidence can be attacked and prevented during the preparation stages. An important part of the YourLegalLegUp agenda is to help you develop the

understanding and judgment you will need if the matter goes to trial.

Remember that trials are almost always won or lost by *evidence*, not "style." Specifically that means that most debt law cases will be decided, in the final analysis, based on whether the debt collectors can persuade the courts to allow them to use their make-believe records or not, and this in turn will almost certainly be decided based on your understanding of the rule against hearsay and the "Business Records exception to the rule against hearsay." Understand these two rules and how to use them and you will probably win at trial even though you are not a lawyer and whether you stutter and stumble or not.

Keep your head, know how and when to object, and avoid admitting anything, and you will probably win even if the case goes to trial. You should.