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**Anatomy of the Collections Process:  
AN OVERVIEW WITH EFFICIENCY TIPS FROM A  
SEASONED COLLECTIONS LAWYER**

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# **ANATOMY OF THE COLLECTIONS PROCESS: AN OVERVIEW WITH EFFICIENCY TIPS FROM A SEASONED COLLECTIONS LAWYER**

## **I. INTRODUCTION.**

Tip: Seek the expertise of fellow collection attorneys. Experience, even borrowed, is important in your practice. This is especially true as local practice varies from county to county.

As with any area of the law, there are attorneys who can do a better job of collecting debt than others. Likewise, any attorney can collect debt if he/she puts his/her mind to it. The purpose of this outline is to provide a skeletal outline of what one should know in order to proceed with collecting debt, plus practice tips gleaned from years of collecting debts in Texas and study of the collections process with other seasoned collectors. I have been privileged to serve on the committee responsible for editing the Texas Collections Manual, Third Edition, published by the State Bar of Texas. Each time the committee meets we share experiences and learn something new. So, I must say thanks to my fellow committee members for their many contributions to what I know about the collections process: Dan Goldberg (Houston), Bruce Atkins (Houston), Stuart Schwartz (El Paso), Dean Hester (El Paso), Manny Newburger (Austin); Barbara Barron (Austin), Stephen Sather (Austin) and Darlene Smith (Houston), Marty Novak (Austin), as well as Sharon Sandle of State Bar Books and Systems.

## **II. FEE AGREEMENT.**

Tip: As with any client relationship the fee agreement is key to defining the financial arrangement between the attorney and client. The signed fee agreement and any required retainers should be in hand before the demand letter goes out.

### **A. Fee Agreement.**

The fee structure available for collection matters will vary from firm to firm. Some collectors will handle collection matters on an hourly basis and others on a contingent fee basis. The size of the accounts and their collectability will often dictate which arrangement makes the best business sense for the client. Collections on a contingent fee basis should not

be considered to be “free”. Even though attorney’s fees are not paid out of pocket, a portion of the account will go to the attorney if collected. And, regardless of whether the account is collected, there will still be costs associated with filing and service of the suit, perhaps copy and mailing costs, and various fees for post-judgment writs and service costs. Further, most contingent fee agreements provide for conversion to an hourly fee if a counterclaim is filed and must be defended. The best fee arrangement will vary and sometimes require the creditor to periodically do a cost benefit analysis of its collection activities. Similarly, the attorney accepting a collection matter will need to do a cost benefit analysis on whether to take the case. As always, the fee agreement should be in writing. To be enforceable, a contingent fee arrangement must be in writing. Texas Disciplinary Rules of Professional Conduct 1.04(d). Sample hourly and contingent fee agreements are included as Attachments 1 and 2 to this paper.

Tip: While the fee agreement is an important first written communication with the client, follow up communications serve to nurture the attorney/client relationship and insure its success.

## **B. Client Communications.**

Attorney disciplinary committees will tell you that the number one client complaint is failure to return phone calls. This should tell you that client communications should be a number one priority. Communications include: copying the client with all documents generated in the file, responding to phone calls and email inquiries promptly, taking the time to drop the client a one minute email status report as events unfold in the file and also when there are delays on the file’s progress, accurate and detailed invoices of fees and expenses, regular and detailed disbursements of funds collected, and monthly status reports that also serve as internal dockets.

## **III. THE CLIENT’S FILE.**

Tip: Adequate documentation of the claim to be collected will kick start an effective collection action. With repeat creditor clients, the “package” will evolve over time to include regularly used information. For one-time collection matters, the list of documents and information to include can be set out in the fee agreement.

The client's file will provide the answer to the first question one should ask when commencing collection action: Is it a consumer or a commercial debt? See part IV below. The client's file will also provide invaluable information which will allow the attorney to do the best job possible to collect the debt.

Some collection clients will want to be as lean as possible when referring claims for collection i.e. a statement of account showing the balance due.

The preferred collection package would include:

- (a) The credit application and any guaranties;
- (b) A copy of the summary statement of account, as well as copies of the unpaid invoices;
- (c) The debtor's current address, phone number and accounts payable contact;
- (d) Copies of any agreements or correspondence between the creditor and the debtor relating to payment of the account and relating to any complaints by the debtor regarding the creditor's services or products furnished;
- (e) Copies of all financial statements and credit reports obtained on the debtor and, if credit was not recently approved, new credit reports on the liable individuals.

#### **IV. CONSUMER OR COMMERCIAL?**

Tip: Always ask the client: Did the debt arise out of a commercial transaction or a transaction primarily for "personal, family or household purposes"? In my firm, collection matters involving consumer debts are put in red file folders and an additional label on the front of the file reminds us that it is subject to the FDCPA.

##### **A. Federal and State Statutes.**

The first question to be answered when presented with a debt to collect is whether it is a consumer debt or a commercial debt. The answer to this question triggers the manner of collecting the debt as defined by federal and state law. A full discussion of the statutes and case law regarding collection practices is beyond the scope of this paper. However, the two statutes most usually addressed are the *Federal Fair Debt Collection Practices Act, 15 U.S.C.A. §§1692 et seq.* (hereinafter "Federal Act") and the *Texas Debt Collection Act, now included in Chapter 392 of the Finance Code (Vernon 1998)* (hereinafter "Texas Act"). These apply to the collection of consumer debts and each has its own definition of consumer debt. Basically, it is a debt arising out of a transaction wherein the subject of the transaction is primarily for "personal, family or household purposes." Collection of commercial or

business debt is not governed by these statutes; however, the statutes provide good standards to comply with even in collection of commercial accounts. The Texas Act applies to in-house collection activities by the creditor, as well as activities by collection agencies and other outside collectors. The Federal Act only applies to third party collectors who regularly collect consumer debt unless the creditor is collecting its own debt using a name other than its own that would indicate that a third party is attempting to collect a debt. For an extensive treatise on the Federal Act and on the debt collection statutes of each state see *Newburger and Barron, Fair Debt Collection Practices: Federal and State Law Regulation (Sheshunoff & Pratt 2002)*.

##### **B. Demands.**

The notice language from the Federal Act should be included in the initial demand letter. A form consumer demand letter is included as Attachment 3. All subsequent contacts with the debtor, whether oral or in writing, should contain the "Miranda Warning", which is also found in the initial demand: "This office is attempting to collect a debt and any information will be used for that purpose."

##### **C. Venue.**

The determination of consumer v. commercial debt also has impact on proper venue. **Caution:** If it is a consumer debt, the action must be brought either in the county in which the defendant signed the contract or in the county where the defendant resides at the time the suit is filed. *Civ.Prac.&Rem.Code§15.035 (Vernon 1986)*. It is a violation of the Texas Deceptive Trade Practices Act to file suit on a consumer debt in any other county than where the defendant resides at the time of commencement of the action or in which the defendant in fact signed the contract. *Tex.Bus.&Com.Code §17.46(22) (Vernon Supp. 1998)*. It is also a violation of the Federal Act *15 U.S.C.A. §1691i; (a) (West 1998)*.

#### **V. DEBTOR LOCATION.**

Tip: I spend more time locating debtors and their assets than I do in heated court hearings. When the traditional methods don't lead to debtor, a good investigator may be a wise investment on the file.

Locating the debtor is sometimes the biggest hurdle in debt collection. The client's file will hopefully provide the best leads for locating the debtor: the debtor's full legal name, date of birth, driver's license number, social security number, last known business and home addresses and form of entity

information, if not an individual debtor. Common location tools include:

**A. Address Service.**

Correspondence sent to a debtor's address marked "Address Service Requested" will result in the correspondence being forwarded to the debtor (if the forwarding order has not expired) and a notice with the forwarding address to the sender. Even if the forwarding order has expired, the envelope will often be returned with a forwarding address label containing the new address.

**B. Driver's License Checks.**

The individual's name, date of birth and driver's license number submitted to the Department of Public Safety will produce a report containing the last address submitted to the Department of Public Safety. A relatively cheap internet service, [PublicData.com](http://PublicData.com), provides driver's license searches by name and driver's license numbers. It also includes voter registration and criminal record information.

**C. Licenses.**

Licensing boards often have current addresses for their licensees and a variety of other identifying information is available. Some professional licensing boards have website access to the information.

**D. Credit Reports.**

If the creditor has permission (usually included in the credit application) to run a credit report, updated reports at the time of referral can be useful if the debtor's address is unknown or uncertain.

**E. Property Records.**

Appraisal district records, or at least contact information for same, can be accessed online. In addition, some counties provide web access to filings in their Official Public Records.

**F. Corporate Information.**

Corporate information on file with the Texas Comptroller can be accessed at <https://ourcpa.cpa.state.tx.us/coa/Index.html>. This information may be dated. Before filing suit on corporate debts, it is advisable check with the Secretary of State's office for registered agent/office information. (512) 463-5555 or online at SOSDirect, <http://www.sos.state.tx.us/corp/sosda/index.shtml>.

**G. Internet Search Services.**

A number of services are available including: Accurant, CompuServe, Lexis-Nexis.com, Westlaw, Ussearch.com, knowx.com, and others referenced above. A simple Google search can also be productive and it is free. If you don't regularly need to track down

debtors, a number of services or investigators may be hired on a one time basis to locate the debtor.

**H. Old Fashioned Tools.**

Don't overlook the phone book, directory assistance, criss cross directories, and a visit to the court house to peruse public records.

**VI. DEBTOR IDENTITY AND MULTIPLYING YOUR DEFENDANTS.**

Tip: Even if the client was not careful to determine up front to whom credit was extended, the effective collection process begins with identifying the debtor and determining if any additional persons or entities should be invited to "the party."

**A. Individuals.**

Suing individuals is pretty straightforward. With complete client information you will hopefully know if you are suing John Doe, John Doe, Jr., or John Doe, Sr. If your debtor, Bill Brown, is actually William A. Brown, Jr., it is always preferable to sue him using his full legal name. Property records, driver's license information and credit reports may help in this determination. You may even want to name the defendant: William A. Brown, Jr. aka Bill Brown. Never assume that your client has given you the correct names or spellings for the defendant. Their records may be based on a handwritten credit application or illegible signature!

Always ask your client if their file contains a personal guaranty. Debts personally guaranteed are often more quickly paid than those that are not.

**B. Sole Proprietorships.**

The sole proprietor or owner of a business is liable for the debts. Hopefully, your client has obtained that person's signature on the application (and contract or order form if in writing). Receptionists, bookkeepers and delivery personnel are seldom authorized to bind the owner and rarely have even provable apparent authority. If the owner of Joe's Antiques is not readily apparent from the file, a search of the assumed name records may be in order. Also, the Texas Comptroller of Public Accounts will have sales tax information, which will in turn provide owner identity. It is a better practice to sue "Joe Smith dba Joe's Antiques" than "Joe's Antiques."

**C. General Partnerships.**

Any partner can bind a general partnership in the ordinary course of business and all partners are thereby jointly and severally liable for the debt. Sometimes the

identity of all of the partners is not readily determined. Your clients should be advised to obtain the names of all partners when extending credit and, if at all possible, obtain their signatures as guarantors. The Business Organizations Code restricts the order of collection against the individual partners unless they are otherwise liable (i.e. by guaranty). *Tex.Bus.Org.Code Section 152.306*. Once determined, all general partners should receive a demand and be included as parties to the suit.

**D. Corporations.**

One of the purposes of incorporating a business is to limit its liability to the assets of the corporation and to protect its owners from personal liability. The president of the corporation is generally authorized to bind the corporation in routine matters in the ordinary course of business. Recovery is limited to the assets of the corporation. Corporate information can be obtained from the Secretary of State (512) 463-5555, or at SOSDirect, <http://www.sos.state.tx.us/corp/sosda/index.shtml>.

**E. Limited Partnerships.**

Limited partnerships are often as insulating from personal liability (and hence collection) as corporations. While individuals are usually the limited partners, the partnership will often have a corporation as the general partner. General partners are authorized to bind the limited partnership in the ordinary course of business. Recovery is limited to assets of the limited partnership and those of the general partner.

**F. Other Entities.**

A full discussion of Limited Liability Companies, Registered Limited Liability Partnerships, Associations and Non-Profit Organizations is beyond the scope of this paper. The key is determining the entity you're dealing with, the identity of the parties who can bind the entity, and the assets available to satisfy creditor claims.

Tip: The opportunity to impose personal liability should never be missed. Personal liability based on forfeiture is an invaluable way to move payment of your client's debt to the top of the debtor's list.

**G. Personal Liability when Charter Forfeited.**

When presented with a corporate debt to collect, one should always check with the Comptroller of Public Accounts to determine if the charter of the corporation has been forfeited. Current forfeitures (with a notation that the corporation is not in good standing) are available at

<https://ourcpa.cpa.state.tx.us/coa/Index.html>. To get complete official information, you can send a letter to the Comptroller. See form included at Attachment 5. This information is important because each director and officer of a corporation whose right to do business within Texas is forfeited will be held liable for any debt of the corporation incurred or created in Texas after the date when the report, tax or penalty is due. The liability accrues as if the officers and directors were partners. *Tex.Tax Code Ann. §171.255 (Vernon 1992)*.

**H. Trust Fund Theory.**

The officers and directors of a corporation that ceases doing business hold the corporate assets in trust for the benefit of creditors. *Hixson v. Pride of Texas Distributing Co.*, 683 S.W. 2<sup>nd</sup> 173 (Tex.App. - Fort Worth 1985, no writ).

**I. Transfers in Fraud.**

Closely held corporations that have closed their doors should not be viewed as a dead end for the debt collector. Often, when the corporation is about to fail, shareholders of these corporations repay loans they made to the corporation, pay long unpaid salaries to themselves, or distribute equipment and inventory in satisfaction of shareholder loans. These can be considered transfers to insiders for antecedent debts in fraud of creditors and can be set aside under the Fraudulent Transfer Act. See Chapter 24 of the Texas Business and Commerce Code.

**VII. AVOIDING THE USURY TRAP.**

Tip: All debts referred for collection which include interest or finance charges should be examined closely to determine the rate charged and whether there is an agreement in writing supporting a charge in excess of 6% per annum.

Small (and sometimes large) business owners often fall into the usury trap by adding to their invoices and billing statements "1 ½% interest on all past due amounts." Sometimes they include this language at the suggestion of their printer or because they see it on so many invoices and billing statements. A full discussion of usury is beyond the scope of this paper, but the guidelines are as follows:

- A. Interest can be charged on past due accounts at the rate of 6% per annum beginning on the 30<sup>th</sup> day after the account is due, even if there is no agreement to pay interest;

- B. Parties to a contract can agree to charge and pay interest up to 10% per annum, even orally (not a good idea!);
- C. If agreed in writing, signed by the customer, interest can be charged at 1 ½% per month or 18% per annum.

See *Finance Code Sec. 301.001, et.seq.* for provisions on interest, usury penalties and curing usury.

Examine the client's file to avoid the usury trap. Is the debtor's signature on a credit application or other contract that contains a provision for charging interest? Relying on an interest provision in the delivery invoices only is not advisable, because the signature of an authorized party on each and every invoice would be required. If the client has committed usury, the Finance Code has provisions for cure, which should be done in the initial demand. See language in Attachment 4 for Notice. Additionally, the client is required to cease any usury violations as to all of its accounts since notice of a violation on one account may put the creditor on notice of violations of a similar nature in its other accounts. See Finance Code Sec. 305.103.

### **VIII. DEMAND LETTERS.**

Tip: Avoid the urge, or the urging of your client, to be overly aggressive with the language of your demand. After all, you want a positive response to the demand letter.

Short and to the point is best. Identify the creditor and balance due. Account numbers and/or invoice numbers may be advisable, although these are usually for the benefit of the client. Demands on consumer debt necessarily include notice language pursuant to the Federal Act. See IV., supra. (A discussion of demands relating to foreclosure of liens on homesteads is beyond the scope of this paper). Attachment 3 are 4 are form demand letters for consumer and commercial debt, respectively. By keeping them simple, you reduce the risk of giving legal advice or running afoul of the consumer debt collection statutes. There is no need to tell the debtor all the nasty things you may do in the event of non-payment.

Send all demand letters by regular mail, address service requested. See page 3 for discussion of address service requests as a means to locate the debtor. If required by contract or statute, also send by certified mail, return receipt requested. If no such requirement, save your client the cost of certified mail and send by regular mail only. Any follow-up correspondence or pleadings to pro se debtors that is required to be sent

by certified mail, return receipt requested, should always also be sent by regular mail, address service requested. Pro se debtors are often allergic to green cards! Faxing and emailing demands can also prove effective.

I don't sue immediately after the expiration of my 10-day demand or 30-day demand. I actually make one to three follow-up calls. I always prefer making phone contact before I sue to discover whether the debtor got my demand, whether there are any defenses and whether a settlement or payment agreement is possible.

### **IX. PAYMENT AGREEMENTS.**

Tip: Though not as "sexy" as garnishments, executions and turnover proceedings, payment arrangements with the agreement to hold off further legal action often result in the most cost effective means of collecting debt, especially when you are dealing with debtors with few unencumbered non-exempt assets.

#### **A. Pre-suit.**

Ninety-five percent of all debtors would write a check for the debt owed-but they can't. The other five percent are stubborn or have a bone to pick. After receiving demand, some debtors will make an offer of payment. You will likely have to make follow-up calls to solicit an offer of settlement or a payout.

The pre-suit payment agreement should clearly reflect (1) the liable party; (2) the balance due; (3) the payment terms; (4) the grace period; and, (5) a release of all claims. Item number five is most important in the event suit becomes necessary. See Attachment 6 for a sample pre-suit payment agreement letter. If an extended payout is required, the parties may agree to an interest charge on the balance due. See Attachment 7 for a sample pre-suit payment agreement letter forwarding a promissory note, as well as the promissory note with release language contained therein.

Sometimes it is good to "incentivize" the debtor to accelerate the payment agreement by providing for a discount of the balance due for early payment, abatement of interest for timely payments, or reduction or elimination of collection costs.

#### **B. Secured by Agreed Judgment.**

Some debtors won't 'get real' until sued. If the creditor goes to the trouble of filing suit, an Agreed Judgment to secure payment is reasonable. Attachment 8 is a letter forwarding an Agreed Judgment for signature, along with an agreement to



make payments on the Agreed Judgment. Some debtors or their attorneys will negotiate that the Agreed Judgment be held in the file and not presented to the court unless and until the debtor defaults in the payment agreement. If so, provide in the Agreed Judgment that interest accrues from the date of the agreement, not the date of the judgment. Please note that a party's agreement to the Agreed Judgment can be withdrawn at any time before it is signed by the judge. That is a downside to agreeing to hold the judgment in file. However, if the party's agreement is withdrawn the creditor could then enforce the judgment as a contract. Debtors should try to negotiate holding the Agreed Judgment in file because, once the judgment is signed by the court, credit reporting agencies will make a report of the judgment entry. Caveat: If the court in which your suit is pending has its cases on the fast track to the DWOP docket, holding the judgment in the file may not be an option. In that case you may be limited to negotiating that the judgment will not be abstracted as long as payments are made.

### **C. Post-judgment.**

Some debtors will make agreements to pay after receiving notice that a judgment has been signed, in lieu of responding to the post-judgment discovery or to prevent the judgment creditor's exercising its post-judgment rights, including post-judgment discovery and remedies. The form in Attachment 8 can be used, minus the first paragraph. The incentive to be left alone is obvious. The creditor's willingness to accept payments even after the judgment is taken can be communicated by letter, in the course of the post-judgment deposition, by including an interrogatory asking for a payment proposal, or even as the constable is about to levy execution.

### **X. SUITS ON ACCOUNTS.**

Attachment 9 is a suggested petition for a suit on an account with a combination sworn account/business records affidavit. This form can be used in any county court at law or district court. It requires insertion of the Plaintiff's name, the court in which it is to be filed, the Defendant's name (and if the defendant is an entity, its agent for service), the defendant's address, the Discovery Level, the suit amount and the attachment of the affidavit and account documents (which can be the account summary, although inclusion of the copies of the outstanding invoices is suggested).

Not all debt will fall under the category of account debt (and expert opinion on what qualifies varies greatly) and may need to be couched in terms of breach of contract. *Tex. R. Civ. P. 185*. Whatever the nature of the debt, keep the petition simple! Note that Justice

Court pleadings and practice were changed substantially effective August 31, 2013. A discussion of those rules is beyond the scope of this paper. *Tex.R.Civ.Pro., 500 et seq.*

### **XI. WHERE TO FILE SUIT.**

#### **A. Amount in Controversy.**

Suits on debts can be filed in a number of courts depending on the balance due.

##### 1. Justice Courts.

Justice Courts – not to exceed \$10,000.00. *Tex.Gov't.Code Ann. §27.031*. Filing fees are less than in other courts; however, these courts are governed by a separate set of rules.

##### 2. County Courts.

County Courts –concurrent jurisdiction with the justice court in civil cases exceeding \$200.00 but not to exceed \$10,000.00; concurrent jurisdiction with the district court in civil cases exceeding \$200.00 but not to exceed \$5,000.00. *Tex.Gov't.Code Ann. §26.042*.

##### 3. Statutory County Courts.

Statutory County Courts – also known as County Courts-at-law – exceeding \$500.00 but not to exceed \$200,000.00 *Tex.Gov't.Code Ann. §25.0003 (Vernon 2011)*. There are exceptions to the cap, ie. Travis County Courts at Law have a \$250,000.00 cap. *Tex. Gov't. Code Ann §25.2292 (Vernon 1998)*. Some statutory court costs will refuse to accept claims under \$10,000 even though they have jurisdiction. It is good to check with the clerk before filing suit.

Note that some counties, like El Paso and Montgomery Counties, share the district clerk, so plaintiffs must mail the petition to the district clerks, then see whether the lottery sends the case to district or county court.

##### 4. District Courts.

District Courts – exceeding \$500.00, with no limit. *Tex.Gov't.Code. Ann §24.0047 (Vernon 1988)*.

#### **B. Venue.**

The County (and precinct if the suit is filed in small claims or justice court) where suit should be filed is governed in part by whether the claim is related to consumer or commercial debt. Venue provisions also vary depending on the court in which the case is filed. (*See Caution note at page 2, if it is a consumer transaction*).

##### 1. Justice Courts.

Justice Courts have their own set of venue provisions. *Civ.Prac. & Rem. Code §15.081, et.seq.*

(Vernon 1986) and Rule 502.4, *Tex.R.Civ.Pro.* Again, the general rule provides for suit in the county and precinct where the defendant resides. A written contract promising performance at a particular place (i.e. a credit application providing for payment at a certain place) may be brought in the county and precinct in which the contract was to be performed. However, suit on a contract involving consumer matters may be brought only in the county and precinct in which the contract was signed or in which the defendant resides. A suit against a corporation may also be brought in the county and precinct in which all or part of the cause of action arose or where the corporation has an agency or principal office. It may be argued that the agreement to pay the creditor in the creditor's county and failure to do so is all or part of the cause of action.

2. County Courts, County Courts-at-law and District Courts.

The general venue rules for these courts are found in Section 15.001, et.seq. of the Civil Practices & Remedies Code. Suits on accounts can be brought pursuant to the general rule.

- (a) in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
- (b) in the county of defendant's residence at the time the cause of action accrued if defendant is a natural person;
- (c) in the county of the defendant's principal office in this state, if the defendant is not a natural person; or
- (d) if the Subdivisions (1), (2), and (3) do not apply, in the county in which the plaintiff resided at the time of the accrual of the cause of action.

*Civ.Prac.&Rem. Code §15.002 (Vernon Supp. 1998).*

For contracts in writing, suit may be brought in the county where the obligation is to be performed if expressed in the writing, or where the defendant resides. Here again, a credit application specifically requiring the debtor to make payment at a particular place, i.e. at the plaintiff's office, would allow suit in the county where the plaintiff does business. If it is a consumer debt, the action must be brought either in the county in which the defendant signed the contract or in the county where the defendant resides at the time the suit is filed. (See *Caution note at page 2, if it is a consumer transaction*).

**XII. SERVICE OF PROCESS.**

Tip: The creditor's attorney is responsible for insuring that the citation is correctly issued, served and return made. Review the citation before it is forwarded for service, work closely with the process server to accomplish proper service and check the citation return before it is filed.

Citations may be served by the Constable, Sheriff or private process server. As a general rule, service on a corporate defendant is accomplished by delivery of the citation to its registered agent, at the registered office, or to its president or vice president. *Bus.Org.Code §5.201(b), §5.255(1)*. The current registered agent and office information can be obtained by calling the Texas Secretary of State at (512) 463-5555 or by accessing SOSDirect at <http://www.sos.state.tx.us/corp/sosda/index.shtml>.

General partnerships are served by delivery of citation to any partner, but each partner to be held individually liable must also be served. *Civ.Prac.&Rem. Code, §17.022 (Vernon 1997)*. Limited partnerships are served by delivery of citation to any general partner or to the registered agent of the limited partnership. *Bus.Org.Code §5.255 (2)*.

When the defendant avoids service of process, substitute service may become necessary. For individuals, on motion supported by affidavit (reflecting attempts to serve the defendant), substitute service may be had by posting on the defendant's door, leaving it with anyone over 16 years of age or by regular mail, without showing actual receipt. *Tex R.C.P.106*. For corporate defendants, the process server must show and say on the return of the unserved citation that the registered agent cannot with due diligence be found at the registered office. The citation is returned to court and a new citation issued for service on the Secretary of State, who in turn forwards the citation to "the most recent address of the entity on file with the Secretary of State", likely the corporation's registered office, but the statute is not clear. The citation served on the Secretary of State should be accompanied by a letter addressed to the Secretary of State requesting that the citation and petition be forwarded to the corporation to "the most recent address of the entity on file with the Secretary of State." *Bus.Org.Code §5.251 – §5.253*.

**XIII. ANSWER DATE AND DEFAULT JUDGMENTS.**

After the defendant is served, the defendant must answer the suit or the plaintiff will be eligible to request a default judgment. The answer is due in small claims courts fourteen days after the date of service.

*Tex. R.Civ.P. 502.5.* If the defendant fails to answer, a default judgment may be entered. In justice courts, the procedure for default is governed by *Rule 503, Tex.R.Civ.Pro.* A sample default judgment is included as Attachment 10. It will bear interest at the judgment rate; but if based on a contract, then the lesser of the two, the contract rate, or eighteen percent (18%). See Sections 304.002 & .003, Texas Fin. Code. For the current judgment rate of interest go to [www.occc.state.tx.us](http://www.occc.state.tx.us).

In the county courts, county courts-at-law, and district courts, the answer is due on or before 10:00 a.m. on the Monday next after the expiration of 20 days after the date of service. *Tex.R.Civ.P. 45.* In these courts, the citation return must be on file ten days, exclusive of the date of filing and the date of judgment, before a default judgment can be entered. *Tex.R.Civ.P. 107.* The plaintiff will need to prepare the proposed default judgment for presentation to the Court. Especially in the event of a default, it is important to review the citation return for accuracy before filing. Request the process server or constable to fax the return for your review before filing.

#### **XIV. MOTION FOR SUMMARY JUDGMENT.**

Many debt collection suits are disposed of as default judgments. The second largest percentage are disposed of with motions for summary judgment. Debtors often file pro se answers – some as simple as a letter to the court. Suits on accounts answered with a general (not sworn) denial are subject to being disposed of by summary judgment. Since the answer can be amended, it is advisable to include two bases for summary judgment (1) that the denial is not sworn and (2) with affidavits supporting the plaintiff's claim. Justice Courts use a different procedure called "Summary Disposition" as described in *Rule 503.2, Tex.R.Civ.Pro.*

Motions for summary judgment will help ferret out those who file answers to buy time from those with genuine defenses and are also great discovery tools. Well drawn summary judgments often require the debtors' attorneys to have serious talks with their clients about fees, resulting in serious settlement negotiations.

#### **XV. PRE-JUDGMENT DISCOVERY.**

Some debt collectors will serve written discovery with the petition. I consider it killing trees, in light of the large number of cases disposed of with agreed judgments, default judgments and summary judgments. But, that may just be a matter of style. Requests for Disclosure, Interrogatories, Requests for Production of Documents and, of course, Requests for Admissions

may be helpful in bringing the case to a close with a summary judgment motion. Debtors may also decide to give in and start paying, rather than doing all the paper work. Pre-trial discovery in Justice Courts now requires a court order. *Rule 500.9, Tex.R.Civ.Pro.*

#### **XVI. MEDIATION AND SETTLEMENT.**

Tip: The purpose of a collections action is to put the most dollars to the client's bottom line. Litigation costs, extensive property exemptions and the value of "bird in hand" are all a part of the cost benefit analysis.

##### **A. Mediation.**

Difficult cases that can't be resolved with discovery and summary judgments should be mediated. It is an excellent opportunity to have a face to face with the debtor and learn the real basis for his resistance to paying a just and lawful debt. Free discovery can also take place on the ultimate collectability of the debt. Before every collection case I mediate, I ask the debtor's attorney to either forward financial statements and tax returns before the mediation or bring them to the mediation. Therefore, if it's a matter of inability to pay, rather than a real defense or just plain stubbornness, I can evaluate settlement in an informed manner.

The mediation is also a way to educate the debtor on the remedies you intend to use if and when a judgment is obtained. Mediations are equally improved in dealing with Rambo opponents and attorneys, as well as clients (both sides) who will not appear in their attorneys' offices and honestly discuss the cases.

##### **B. Settlement.**

Settlement of any case may make sense if it makes dollars and cents! Defenses and counter claims could make pursuit through trial an expensive and risky proposition. Sometimes "bird in hand" is better than collecting the judgment into its renewal period. With the cost and difficulty of collecting debt in Texas the cost/benefit analysis may call for settlement for cash less than the suit amount.

Settlement offers must now be taken more seriously with the passage of Chapter 42, Tex. Civ. Prac. & Rem. Code and *T.R.C.P. Rule 167*, which governs cases filed after January 1, 2004 and the amendments to said chapter and rule applicable to cases filed after September 1, 2011. Together, this statute and rule provide for the shifting of litigation costs when a party rejects an offer to settle a claim and the judgment is significantly less favorable than the settlement offer. The statute and rule govern the manner, contents and timing of the offer. A complete

discussion of the procedure is beyond the scope of this article.

## **XVII. TRIAL.**

Unless the amount in controversy is large, the success of a counterclaim small or the ultimate collectability certain, a cost benefit analysis will generally not justify trial of a collection suit. If trial is necessary, the issues can and should be considerably narrowed by pre-trial discovery and summary judgment.

## **XVIII. POST-JUDGMENT DISCOVERY.**

Tip: You need not wait 30 days to begin the post-judgment discovery process. You can even send out your deposition notice and interrogatories in aid of judgment the day the judgment is signed.

In order to best evaluate the collectability of the judgment and to determine which post-judgment remedies should be utilized, the creditor should permit its attorney to take a post-judgment deposition. Interrogatories are useful, but often the debtor's answers are less than complete. Post-judgment depositions with a request for production of various documents reflecting the debtor's financial situation are much more flexible. Simple forms for individual and corporate judgment debtors are included as Attachments 11 and 12 respectively. The depositions can be taken by tape recording and so the cost of a court reporter is not necessary. Often this is the first time the debtor is face to face with the collection attorney. In addition to discovering the debtor's assets and ability to pay, the deposition meeting can be useful in working on a payout of the debt.

Debtors who fail to cooperate in the post-judgment discovery process can be ordered to comply and eventually held in contempt of Court. The potential of jail time will usually bring the debtor to the table.

## **XIX. WHAT ASSETS CAN A JUDGMENT CREDITOR REACH?**

Tip: Corporations and other entities have no exempt property, but individuals do. A command of what is exempt or not is necessary in order to make the best of your post-judgment deposition, evaluating asset searches and effectively utilizing post-judgment remedies. It is crucial for collectability analysis.

If the debtor is a corporation, or other entity, all of its assets are subject to seizure. However, if the assets are subject to a prior perfected security interest it may not be cost effective to go after the assets if the debtor has little equity in the property. Further, if the debtor's secured creditor seeks to protect its interest in the property, at least one case says that the secured creditor has rights superior to those of a judgment creditor. *See Grocers Supply v. Intercity Investment Properties, Inc.* 795 S.W.2d 225 (Tex.App. - Houston [14th Dist.] 1990, no writ). But see Tex.Civ.Prac. & Rem. Code §34.004 which provides that the judgment creditor can levy on mortgaged property if the mortgagee cannot point out other property of the judgment debtor in the county sufficient to satisfy the judgment.

With individual judgment defendants, the creditor has the added hurdle of determining whether the debtor's property is exempt from creditor claims under one or more statutes. Whole papers are written on this subject as well as the subjects of post-judgment discovery and post-judgment remedies. See [www.dbrownlaw.com](http://www.dbrownlaw.com) for an in depth article on post judgment remedies. Basically the debtor's home is exempt regardless of value, with some restrictions on acreage depending on whether it is urban or rural. The debtor's home furnishings, clothing, tools of trade, vehicles and other specific personal property listed in the exemption statutes are exempt, up to \$30,000 for single persons and \$60,000 for families. Life insurance, retirement plans and wages are also exempt, without limit. The property not exempt from creditor claims will include non-homestead property, bank and savings accounts, stock, and notes and accounts receivable. In spite of the broad exemptions enjoyed by individual Texas residents, individual debtors can often be encouraged to enter into payment agreements to prevent being sued. As judgment debtors they can eliminate follow-up depositions and the threat of collection remedies if a payment agreement is worked out with the judgment creditor.

## **XX. POST-JUDGMENT REMEDIES.**

### **A. Judgment Lien.**

The mere entry of a judgment by the Court is not enough to create a judgment lien. The judgment must be properly abstracted and filed with the county clerk. It will create a judgment lien on all non-exempt real property in the county where filed. It does not create a lien on the judgment debtor's personal property or accounts. *Tex.Prop. Code Ann. §52.001 (Vernon 1995).*

### **B. Executions.**

The judgment debtor's real and personal non-exempt property can be seized by a sheriff or constable

with a writ of execution. After seizure, if the judgment debtor does not post a bond, the property will be sold and the proceeds paid over to the judgment creditor. The judgment creditor can buy the property at the sale by bidding credits to the judgment; however, all property is purchased as is and subject to all liens.

### **C. Garnishments.**

A garnishment writ will be issued on application of the judgment creditor, which must include a sworn statement that to the applicant's knowledge the judgment debtor does not possess property in Texas subject to execution sufficient to satisfy the judgment. *Tex.Civ.Prac. & Rem. Code Ann. §63.001(2)(B) (Vernon 1997)*. Creditors are often excited about proceeding with garnishments when they know or expect they know where the judgment debtor banks. They must often be cautioned about the required sworn statement. They must also be cautioned about the judgment debtor's bank's potential rights of offset in the event of garnishment when the judgment debtor owes money to its bank.

Garnishment actions are not limited to bank accounts. A judgment creditor can garnish savings and stock accounts as well as any non-exempt personal property of the judgment debtor held by a third party.

### **D. Turnovers.**

While non-exempt real and personal property can be reached by execution, and accounts and stock by garnishment, certain property interests may require the aid of the Court to reach. The turnover proceeding is a post-judgment remedy that in most cases involves a motion, hearing (which may be ex parte) and a resulting order. The order will require the judgment debtor to turn over its property to a constable or receiver for sale with the proceeds to be distributed to the judgment creditor. This order is enforceable by contempt. *Tex.Civ.Prac.&Rem. Code Ann. §31.002, et seq (Vernon Supp. 1997)*. The proceeding may be used to reach property located outside of Texas, intangible property, property the debtor has secreted, accounts and notes receivable, and any other property that is difficult to reach.

### **E. Other Remedies.**

If the debtor has a limited partnership interest, the interest may be reached via a charging order under the limited partnership statutes. Turnover orders may be useful for reaching general partnership interests. If the dollars are large enough and if fraudulent transfers are discovered, the creditor may find the necessity to file yet another suit to set aside a fraudulent transfer in order to collect its judgment.

## **XXI. JUDGMENT RENEWAL.**

Tip: Don't wait till the eve of dormancy to renew the judgment. The clerk's office may have the file in offsite storage so it may take a while to get a writ issued.

The judgment is good for ten years. It will become dormant if a writ of execution is not issued before the end of the ten year period. *Tex.Civ.Prac.&Rem. Code Ann. § 34.001 (Vernon 1996)*. If it becomes dormant, it can be revived within two years of its becoming dormant. *Tex. Civ.Prac.&Rem. Code Ann. §31.006 (Vernon 1996)*.

The judgment lien continues for a period of 10 years following the date of recording and indexing the abstract except if the judgment becomes dormant, in which event the lien ceases. *Tex.Prop.Code Ann. §52.006 (Vernon 1984)*. Therefore one must (1) keep the judgment alive and (2) obtain and record a new abstract of judgment, in order to extend the judgment lien.

## **XXII. PRACTICE MANAGEMENT**

Tip: A successful collections practice requires (1) up-to-date forms, (2) systems to manage work flow and production; and (3) highly trained legal assistants.

Perhaps this section of the paper should have been first, rather than last. A law practice dedicated to debt collection is a unique animal. While a general litigation practice benefits from these same components, a successful collections practice depends on them.

### **A. Forms.**

The Texas Collections Manual published by the State Bar provides a good starting place for forms. The forms were developed by a committee of attorneys with 100 years of collections experience. But, as with all forms, the forms should be tailored to the particular case and, just as importantly, to the venue in which they are used. As one develops a collections practice, forms will develop that are also particular to a client. Organizing the forms in a form directory in a meaningful order will make access and use of the forms most efficient.

### **B. Systems.**

As file volume increases, systems to manage intake of the files, processing the work and managing the calendar become increasingly important. While it takes time and energy to reduce those systems and procedures to writing, a written office manual insures a

source of reference for consistent quality of work. The systems typically used include:

development, oversight of the practice, and practicing law. Oh, and golf!

1. Time and Billing / Accounting System.

Integrated time and billing systems provide a basis for conflicts checks, management of file fees and expenses for reporting and billing, trust accounting for handling client and debtor funds, and financial reporting for purposes of taxation. Even if a practice is based on contingent fee collections, it will be important to account for time expended on the contingent fee files so that an analysis can be done for profitability.

2. Calendar, Docket Control and Client Reporting.

Some time and billing systems have the calendar and docket controls fully integrated. If not, the practice should have a calendar system that insures that deadlines are met and the practice of court appearances and other appointments and schedules are successfully monitored. These are items that are often part of the malpractice insurance application, and for good reason. Further, monthly reporting of client dockets can be a useful tool for client communication as well as a backup of the docket control so that files do not 'slip through the cracks'.

3. File Management and Work Flow.

An office procedures manual that addresses issues beginning with conflicts checks, file opening, standard searches, demand letters, follow-up procedures, preparation of suits for filing, service of process, docketing for court deadlines, preparation of discovery, drafting of judgments, preparation of all pre-judgment and post-judgment discovery and enforcement, post-judgment remedies, bankruptcy procedures and a variety of other procedures that are used in connection with the forms files is a good means to provide a go-to place for preferred practice methods. It is also an invaluable training tool as new personnel are brought into the practice. This manual, like the form files, must be kept up to date as processes and procedures for a successful practice keep up with the law and up with the times.

**C. Highly Trained Legal Assistants.**

Great forms and a detailed procedures manual provide a great start for the process of training and developing a great collections practice staff. However, one on one and in-house seminars and training meetings are a must if you want to get the most out of your staff of professionals. Taking the time to train will reap great dividends. It will enrich their knowledge, raise their confidence levels and allow the most complete delegation of tasks and duties possible. This is not to say that supervision is no longer needed, but it certainly frees up the attorney's time for business

**Attachment 1**  
**Fee Agreement-Hourly**

[Name]  
[address]  
[City, State, Zip]

Re: \_\_\_\_\_

Dear \_\_\_\_\_:

This is to confirm our agreement concerning our firm's representation of you/[Company Name] in connection with your/its claim(s) against \_\_\_\_\_ and other legal matters handled by the firm.

Unless otherwise provided by written agreement, our representation will be provided on an hourly fee basis whereby the time expended by various lawyer and non-lawyer persons in our office will be reimbursed for the time expended at their respective hourly rates in effect at the time the work is performed. The current hourly rates for the personnel who may be expected to work on this matter/these matters are: \_\_\_\_\_ for \$\_\_\_\_\_ per hour; legal assistants and law clerks for \$\_\_\_\_\_ per hour, with other attorneys providing services at rates ranging from \$\_\_\_\_\_ to \$\_\_\_\_\_ per hour.

In addition, you will be invoiced for all expenses incurred in connection with this matter/these matters, including expert witness fees, travel costs, deposition costs, long distance telephone charges, copying expenses, court costs, and any other charges attributable to this matter/these matters. All fees and expenses will be invoiced on a monthly basis. Billings are due upon receipt and payment is considered late if made more than thirty (30) days after receipt of the invoice without prior approval.

We will require a \$\_\_\_\_\_ retainer from you, against which we will bill on a monthly basis for fees and expenses accrued. Once the retainer is depleted, you will be invoiced for fees and expenses. We reserve the right to request additional retainers from time to time to cover significant anticipated expenses, such as discovery costs or trial costs. We reserve the right to withdraw our representation if any requested additional retainer is not received. Upon completion of the matter, any unused portion of the retainer will be refunded/non-refundable.

We reserve the right to withdraw our representation if our billings are not paid in a timely manner. Further, we reserve the right to withdraw in the event our continued representation could constitute ethical violations.

Notice to Clients: The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar Office of the General Counsel will provide you with information about how to file a complaint. For more information, please call 1-800-932-1900. This is a toll-free phone call.

[OPTION A - authorized agent] If this correctly sets out our agreement as you understand it, I would appreciate your having an authorized agent for [Company Name] sign a copy of this letter and return it to our office for our files.

**Anatomy Of The Collections Process: An Overview With Efficiency Tips From A Seasoned Collections Lawyer**

[OPTION B - your client] If this correctly sets out our agreement as you understand it, I would appreciate your having your client sign a copy of this letter and return it to our office for our files.

[OPTION C - individual] If this correctly sets out our agreement as you understand it, I would appreciate your signing a copy of this letter and returning it to our office for our files.

[OPTION D- personal guaranty] Please also confirm your personal guaranty of payment of the account of [Company Name] to our firm.

[OPTION E - billing] We would also appreciate your indicating the appropriate billing address and the person to whom the bills should be addressed.

Thank you.

Sincerely,

\_\_\_\_\_  
\_\_\_\_\_

APPROVED:

APPROVED:

Name of Client Company

OR

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
(Name)

Add if you chose OPTION D

I hereby guaranty to \_\_\_\_\_ the payment of all sums to become due from [Company Name] to \_\_\_\_\_.

\_\_\_\_\_  
Name: \_\_\_\_\_, Individually

Add if you chose OPTION E

Billings are to be sent to:

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_



Attachment 2  
**Fee Agreement - Contingent**

[Client name]  
[Address]

Re: \_\_\_\_\_

Gentlemen:

This is to confirm our agreement concerning our firm's representation of [Client] in connection with its claim(s) against [Debtor], and any other collection matters handled by the firm.

(1) Unless provided by written agreement, our representation will be provided on a contingent fee basis. If we collect this matter/these matters without the necessity of suit, all sums recovered including the account amount and any interest thereon will be divided 1/3 to \_\_\_\_\_ and 2/3 to [Client] as the funds are received.

If we are required to file suit to collect on any matters, all sums recovered including the account amount, attorney's fees, and any interest thereon will be divided 1/3 to \_\_\_\_\_. and 2/3 to [Client] as the funds are received. All court costs recovered will be reimbursed to [Client] out of the last funds received.

In the event a counterclaim is asserted, we reserve the right to convert this file to an hourly fee basis whereby our time will be billed at our usual hourly rates as described in paragraph (4) below.

(2) [Client] will be invoiced for all expenses incurred in connection with this matter/these matters, including expert witness fees, travel costs, deposition costs, long distance telephone charges, copying expenses, court costs, and any other charges attributable to this matter/ these matters. We will require a \$50.00 cost retainer from [Client], against which we will bill on a monthly basis for expenses incurred. Additionally, if suit becomes necessary, we will require a court cost and service fee retainer of \$195.00 per file. Once the cost retainer is depleted, we reserve the right to request additional retainers of at least \$50.00 each from time to time. Upon completion of all matters, any unused retainer will be refunded. All fees and expenses will be invoiced on a monthly basis. Billings are due upon receipt and payment is considered late if made more than thirty (30) days after receipt of the invoice without prior approval.

(3) We reserve the right to withdraw our representation for any reason. In that event we forfeit any rights to the contingent fee, although [client] will not be relieved of its obligation to pay costs provided herein (see next paragraph for provisions of withdrawal for non-payment of costs).

(4) In the event [client] terminates \_\_\_\_\_'s representation of [client] in this matter/these matters without cause, or in the event additional cost retainers are not paid in a timely matter, [client] will agree to pay \_\_\_\_\_ for all time expended on this matter/these matters as if it had been accepted on an hourly fee basis whereby time expended by various lawyer and non-lawyer persons in our office will be reimbursed at their respective hourly rates in effect at the time the work is performed. The current hourly rates for the litigation personnel who may be expected to work on these cases are: \_\_\_\_\_ for \$\_\_\_\_\_ per hour; \_\_\_\_\_ for \$\_\_\_\_\_ per hour; and legal assistants and law clerks for \$\_\_\_\_\_ per hour.

Notice to Clients: The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar Office of the General Counsel will provide you with information about how to file a complaint. For more information, please call 1-800-932-1900. This is a toll-free phone call.

If this correctly sets out our agreement as you understand it, I would appreciate your having an authorized agent for [client] sign a copy of this letter and return it to our office for our files.

We would also appreciate your indicating the appropriate billing address and the person to whom the bills should be addressed.

Thank you.

Sincerely,

\_\_\_\_\_  
\_\_\_\_\_

APPROVED:

[Client Corporation]

Billings are to be sent to:

By: \_\_\_\_\_

Address: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Attention: \_\_\_\_\_

**Attachment 3**  
**Demand Letter- Consumer Debt**

[Name]  
[Address]  
[City, State, Zip]

CERTIFIED MAIL NO.  
RETURN RECEIPT REQUESTED  
AND REGULAR MAIL  
ADDRESS SERVICE REQUESTED

Re:     Creditor:           \_\_\_\_\_

       Balance Due:         \$\_\_\_\_\_

Dear \_\_\_\_\_:

Our office has been retained to collect your debt in the amount of \$\_\_\_\_\_ that you owe to \_\_\_\_\_ for \_\_\_\_\_'s furnishing goods and/or services to you on account.

You have thirty (30) days from the date you receive this notice to dispute the validity of the debt or any portion thereof. If you do not dispute the validity of the debt or any portion of the debt, your debt will be assumed to be valid by [name of attorney's firm].

NOTE: Include options 1 or 2 in initial correspondence to debtor and 3 if applicable.]

[option 1]     If you notify our office within the thirty (30) day period that the debt or any portion thereof is disputed, we will obtain verification of the debt and mail you a copy of such verification.

[option 2]     If you notify our office within the thirty (30) day period that the debt or any portion thereof is disputed, we will obtain verification of the judgment against you and mail you a copy of such judgment.

[option 3]     If the original creditor is different from your current creditor, we will provide you with the name and address of that original creditor provided you request our office to do so, in writing, within thirty (30) days from the date you receive this notice.

[always include, not an option]This office is attempting to collect the above-described indebtedness from you and any information obtained will be used for that purpose.

If we have not heard from you within thirty (30) days [**Note: Never shorten this language in consumer demands]** of your receipt of this letter, we intend to recommend to our client that suit be filed. Further, we will recommend that our client seek court costs and attorney's fees in addition to the amount of the debt.

Sincerely,

[ATTORNEY'S NAME]

cc: [client]

**Attachment 4**  
**Demand Letter- Commercial Debt**

[Name]  
[Address]  
[City, State, Zip]

CERTIFIED MAIL NO.  
RETURN RECEIPT REQUESTED AND  
FIRST CLASS MAIL  
ADDRESS SERVICE REQUESTED

Re:    Creditor:           \_\_\_\_\_

      Balance Due:        \_\_\_\_\_

Dear \_\_\_\_\_:

[option 1- individual]Our office has been retained to collect your debt in the amount of \$\_\_\_\_\_ that you owe to [client] for [his/her/its] furnishing goods and/or services to you on account.[end option]

[option 2-corporation/company]Our office has been retained to collect the debt of [debtor/corporation] in the amount of \$\_\_\_\_\_ that is owed to [client] for its furnishing goods and/or services to [debtor/corporation name] on account.[end option 2]

[Option - If late charges over statutory limit were applied and there was no written agreement to charge interest over statutory limit]Notice is given pursuant to Section 305.103 of the Finance Code that all late charges have been reversed.

[Option- if Personal Guaranty signed] Pursuant to your Guaranty Agreement dated \_\_\_\_\_, guaranteeing all of the indebtedness of \_\_\_\_\_ to \_\_\_\_\_, payment of the above-described amount is hereby demanded. [end option]

Please contact our office concerning payment of this indebtedness. If we have not heard from you within ten (10) days of your receipt of this letter, we intend to recommend to our client that suit be filed. Further, we will recommend that our client seek court costs and attorney's fees in addition to the amount of the debt.

Sincerely,

[ATTORNEY'S NAME]

cc: [Client]

**Attachment 5**  
**Letter To Comptroller Of Public Accounts**  
**-Requesting Certified Corporate History**

Comptroller of Public Accounts  
Attn: Open Records  
PO Box 13528  
Austin, Texas 78711

VIA FAX 475-1610

Re: \_\_\_\_\_ Charter No. \_\_\_\_\_

Dear Sir or Madam:

Please forward certified corporate history regarding the following:

1. documentation regarding said corporation's failure to file franchise tax reports and/or pay franchise taxes, including the dates that the reports and/or taxes became due;
2. documentation regarding said corporation's status and whether or not said corporation's corporate privileges have been revoked, and/or its charter revoked; and
3. certified documentation showing the officers/directors of the corporation from \_\_\_\_\_ through the present.

Information should be sent to my attention at \_\_\_\_\_.

Thank you for your assistance in this matter. Please let me know if you should need any other information, or if you should have any questions.

Sincerely yours,

\_\_\_\_\_  
Legal Assistant to  
\_\_\_\_\_

**Attachment 6**  
**Payment Agreement Letter, Pre-Suit**

[Name]  
[Address]  
[City, State, Zip]

Re: [Creditor Name]  
Account No. \_\_\_\_\_  
Total Due: \$ \_\_\_\_\_

Dear \_\_\_\_\_:

This is to confirm you/ your client's agreement to repay the indebtedness on the above account. You/ Your client will begin making payments of \$\_\_\_\_\_ or more per month beginning \_\_\_\_\_, and continuing thereafter on or before the \_\_\_\_\_ day of each of the following months until the full amount of the account is paid. You/Your client's checks should be made payable to \_\_\_\_\_ and forwarded to my attention at \_\_\_\_\_. Should any payment be received more than five (5) days late, we reserve the right to proceed with suit for the balance owing plus court costs and reasonable attorney's fees.

[option 1 corporation release] This is further to confirm that, by its approval below, [company name] hereby releases [client] from any and all claims which it has or had, known or unknown, arising out of the transaction which gave rise to the above account.[end option]

[ option 2 individual release] This is further to confirm that, by your/your client's approval below, you your client hereby release(s) [client] from any and all claims which you /your client have or had, known or unknown, arising out of the transaction which gave rise to the above account. [end option]

If this payment agreement meets with your approval, [atty option] please have your client sign where indicated below and return a copy to me with the first payment. [end atty option]please sign where indicated below and return a copy to me with your first payment.

Thank you very much for your cooperation./assistance.

Sincerely,

ATTORNEY'S NAME

DB:hcs

AGREED AND APPROVED:  
(Corporation's Name)

[use "By" only for corp., otherwise delete] By: \_\_\_\_\_

cc: [client]

**Attachment 7**  
**Payment Agreement Letter With Promissory Note**

Name  
Address

RE: [Creditor]  
Account No:  
Balance Due:

Dear \_\_\_\_\_:

Enclosed is a proposed note reflecting your agreement to repay the indebtedness on the above account. If it meets with your approval, please sign where indicated and return it to me on or before \_\_\_\_\_. Your first payment will be due \_\_\_\_\_. Your checks should be made payable to \_\_\_\_\_, and forwarded to my attention at \_\_\_\_\_. Should any payment be received more than five (5) days late, we reserve the right to proceed with suit for the balance owing plus court costs and reasonable attorney's fees.

Thank you very much for your cooperation.

Sincerely,

ATTORNEY'S NAME

DB:hcs  
Enclosures

cc: [Client]

**UNSECURED NOTE**

Date: [Date]

Maker: [debtor]

Payee: [creditor]

Place for Payment: [place]

Principal Amount: U.S. \$0.00

Annual Interest Rate on Unpaid

Principal from Date of Funding: \_\_\_\_\_ percent (\_\_\_%)

Terms of Payment:

Payable in monthly installments of \_\_\_\_\_ DOLLARS (\$0.00) each, including principal and interest, beginning \_\_\_\_\_ and continuing on the \_\_\_\_\_ day of each month thereafter until paid in full.

Annual Interest Rate on Matured,

Unpaid Amounts: \_\_\_\_\_ percent (\_\_\_%)

Maker promises to pay to the order of Payee at the place for payment and according to the terms of payment the principal amount plus interest at the rates stated above. All unpaid amounts shall be due by the final scheduled payment date.

On default in the payment of this Note, it shall become immediately due at the election of Payee. Maker and each surety, endorser, and guarantor waive all demands for payment, presentations for payment, notices of intention to accelerate maturity, notices of acceleration, protests, and notices of protest.

If this Note is given to an attorney for collection, or if suit is brought for collection, or if it is collected through probate, bankruptcy, or other judicial proceeding, then Maker shall pay Payee reasonable attorney's fees in addition to other amounts due.

Nothing in this Note shall authorize the collection of interest in excess of the highest rate allowed by law.

Each Maker is responsible for the entire amount of this Note. The terms Maker and Payee and other nouns and pronouns include the plural if more than one. The terms Maker and Payee also include their respective heirs, personal representatives, and assigns.

Maker has the right to prepay this Note at any time without penalty.

Maker hereby releases Payee from any and all claims raised or which could have been raised, known or unknown, arising out of Maker's dealings with Payee through the date of this Note as well as the services rendered for which this Note constitutes payment.

\_\_\_\_\_  
[name]



**Attachment 8**  
**Payment Agreement Letter With Agreed Judgment**

[Name]  
[Address]  
[City, State, Zip]

Re: [Case style]

Dear \_\_\_\_\_:

[optional paragraph w/ agreed jmt] Enclosed is the proposed Agreed Judgment we discussed which provides for recovery of the principal balance of the debt of \$\_\_\_\_\_, interest of \$\_\_\_\_\_ (\_\_\_% from \_\_\_\_\_, through \_\_\_\_\_), and attorneys fees of \$\_\_\_\_\_. If it meets with your approval, please sign where indicated and return it to me by \_\_\_\_\_. An additional copy is enclosed for your files. (Add if dealing with pro se debtor) You are, of course, encouraged to seek independent counsel of your own choosing to advise you of your legal rights and remedies. As counsel for \_\_\_\_\_ we are prohibited from doing so.[end option]

This is to confirm your/ your client's agreement to repay the Judgment in the above matter. You/Your client will begin making payments of \$\_\_\_\_\_ or more per month beginning \_\_\_\_\_, and continuing thereafter on or before the \_\_\_\_\_ day of each of the following months [Option] until the full amount of the Judgment is paid[option] for a period of one year, at which time this agreement is subject to renegotiation.[end option]. Your/Your client's checks should be made payable to \_\_\_\_\_ and forwarded to my attention at \_\_\_\_\_. [Option 1]Should any payment be received more than five (5) days late, we reserve the right to proceed with all lawful remedies to collect on the Judgment.[End Option 1][Option 2] We agree to hold the Agreed Judgment in our file as long as the payments are made in a timely manner. Should any payment be received more than five (5) days late, we reserve the right to have the Judgment entered with the Court and to thereafter proceed with all lawful remedies to collect on the balance then owing on the Judgment.[End Option 2]

[dbs signature paragraph] If this payment agreement meets with your approval, I would appreciate your signing/ having your client sign where indicated below and return/ing a copy to me with your/ the \_\_\_\_\_ first payment. An additional copy is enclosed for your records.

Thank you very much for your cooperation/ assistance.

Sincerely,

[ATTORNEY'S NAME]

DB:hcs  
Enclosures

AGREED AND APPROVED:  
(Corporate name, if applicable)

By: \_\_\_\_\_  
name  
(Use "By" only for corporations, otherwise delete)

cc: [Client]

NO. \_\_\_\_\_

\_\_\_\_\_

§  
§  
§  
§  
§

IN THE \_\_\_\_\_ COURT

VS.

OF

\_\_\_\_\_ COUNTY, TEXAS

\_\_\_\_\_

AGREED JUDGMENT

Came on to be heard the above styled and numbered cause, and it having been made known to the Court that Plaintiff and Defendant(s), by and through their respective counsel, [option] and individually [end option] have agreed that judgment should be entered for Plaintiff as prayed for; and the Court having considered the pleadings and the official records of the Court, and being of the opinion that judgment should be entered for Plaintiff as agreed:

It is, accordingly, ORDERED, ADJUDGED and DECREED that Plaintiff, \_\_\_\_\_, have and recover of and from Defendant(s), \_\_\_\_\_, [if plural, add "jointly and severly"] judgment in the total sum of \$\_\_\_\_\_, which includes Plaintiff's principal claim of \$\_\_\_\_\_, [statutory] interest to date of \$\_\_\_\_\_, and attorney's fees of \$\_\_\_\_\_, together with interest thereon from [insert date, if judgment to be held in file] [date of judgment] at the rate of \_\_\_\_\_ percent (\_\_\_\_\_% ) per annum until paid, and for all costs of court in this behalf expended, for all of which let execution issue.

This judgment finally disposes of all parties and all claims and is appealable.

SIGNED this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
JUDGE PRESIDING

APPROVED AND AGREED:

[FIRM]

By \_\_\_\_\_  
[NAME]  
Bar No. \_\_\_\_\_  
Attorneys for Defendant(s)  
[name of defendant(s)]

[FIRM]

By \_\_\_\_\_  
[NAME]  
Bar No. \_\_\_\_\_  
Attorneys for Plaintiff

**Attachment 9**  
**Suit On Account**

NO. \_\_\_\_\_

_____	§	IN THE _____
VS.	§	
	§	
_____ and	§	COURT OF
	§	
_____	§	_____ COUNTY, TEXAS

**PLAINTIFF’S ORIGINAL PETITION**

1. Parties. Plaintiff is \_\_\_\_\_, whose address is \_\_\_\_\_  
\_\_\_\_\_. Defendant is \_\_\_\_\_, who may be served by delivering citation to its registered agent,  
, at the registered office at \_\_\_\_\_; or to its president, \_\_\_\_\_, at \_\_\_\_\_. Defendant,  
[guarantor] \_\_\_\_\_, may be served with process at \_\_\_\_\_.

Discovery is intended to be conducted under Level 1 of Rule 190 of The Texas Rules of Civil Procedure. Plaintiff seeks monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees. The damages sought are within the jurisdictional limits of the court. [See Rule 47 if over \$100,000]

2. Facts. As shown in the attachments, Plaintiff sold to Defendant \_\_\_\_\_ goods, services, wares, and merchandise, which said Defendant accepted and thereby became bound to pay to Plaintiff in \_\_\_\_\_ County the stated price thereof, which was a reasonable and fair, usual and customary price. Under the Guaranty included in said attachments, Defendant \_\_\_\_\_ personally guaranteed payment of any and all indebtedness or other liability which the Defendant \_\_\_\_\_ may owe to Plaintiff.

3. Debt. The balance due and owing to Plaintiff on said account is \$ \_\_\_\_\_. Although often requested, Defendants have failed and refused to pay the amount due.

[4. Attorney’s Fees. The failure of Defendants to pay the account has made it necessary for the Plaintiff to employ the undersigned attorneys to sue on the account. Plaintiff has made a demand on Defendants for the

balance due and is entitled to reasonable attorney's fees pursuant to Civil Practice and Remedies Code §38.01 et. seq. [and the agreement of the parties]. A reasonable attorney's fee would be \$\_\_\_\_\_. **Note - Do not include if non-attorney suing pro se]**

4. Request for Judgment. Plaintiff asks that citation issue and that Plaintiff have judgment against Defendants for the principal sum of the account, interest, [attorney's fees,] costs of court, and for such other relief, both general and special, to which it may show itself to be justly entitled.

Respectfully submitted,

[Signature block]

Attorneys for Plaintiff

[If creditor suing pro se, include name, address, phone number and fax number, if available.]

THE STATE OF TEXAS                    §  
  §  
COUNTY OF \_\_\_\_\_           §

**RULE 185 AND BUSINESS RECORDS AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, who, being by me duly sworn, deposed as follows:

“My name is \_\_\_\_\_. I am of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated:

“I am the custodian of the records of \_\_\_\_\_. Attached hereto are \_\_\_\_\_ pages of records from \_\_\_\_\_. These said \_\_\_\_\_ pages of records are kept by \_\_\_\_\_ in the regular course of business, and it was the regular course of business of \_\_\_\_\_ for an employee or representative of \_\_\_\_\_, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original.

“The claim evidenced by the attached documents is within the knowledge of affiant, just and true, it is due and all just and lawful offsets, payments and credits have been allowed.”

\_\_\_\_\_  
\_\_\_\_\_  
Affiant

SWORN TO AND SUBSCRIBED BEFORE ME on this the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, to certify which witness my hand and seal of office.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**Attachment 10**  
**Default Judgment**

NO. \_\_\_\_\_

\_\_\_\_\_

§  
§  
§  
§  
§  
§

IN THE \_\_\_\_\_

VS.

COURT OF \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ COUNTY, TEXAS

**DEFAULT JUDGMENT**

Came on to be heard the above styled and numbered cause, and Plaintiff's Motion for Judgment in such cause, and it appearing to the Court that Defendants, though duly cited to appear and answer herein, have wholly failed to appear and answer herein, that appearance day for the Defendants has passed, that Plaintiff's cause of action is based upon a liquidated demand, and that Plaintiff is entitled to judgment by default as prayed for:

It is, accordingly, ORDERED, ADJUDGED and DECREED that Plaintiff, have and recover of and from Defendants, \_\_\_\_\_ and \_\_\_\_\_, jointly and severally, judgment in the total sum of \$\_\_\_\_\_, which includes Plaintiff's principal claim of \$\_\_\_\_\_, [statutory] interest of \$ \_\_\_\_\_, and attorney's fees of \$\_\_\_\_\_, together with interest thereon from date of judgment at the rate of \_\_\_\_\_ percent (\_\_\_%) per annum until paid, and for all costs of court in this behalf expended, for all of which let execution issue.

This judgment finally disposes of all parties and all claims and is appealable.

SIGNED this \_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
JUDGE PRESIDING

**DEFAULT JUDGMENT CERTIFICATE**

Pursuant to Rule 239a, Texas Rules of Civil Procedure, I certify that the last known mailing address(es) of the party(ies) against whom the judgment is taken is(are): \_\_\_\_\_.

DATED \_\_\_\_\_, \_\_\_\_\_.

Respectfully submitted,

[Signature block]

By \_\_\_\_\_

\_\_\_\_\_  
Bar No. \_\_\_\_\_

Attorneys for Plaintiff

[If creditor suing pro se, include name, address, phone number and fax number, if available.]





**Attachment 11**  
**Simple Deposition Notice- Individual**

NO. \_\_\_\_\_

	§	IN THE _____
VS.	§	COURT OF _____
	§	_____ COUNTY, TEXAS

NOTICE FOR ORAL DEPOSITION IN AID OF JUDGMENT

TO: \_\_\_\_\_, Defendant in the above-referenced cause:

Pursuant to Texas Rules of Civil Procedure, you are notified that you are required to give your oral deposition in the captioned cause at the offices of \_\_\_\_\_, on \_\_\_\_\_, at \_\_\_\_\_ o'clock a.m. The deposition will be tape-recorded. You are ordered and directed to bring and produce at such time and place, as fully as if a subpoena duces tecum were otherwise served upon you, all of the following:

1. All canceled checks, bank statements, check stub records, and other banking records pertaining to your financial affairs and those of your spouse, or for any account upon which you have had signatory authority, within the last two years.
2. Copies of all books, records, and financial statements kept or issued by you for the last two years.
3. Copies of your income tax returns and those of your spouse, with all attachments, for the last two years.
4. All papers and records pertaining to debts owed you by others, and ANY OTHER PAPERS OF ANY SORT PERTAINING TO YOUR BUSINESS OR FINANCIAL AFFAIRS FOR THE PERIOD OF TWO YEARS IMMEDIATELY PRECEDING DATE HEREOF, including but not limited to any and all certificates of title to vehicles, share certificates, deeds or contracts concerning real estate, or other indications of ownership of real or personal property.

Respectfully submitted,

[Signature block]

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing Notice for Oral Deposition in Aid of Judgment has been served by regular mail, on \_\_\_\_\_ at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
(Attorney's name)

**Attachment 12**  
**Simple Deposition Notice - Corporation**

NO. \_\_\_\_\_

	§	IN THE _____
	§	
VS.	§	COURT OF
	§	
	§	_____ COUNTY, TEXAS

NOTICE FOR ORAL DEPOSITION IN AID OF JUDGMENT

TO: \_\_\_\_\_, as representative of \_\_\_\_\_, Defendant in the above-referenced cause:

Pursuant to Texas Rules of Civil Procedure, you are notified that you are required to give your oral deposition in the captioned cause at the offices of \_\_\_\_\_, on \_\_\_\_\_, at \_\_\_\_\_ o'clock a.m. The deposition will be tape-recorded. You are ordered and directed to bring and produce at such time and place, as fully as if a subpoena duces tecum were otherwise served upon you, all of the following:

1. All canceled checks, bank statements, check stub records, and other banking records pertaining to the financial affairs of \_\_\_\_\_ or for any account pertaining to \_\_\_\_\_, within the last two years.
2. Copies of all books, records, and financial statements kept or issued by \_\_\_\_\_ for the last two years.
3. Copies of the income tax returns of \_\_\_\_\_, with all attachments, for the last two years.
4. All papers and records pertaining to debts owed to \_\_\_\_\_ by others, and ANY OTHER PAPERS OF ANY SORT PERTAINING TO THE BUSINESS OR FINANCIAL AFFAIRS OF \_\_\_\_\_ FOR THE PERIOD OF TWO YEARS IMMEDIATELY PRECEDING DATE HEREOF, including but not limited to any and all certificates of title to vehicles, share certificates, deeds or contracts concerning real estate, or other indications of ownership of real or personal property.

[option 1]Any and all documents evidencing the identity and location of \_\_\_\_\_.

[option 2]Any and all documents evidencing the assets of \_\_\_\_\_.

Respectfully submitted,

[Signature block]

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing Notice for Oral Deposition in Aid of Judgment has been served by regular mail, on \_\_\_\_\_ at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
(Attorney's Name)