

Five Reporting Expectations from Your Attorney

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By Harold Stotland, JD

Any attorney who represents creditors usually specializes in either commercial or consumer collections. One of the major differences between these two is the type of service and reporting that is expected by the creditor. Consumer creditors usually require reporting and remitting en masse, whereas commercial creditors expect individual file reporting and remitting. Here are five criteria on what a commercial creditor should expect from an attorney; these also may assist a creditor in evaluating his or her attorney's performance.

1. Evaluate the claim. Within 10 to 14 days of receipt of a claim, the creditor should receive a written report that evaluates the legal issues and collectability of the claim. If the statute of limitations is short, this also should be brought to the client's attention. I think it is understood that the claim should be acknowledged on the day of its receipt. If appropriate, suit requirements also should be included with the first report.
2. Determine Conflicts of Interest. All clients need to be advised when the attorney is handling more than one claim against the same debtor because it can create a conflict of interest. Most everyone in this industry realizes that by aggregating claims with one attorney, these claims will get resolved more quickly. Aggregation allows the creditor's attorney to invest a lot more time and energy regarding a particular debtor, and also educates the attorney by disclosing the debtor's serious financial problems.
3. Provide a Status Report. Whatever the state of the claim, the creditor is entitled to know the progress and know when to expect the next report. If the creditor has to continuously prompt the attorney for status reports, this can be a warning sign that the file is not being properly handled. Every file needs to have a follow-up date indicating when the creditor should expect and receive a report. In addition, there should be no orphan files.
4. Maintain Communications. The creditor always has the right to talk to the attorney. The attorney should never put off the creditor when there is a request for status or information. Even if a claim comes to us through a collection agency or forwarding attorney, attorneys always owe our ultimate loyalty to the creditor. In addition, the creditor always has the right to give us instructions directly. When a creditor calls, s(he) needs to have the call returned immediately. I also have found that every interaction with a creditor gives me the opportunity to get additional information that helps me evaluate the claim or helps us to satisfy the judgment.
5. Legal Advice. Regardless who forwards the claim, it is important that the creditor establishes a client/attorney relationship with the receiving attorney. The attorney representing the creditor is obligated to meet the standard of care of any attorney in that specialty. In addition, representing creditors is all about money and should never be about the creditor's ego or the creditor's principles. If the representation cannot be seen as producing more recovery than it costs, it is not a good decision to go forward with the proceeding.

For example, we may receive a claim for \$3,000. Upon investigation, we discover that it is the tail end of a \$300,000 construction job in which a 1 percent discount was taken. The creditor's position may be that the discount was taken improperly. On the other hand, we know that if we file suit on behalf of that creditor, it opens the door to the debtor examining the entire transaction, and perhaps filing a counterclaim for an otherwise ignored omission by the creditor. The fact that

this is a collection case does not waive or remove the obligation of the attorney to look out for the best interests of the creditor.

I hope these standards will assist any creditor or forwarder to evaluate the performance of an attorney. In the end, we all know the best report a creditor can receive contains only two words: "check enclosed."

ABOUT THE AUTHOR

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