

# **GARDEN STATE CLE LESSON PLAN**

**A 1.0 credit course**

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LESSON PLAN AND EVALUATION**

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## **INTRODUCTION TO COLLECTION LAW**

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**With**

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**And**

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### **Program description**

Just because you have a judgment doesn't mean you'll get paid. This 1.0 credit CLE will introduce you to the procedure for lawfully collecting your client's money from a third party.

## **I. Hypothetical Case**

- **Dailey Planet newspaper**
- **Advertisements for a carwash**
- **\$1500 of advertising for carwash and they won't pay for whatever reason**

## **II. Your Client is Owed Money – First Steps You Can Take**

- **Send a demand letter as evidence that tried to communicate with them prior to filing suit**
  - **Send by regular and certified mail return receipt requested**
  - **“Please be advised that this firm has been retained with reference to an outstanding bill for services rendered to you. You have 30 days to pay the bill otherwise the bill will be the subject of a lawsuit which could result in more money being owed for attorneys fees, filing fees, and other fees for relief that the court may or may not give.”**
- **Cannot say “going to file criminal charges” – may violate RPCs**
  - **However if dealing with a “kiting” charge where someone gave you a bad check; kiting is a form of check fraud, involving taking advantage of the float to make use of no-existent funds in a checking or other bank account – there are criminal sanctions for kiting**
  - **Violating RPCs by threatening – if there is a criminal charge, then go to the prosecutor's office**
- **Attorneys are under special obligation – an attorney must give the potential defendant (i.e. the client who did not pay your bill) the option to go to fee arbitration and if you do not give that then the court will throw out your lawsuit – must send fee arb notice in your demand letter and give 30 days before filing suit**
- **Attorneys are required to provide most recent statement with demand letter and may need to be attached to the pleadings**

- **Check “Pacer” – electronic system that registers all filings in bankruptcy court to see if company has filed for bankruptcy to see if there is an automatic stay is involved**
- **After letter – file a small claims, special civil actions because of amount of damages is \$1500 (small claims can only address cases up to \$5K)**
- **Special civil part is quicker, easier, cleaner, faster**

### **III. Procedures for filing in special civil part**

- **File complaint and pay filing fees and court does service for you by certified mail**
- **Summons and complaint**
- **Attach all evidence to your complaint**
- **After service – see if answer is filed – if answer filed**
- **Jurisdiction of special civil part (outside special civil part) is up to \$15K; more than that amount is law division jurisdiction**
- **Form driven courts for special civil and small claims**
  - **Basic and simple**
  - **Some discovery in small claims**
- **Law division is formal pleading practice with process server or sheriff serving complaint, waiting 30 days for answer, then depending on what track the case is put into establishes how quickly the case will be heard – detailed discovery exchanged**
- **50% of the cases go to judgment for failure of the defendant to file an answer**
- **If there is no answer filed – how to get default**

### **IV. The Procedures for Default Judgments**

- **Clerk will automatically default if the defendant does not appear in special civil and then attorney must file papers to get default judgment entered – must show proof that person is not in the military; show proofs to the court and the court may schedule a formal proof hearing or they may just enter judgment**
  - **If you have the person’s social security number, you can type it in and the website will check if the person is in the military**

- **If defendant is a corporation you just need to put that into your papers**
- **Send in an order of default judgment, the court completes and returns to you**
- **Statement of docketing – ask for this from special civil part clerk, send in fee, and then send/mail to Trenton where they record in Book of Judgments**
  - **Shows up on title reports**
  - **If someone owns a piece of property you have clouded their title and must clear it in order to get clean title**
  - **Lien on property**
  - **Allows judgment holder to do garnishments or to levy by sheriff**
  - **J number shows that it is recorded as a lien**

#### **V. How to collect on the judgment**

##### **A. Judgment against carwash (hypothetical)**

- **Do research to show where they have assets**
- **Dun and Bradstreet report on corporation**
- **Secretary of State information on corporation**
- **Information subpoena to corporation**
- **Serve the registered agent as well as owner/manager**
- **Depositions to find assets are usually for law division cases**

##### **B. Information Subpoena**

- **If don't respond to Information Subpoena then go to court and file Motion to Enforce Litigant's Rights, R. 1:10-3**
  - **Motion to force defendant to answer subpoena and if they don't then subject to being arrested**
  - **Motion on the papers**
  - **Papers filed in special civil part**
  - **Same docket number**
  - **Get order from the court directing to answer, send 1<sup>st</sup> class mail and certified mail return receipt requested**
  - **Don't expect an answer**
  - **Then get order for principle's (president/owner) arrest – give to sheriff to arrest**

- **Arrest means they will stay in jail until they comply with the court order – force to answer the information subpoena**
  - **Does not get the money – just gets answers to subpoena**
- **From information subpoena, now have information about assets**
  - **Can put a lien on the property**
  - **If a mortgage on the property, then register judgment and have it served to perfect judgment and have lien perfected**
  - **Perfectured by service of judgment and information subpoena and having sheriff go in and take an inventory**
  - **Other lienholders do not need notice**
- **Once you have a “J” number, you are in the “book”**
- **1<sup>st</sup> in time 1<sup>st</sup> in right priority for liens if there are other lienholders – docketing judgment first – but still not paid – no guarantees**

#### **VI. Levying accounts**

- **Get order from court allowing to levy**
- **Send order to sheriff and say “go serve these banks”**
- **Accounts get frozen by levy and then bank gives notice to account holder of freezing account based on notice of judgment – you have 10 days to object otherwise funds will be transferred**
- **Sheriff then says they have received money, then plaintiff must make a motion to have money transferred to plaintiff**
- **Bankruptcy can stop the process at any point – 11 USC 362 a temporary stay will be entered**
  - **Collections efforts must stop**

#### **VII. If you have a judgment against a consumer**

- **Example: Husband owes \$75K**
  - **Judgment against husband**
  - **Husband lives in home with wife and they own as tenants by the entirety**
  - **Still docket judgment against their interest in the property**

- **Inventory personal property of husband to determine which assets are husband's**
- **You can lien property and sheriff has taken assets out of the house – defendants usually find a way to pay the judgment**
- **Some cases you know there are other judgments against the person and you cannot get money**
- **Other cases you know that you are the 1<sup>st</sup> or 2<sup>nd</sup> in line for judgments then go after the assets**
- **Must take out leading judgment holders or lien holders in order to get your lien priority – not always practical**
- **IRS will take out leading lien holders by taking a tax lien and take out first mortgage and then take tax foreclosure**
- **Why does consumer not file for bankruptcy when there is this type of action against them**
  - **Automatic stay provision stops everything and puts up a barrier and requires lien holders to take action (vacate stay, move before court to proceed with action)**
  - **Mortgage companies make applications to lift stay even when consumer in bankruptcy because consumer did not make post-petition payment, which is required in Chapter 13 bankruptcy**
  - **Chapter 7 – an estate is created and then the trustee owns the estate and has the right to abandon or sell interest in the property – if abandon interest, then goes back to debtors**
    - **If living there and not paying, then mortgage company can come in and ask court to continue with foreclosure if owner said they intend to abandon**
    - **Mortgage companies are not all that eager to get people out of the house**
  - **Chapter 11 – not a good option for our hypothetical carwash**
    - **Is it going to continue operating?**
    - **11 USC 101(a) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting**



- **In NJ, we use federal exemption limit – up to \$22K per person – can keep out of equity of a house**

#### **IX. Student loan debt issues**

- **There are companies that can reduce student loans**
- **Bankruptcy is not an answer if your sole or primary debt is student loans – not dischargeable**
- **Some legislation to make private student loans dischargeable in bankruptcy**
- **Must show significant disability that will impair you from earning a living and function in the field that you received your education in – in order to get student loan discharged in NJ through bankruptcy**
- **Chapter 13 bankruptcy to repay student loan – interest runs but student loans are held in abeyance**
  - **Bankruptcy will take care of arrears – because trustee making payments through Chapter 13 plan**
  - **Make interest payments to student loan company**
  - **After bankruptcy, arrears taken care of, interest has not accumulated and all other debts are gone – then only paying student loans**
- **Nationwide problem**

#### **X. How to deal with clients who come in**

- **Individualized plan**

#### **XI. How does an attorney doing this work get paid**

- **Expense retainer with % of collection activity**
- **Review contract in dispute to see if attorneys fees are going to be paid**
- **Hired by other attorneys and corporations that are seeking their receivables**
- **Diversification – bankruptcy and collections – do not get too heavily loaded down in one field – need balance to make the bills and income**
- **Computerized filings facilitating cases (Hudson County, federal bankruptcy and federal district court)**

#### **XII. Words of wisdom for young attorneys**

- **There is a great deal of competition**

- **Find something you enjoy doing within the legal community**
- **The days of big collection firms is gone**
- **So many fields of law and find one that you like**
- **Need to have attention to detail in order to do collection law**
- **Be sure to follow through**
- **Take good notes with client information**
- **Cannot do this work without computer and good staff**
- **Commercial bankruptcy software**
- **Colliers, Lawyers' Diary Online, Gann – all have forms that you can use**