



Assisting Clients Sued by Creditors in District Court

September 2012 Tip of the Month
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When determining how to help clients sued by creditors in District Court, consider whether they are judgment proof, pre- or post-judgment, and have any meritorious defenses. The below chart provides suggestions from experienced volunteers for next steps. Also consider your client’s financial situation and debt load; if bankruptcy is an option, it could eliminate the need to fight multiple court battles or maintain permanent vigilance for garnishment notices.

Client is not judgment proof (or only temporarily judgment proof)		
	Pre-judgment ¹	Post-judgment
Client has full or partial defense²	Draft an Answer to the Complaint accordingly and serve it on the other party. If the Answer needs to be filed with the court and the client’s household income is at or below 125% of the Federal Poverty Guidelines , ask the court for an Order to Proceed In Forma Pauperis (IFP) to waive the filing fee; then file the Answer with the court. The Plaintiff’s attorney likely will not file the case until after the discovery process is completed. Settlement before the Plaintiff spends \$322.00 filing fee to file the case in District Court is preferable. The Plaintiff may bring a motion for summary judgment after the case is filed. Prepare to defend if there are disputes about the important facts of the case.	<p>If your client did not answer the original Summons and Complaint, it is likely the district court administrator entered a default judgment without any hearing being held. Consider filing and serving a Notice of Motion and Motion to Vacate Default Judgment.³ Courts may consider the intelligence or inexperience in business or legal affairs of a party in determining whether an excuse for failure to answer is reasonable.⁴ It is not a high threshold if the client has a substantive defense on the merits. If your client was never served pursuant to Minn. Rules of Civil Procedure 4.03, the judgment is void and you don’t have to allege a good defense to obtain an order nullifying the judgment.</p> <p>If your client did answer the Complaint and recently lost for other reasons, you might explore requesting the court to reconsider, although reconsiderations are rarely granted.</p>
Client does not have a full or partial defense (would likely lose on summary judgment)	Try to settle the case with a lump sum payment (monthly payments can be difficult to maintain). Explain the lack of defense, that a judgment will be entered if no settlement is reached, and that the plaintiff may attempt to garnish income or bank accounts 45 days after service. ⁵ Review the client’s finances and list the exemptions he or she may claim.	Assess the extent to which your client has exempt income and/or assets and advise him or her about garnishment and the client’s rights . (See Legal Aid Fact Sheet C4 – Garnishment and Your Rights, located on www.lawhelpmn.org under “Consumer and Debt.”)

Client is judgment proof (has only income or assets that are exempt from collection⁶). Note, if that judgment proof status is temporary (e.g., based on temporary receipt of public assistance), your client may benefit more if you proceed as though he or she were *not* judgment proof.

Regardless of whether the case is pre- or post-judgment and whether your client has any defenses, you may write a [letter to your client's creditors](#) (including this plaintiff). In this letter, explain that your client is judgment proof and request that the law firm's non-attorney debt collectors cease contacting/harassing your client. (If your client's goal is to settle, be careful not to inadvertently close the lines of communication with opposing counsel; you may want to include language in the letter to indicate that the client consents to be contacted by an attorney regarding settlement so that opposing counsel can engage in negotiations without fear of violating the Fair Debt Collection Practices Act (FDCPA)). Enclose proof of exempt income/assets after redacting any confidential information. Under the FDCPA, all debt collectors must comply with a written request to cease contact; while original creditors may not be required to comply, they usually do. Creditors still may (and routinely do) sue your client to get a judgment despite the fact that a client is judgment proof.

Unfortunately, your client will have an ongoing burden to verify the exempt status of assets and income. To reduce future problems, advise your client to: cooperate with collectors' requests for confirmation of exempt income/assets; not mix any non-exempt with exempt money in bank accounts; not have any joint bank accounts with non-debtors; and be ever vigilant for garnishment notices and ready to complete and submit the exemption claim form within the time specified (10 or 20 days).⁷ Failure to do so may result in the judgment (or even pre-judgment) creditor seizing income or freezing and seizing accounts.⁸

¹ Check the Minnesota Court Information System (MNCIS) website to see if the case has been filed with the court. Typically, Hennepin County trial court records are posted online within a week of the action. Remember that a Minnesota court action is commenced upon service of the action upon the defendant, not upon filing it with the court. (Minnesota Rule of Civil Procedure 3.01, Commencement of the Action.) If a defendant fails to answer, a plaintiff can garnish before the lawsuit is filed with the court.

² Common defenses include full or partial payment, discharge of debt (e.g., in bankruptcy), invalid assignment, and expiration of the statute of limitations. (In contracts for the sale of goods, Minnesota's statute of limitations is four years under the UCC. Minn. Stat. § 336.2-725. If the date of last payment was after August 1, 2004, the statute of limitations from the state in the choice-of-law provision applies, which is typically three to four years. The statute of limitations starts to run the date of the last payment or last charge.) If the plaintiff is a successor in interest to the original creditor, see our March 2008 Tip of the Month for more details on possible defenses.

³ See Minnesota Rule of Civil Procedure 60.02. A helpful resource on motions to vacate default judgments is Chapter 16 DISMISSALS AND JUDGMENTS, Part G. Default Judgment, Minnesota Civil Practice, McFarland, Keppel, Copyright 2007, Matthew Bender & Company, Inc., a member of the LexisNexis Group. VLN also has sample forms and tips on Motions to Vacate Default Judgments.

⁴ See Roe v Widme, 191 Minn. 251, 254 (1934); Wood v. Schoenauer, 85 Minn. 138, 88 N.W. 411 (1901); Pilney v. Funk, 212 Minn. 398, 3 N.W.2d 792 (1942).

⁵ Minn. Stat. § [571.71](#)(2).

⁶ For exempt assets and income, see: Minn. Stat. §§ [550.37](#) (various exempt assets and income); [510.02](#) (real property); [510.07](#) (proceeds from homestead); [571.922](#) (earnings); [571.925](#) (bank account funds); [268.192](#) (unemployment compensation); [550.38](#) (veteran's benefits); [550.39](#) (payments from accident or disability insurance); and 42 U.S.C. § 407 (social security benefits). The Minnesota Judicial Branch website also contains a [Summary of Exempt Property](#) (Minn. Stat. §§ 510.02, 550.37).

⁷ Minn. Stat. Chapter 571, especially § 571.72. Note that while notice of intent to garnish earnings is given prior to the earnings being taken, notice of intent to garnish an account with a financial institution is given after the account has been frozen.

⁸ Even if the creditor/collector has been told that your client is judgment proof, it can still freeze a bank account without warning, often resulting in NSF charges and bank fees (more so if the client loses any time in sending back the exemption claim to get the account unfrozen). If the client delays, and the funds are actually seized, the client may eventually get the exempt money back via letter or court hearing, but it requires much effort and follow through.