



Debt Collection Issues

Brief Advice Clinics

Common Client Issues:

- Client expresses interest in filing bankruptcy outright because he or she wants a “clean slate”;
- Client may be facing a lawsuit from one particular creditor or debt buyer and does not know how to respond to the complaint;
- Client may have a judgment against them from a lawsuit that was filed a long time ago and a new creditor has re-started collection efforts. The client may or may not have been aware of the original case but is now having her wages garnished;
- Client may be harassed or threatened by debt collectors;
- Client may be facing a foreclosure;
- Client may be interested in obtaining a copy of his credit report or may need assistance in resolving an inaccuracy;
- Client may have a student debt issue.

How to give “Good Advice” to these clients:

1. Determine if the client is collectable. Does the client have any assets or income that either a creditor or trustee in Bankruptcy Court can seize? The same Ohio Exemption statute [ORC 2329.66] applies in both scenarios. The knowledge that a creditor cannot take anything from them is powerful, particularly for our elderly clients who are especially susceptible to creditor threats. If the client is not collectable, we have a letter-writing program to stop creditor harassment explained below. If the client is collectable, additional legal action may be necessary.
 - a. **Initial caveat:** if the creditor is the federal or state government, they follow a slightly different set of rules. They still cannot leave a debtor with less than a certain amount of income per month, but they do not necessarily have to have a judgment and can access tax returns and social security benefits that are generally safe. Regular creditors (credit card companies, hospitals, banks, utility companies, etc.) must sue a debtor in court and successfully receive a judgment before they can collect.
 - b. **Income:**
 - i. The following sources of income are entirely exempt from collection*:
 1. Social Security and Social Security Disability (unless the creditor is the federal government – student loans, some tax debt, benefit overpayments);
 2. Supplemental Security Income;
 3. Unemployment compensation
 4. Veteran’s benefits;
 5. Child Support;
 6. Pensions (cl. may have to show pension is “reasonably necessary for the support of the person,” which is likely not a problem for clients you will be meeting).

* Income is exempt even after the income is deposited into a client’s bank account and the amount is higher than the amount listed in the table below.



Client may have to alert the bank and creditor that they are attempting to collect exempt funds.

- ii. Wages – [ORC 2329.66 (13)] The **greater** of \$217/week or 25%.
Basically, a creditor cannot leave an individual with less than \$217/week, after mandatory deductions, post-garnishment. This statute does not account for family-size, so many clients are supporting their entire households on a relatively low-income and cannot afford a garnishment.
- c. **Assets:** an individual can have assets valued up to the following amounts and they will be exempt:

| Exemption | Description |
|-----------|---|
| \$475 | Bank accounts, cash, tax refunds not yet received (even if not filed yet) |
| \$1600 | Jewelry |
| \$3775 | Automobile equity (value minus what they still owe) |
| \$12,625 | Clothing and household items (up to \$575 each item) |
| \$23,700 | Recent auto accident where someone owes them money for bodily injury |
| \$2400 | Tools of trade (carpenter tools, plumbing tools, etc.) |
| \$136,925 | Real Property that the client lives in |

2. Evaluate the stage of the litigation process:

a. **Foreclosure –**

- i. Post-Judgment: If the client is being foreclosed on and a judgment has already been issued, there is little we can do. This debt is dischargeable in a bankruptcy and filing bankruptcy may delay the sheriff sale or the confirmation of the sale, but it will not make it go away.
- ii. Pre-Judgment: Ask the client if they wish to keep their home and can make reasonable monthly mortgage payments. LASC may consider the client’s case for in-house representation, particularly if one of the following scenarios apply:
 1. Client has considerable equity in the home;
 2. Client is generally able to make reasonable monthly mortgage payments, but one event has rendered him unable to make monthly payments.
 3. Client has a defense to the foreclosure.

b. **Creditor Lawsuit –**

- i. Post-Judgment: If a judgment has already been issued in the case, there is generally very little legal aid can do. If the client is collectable and has other debts, he may want to consider bankruptcy (addressed below). If the client states they did not receive service of the complaint and has a defense against the underlying charge (mistaken identity, never had a visa card, etc), LASC may be able to assist him.
- ii. Pre-Judgment: If the client has collectable income, LASC may be able to assist him in the case.



1. If the client has been served a complaint, an answer is due 28 days after the date of service.
 2. If the date is getting close, advise the client to file a pro se extension of time. Legal Aid can provide the client with a packet and directions if they are not at the clinic. These are also available on our website under the “get help” section.
 3. If the client has numerous cases and wishes to file bankruptcy, they still want to file the extension of time to assess their bankruptcy options.
3. **Bankruptcy** – If the client expresses interest in filing for bankruptcy, or it looks like because of their multiple creditor lawsuits, bankruptcy might be a good idea, Legal Aid has programs available. If a client has filed a chapter 7 and received a discharge in the case, within the past 8 years, they are not eligible to file a chapter 7 again until the 8 year mark has passed. Additionally, the client must have lived in this city for the last six months. Legal Aid has the following resources available:
- a. **Bankruptcy By-Pass clinic:** Clients who are elderly or disabled and are long-term “uncollectable” may qualify for the Bankruptcy By-Pass program, an alternative to Bankruptcy. Legal Aid sends out letters to the client’s creditors telling the creditor the client is long-term uncollectable and to stop contacting him or her under the Fair Debt Collections Practices Act. By law, the creditor should stop contacting the client. Qualifiers:
 - i. Client has a fixed income such as Social security, SSI, or a pension and their income is not likely to go up in the future. These sources of income are generally out of reach for a creditor, and so long as the client does not have any non-exempt assets, they may not need to go through the effort and cost of filing for bankruptcy.
 - ii. Client is receiving phone calls from creditors on a regular basis.
 - iii. Client does not have any collectable assets (see chart above) and does not own a home.
 - b. **Chapter 7 Reduced-Fee Bankruptcy Referral:** Legal Aid refers clients whose income falls under 200% of the poverty line to private attorneys who take the case on a reduced-fee basis.
 - i. Cost is **\$685** for clients who do not own property and **\$785** for clients who do own property.
 - ii. Clients must be funneled through LASC to receive a referral.
 - c. **Chapter 7 Pro Bono Bankruptcy Referral:** Legal Aid refers qualifying clients to private attorneys on a pro bono basis if the following eligibility criteria are met. Legal Aid collects the necessary documentation prior to the referral. Do not promise anyone a pro bono referral, but if it looks like someone may qualify, LASC will evaluate.
 - i. Client is under 100% of the poverty line;



| Family Size | Max. Yearly Income | Max. Monthly Income |
|-------------|--------------------|---------------------|
| 1 | \$12,140 | \$1012 |
| 2 | \$16,460 | \$1372 |
| 3 | \$20,780 | \$1732 |
| 4 | \$25,100 | \$2092 |
| 5 | \$29,420 | \$2452 |
| 6 | \$33,740 | \$2812 |
| 7 | \$38,060 | \$3172 |
| 8 | \$42,380 | \$3532 |

- ii. Client has not filed Ch. 7 within the last eight years;
- iii. Filing bankruptcy initiates an “automatic stay” which is a valuable tool for our clients. Client must be facing one of the following emergencies to qualify for the pro bono referral program:
 - 1. Utility shut-off notice;
 - 2. Wages are being garnished, or they **may** be garnished (cl. has a judgment, or is in the middle of the a credit card case AND has collectable income);
 - 3. License suspension – if a client’s license is suspended for some reason other than a DUI, Points, Child Support Arrears, or unpaid parking tickets, filing bankruptcy may allow them to get their license back.
- d. **Chapter 13 Bankruptcy Filing** – Legal Aid does not have any official program for Ch. 13 bankruptcies. It is generally in a client’s best interest to file Chapter 7 because the case is over in a matter of months and the client does not have to enter into a 3-5 year payment plan. The following are common reasons a client may want or need to file Chapter 13:
 - i. Over median income;
 - ii. Client filed Chapter 7 within the last eight years;
 - iii. Client is attempting to save their home and include past-due mortgage arrearages in the plan;
 - iv. Client has collectable assets they do not want to give up.

Miscellaneous Additional Scenarios

- 1. **Veterans** – If the client you are talking to is a veteran and has a debt collection issue **other than bankruptcy**, there are multiple legal resources beyond legal aid that he or she can access.
 - a. Captain Jonathan D. Grassbaugh Veterans Project – No income eligibility requirements. Clients should call 614-292-0290 and will be routed through the intake at OSU.



- b. Operation Legal Help – Clients with debt collection issues with income below 150% of the poverty line should contact Operation Legal Help Ohio at 1-877-759-6182.
- 2. Student loans** – Generally, not dischargeable in bankruptcy.
 - a. Ask who the client owes?
 - i. If the client owes on a federal student loan, they have a number of options unavailable with private loans;
 1. Client should look up National Student Loan Database
 - ii. If the client has a current lawsuit involving a school directly, LASC may be able to assist.
 - iii. If the client owns a private student loan, there are few options.
 - b. Is the client able to make any payments in an effort to renew loan payments? If the client has defaulted on their federal student loans, they have a few different options and should contact their lender :
 - i. Loan Rehabilitation;
 - ii. Settlement;
 - iii. Consolidation.
 - c. If the client is disabled and has federal student loans, it is best to direct her to file a Total and Permanent Disability Discharge and can begin the process by calling 1.888.303.7818 or visiting www.disabilitydischarge.com.
- 3. Credit Reports** – Annualcreditreport.com
 - a. If the client is interested in accessing a free copy of their credit report, he/she can pull one up online at annualcreditreport.com or he can fill out a form available at the clinic and on the website and mail away for it.
 - b. If the client is interested in disputing something on the credit report, he/she should take the following steps:
 - i. Contact both the credit reporting company (Experian, TransUnion, or Equifax) and the creditor/company that provided the information.
 - ii. Explain in writing what you think is wrong, why and include copies of documents that support your dispute. Include:
 1. Name;
 2. Address;
 3. Telephone number;
 4. Report Confirmation Number;
 5. Account Number.
 - iii. Send your letter by certified mail and ask for a return receipt:
 1. **Equifax**
Online: www.ai.equifax.com/CreditInvestigation
Mail the dispute form with your letter to:
Equifax Information Services LLC
P.O. Box 740256
Atlanta, GA 30374
By phone: Phone number provided on credit report or (800) 864-2978
 2. **Experian**
Online: www.experian.com/disputes/main.html
By mail: Use the address provided on your credit report or mail your letter to:



Experian
P.O. Box 4000
Allen, TX 75013

By phone: Phone number provided on credit report or (888) 397-3742

3. **TransUnion**

Online: www.transunion.com/personal-credit/credit-disputes-alerts-freezes.page

Mail the dispute form with your letter to:

TransUnion Consumer Solutions

P.O. Box 2000,

Chester, PA 19022-2000

By phone: (800) 916-8800

- c. If the client feels the error on the credit report is due to identity theft, he should:
- i. Call the credit bureaus to place a fraud alert on his report;
 - ii. File a police report;
 - iii. Call your bank; and
 - iv. report the error to the Ohio Attorney General by calling 800-282-0515.