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LAW PRACTICE MANAGEMENT

Following the Money

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Laboring under significant pressure to generate business, lawyers often forget to investigate whether to accept a client and look into an opponent's solvency—and to follow through on collection efforts. But these practices can leave you out of luck and out of pocket.

LOOK BEFORE YOU SUE

Investigate all clients thoroughly before accepting them. Include their financial condition, credit history, and history of lawsuits in your research.

Once you accept a client, assess whether a judgment will be collectable by investigating all potential opposing parties: their assets, liabilities, existing and future income, credit and bankruptcy history, and location.

When conducting investigations, use experts to help save time and money. Private investigators, for example, likely have access to more information than you do and have greater expertise in extracting information from others effectively and efficiently. Furthermore, investigators have fewer restrictions governing with whom they may speak. (See, Cal. Rules of Prof. Conduct 2–100.)

TURNING A JUDGMENT INTO CASH

You can take several practical steps to secure a judgment and help avoid potential pitfalls when it comes time to collect it.

Collection efforts. At the beginning of every lawsuit, try to obtain an attachment lien. Once a judgment is entered, secure your client's claim against all assets of the debtor. For real estate, you must obtain an abstract of judgment and then record it with all counties and states in which the property is owned; if it's owned outside the state, you must register the judgment in that state and follow its rules for perfection.

A secured claim has many benefits. A secured creditor enjoys the

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rights to foreclose on a defendant's assets, and a properly perfected lien cannot be discharged in bankruptcy or by an assignment. Finally, a debtor cannot confirm a plan providing for paying claims in bankruptcy unless a lienholder consents or the debtor can "cram down" the objecting lienholder. The only way a debtor can confirm a plan against a nonconsenting secured creditor is to prove that the plan is fair and equitable.

You can take a number of steps before a debtor can create collection obstacles. They include: wage garnishments against individuals and bank levies if economically efficient; till taps, in which a sheriff or marshal seizes all cash and credit-card receipts on the debtor's premises; keeper installations, in which a sheriff or marshal remains on the debtor's premises to collect all cash and credit-card receipts from customers; and receiver appointments, in which a court-appointed person oversees and operates the debtor's business.

Collection hurdles. Be cognizant of potential hurdles that may affect a debt's collectability. For example, a debtor may assign its assets to an assignee for the benefit of its creditors, or alternatively, file a voluntary petition under Chapter 7, 11, or 13 of the Bankruptcy Code.

If a debtor effects an assignment, investigate the assignment to determine whether it was proper and made in good faith. Depending on the results of your investigation, you may be able to seek legal redress by attacking the propriety of the assignment.

If a debtor's business is sold, investigate potential successor liability. Depending on how the business continues to operate, the new purchasing entity may be subject to successor liability.

Generally, the person who purchases assets of another corporation or assignee does not assume the seller's liabilities unless certain conditions exist, such as when the purchasing corporation is a mere continuation of a seller, or the transfer is for the fraudulent purpose of escaping liability for the seller's debts. (See, *Ray v. Alad Corp.*, 19 Cal.3d 22 (1977).)

If a bankruptcy is filed, make sure to file a proof of claim, indicating the type of claim—secured, priority, or other—and including all documentation necessary to evidence the validity, amount, and nature of the claim.

If a Chapter 11 is filed, take advantage of the 341(a) meeting of creditors. This is a publicly held examination by the United States Trustee into the debtor's assets, liabilities, and business operations, in which creditors are allowed to ask the debtor questions that might otherwise require a deposition or a judgment-debtor exam. CL