



# Debt Collection Lawsuits and Counter Suits

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# Debt Collection Cycle

- Original Creditors
  - Overdue billings
  - Collection calls
  - Close Account
  - Litigation and/or Write Down
- Secondary Creditors
  - Collection letters → Possibly Attorney Letter
  - Collection calls → Possibly originated by Law Firm
  - Litigation
  - Re-assignment of Debt

# Debt Collection Lawsuits

- Original Creditors
  - Credit Cards
  - Auto Loans
  - Payday Loans
  - Medical Bills
- Secondary Creditors
  - Debt Buyers (all of the above)

# The Collection Lawyer Toolkit

- File as many suits as possible
- Buy Debts or Share collections
- Count on Uninformed Courts
- Count on Uninformed Defendants
- Count on Defaults
- Garnish Garnish Garnish

## Default Judgments

- 10 days to set aside
- Error in Service – no time limit

## The Petition

- We are a legal business
- We own this account
- You were extended credit
- You didn't pay
- We demanded payment
- You owe some exorbitant amount
- We Need attorney Fees
  - Limited by 965 sw2d 262 Manfield v. Auditorium Bar & Grill

## The Affidavit

- We are a legal business
- We own this account
- I am the custodian of records for assignee
- Our records say you owe \$\$\$

# The Assignment

“On this date, big credit card company transferred the accounts in collection file “X” to assignee company for good and valuable consideration”

Signed,

Random big CC guy

Random debt buyer gal



## The Judgment Proof Dependant

- Social Security or Exempt Income §513.430.1(10)
- Unemployed / No Prospects
- No Real Estate
- No Significant Assets §513.430.1
  
- AFFIDAVIT of inability to pay

## Affirmative Defense

- Lack of Standing
- Fraud (Affidavit of Fraud)
- Discharged in BK
- Settlement agreement
- Not a Defense – I paid a debt management company

# Counter Petition

- FDCPA Violations
  - Statute of Limitations
    - 5 Years §516.120; 10 Years §516.110
  - Lack of Standing 15 USCA 1692 e (5)
  - Communication violations 15 USCA 1692 b & c
  - Harassment 15 USCA 1692 d
  - Dunning letter by non MO attorney 15 USCA 1692 f
- Malicious Prosecution

## FDCPA Claims

- Full Actual Damages
- Limited to \$1000 additional damages
  - (all FDCPA violations)
- Does allow attorney's fees
- Class Capacity – All actual damages + Up to \$500,000 + atty fees

## Consumer Lawsuit Strategy

- File Affidavit if unable to pay
- Counter if possible
- Discovery → Motion to compel / sanction
- Set for Trial
- Dismissal by OP
- Counter → Mutual DWP or settlement

**Questions ???**