

# COLLECT YOURSELF

## HOW TO EXTRACT MONEY FROM TIGHT-FISTED CLIENTS

**The check *wasn't* in the mail.** Your client said, "Mail me an invoice, and I'll pay you before the month's out," and here it is, 47 stomach-churning days later, and you're still checkless. You sent a crisp new invoice marked "overdue." No check. Then you shot off an angry email. Still nothing. Now what?

Unfortunately, you're not alone. Soloists all over America are suffering from similar collection headaches. The nasty little secret of self-employment: Some clients don't pay on time, and a few don't pay at all.

If you think your only option is to pass a client debt over to a lawyer or collection agency, you're wrong. Fact is, independent professionals can collect many debts themselves. It takes a little time and effort, but it can be well worth it: DIY debt collection saves the gargantuan fees that lawyers and collection agencies charge. Moreover, IPs often can extract checks from tight-fisted clients as well as any lawyer or collection agency can. Trust me. I'm not just a writer — I'm an attorney. (Well, trust me anyway.)

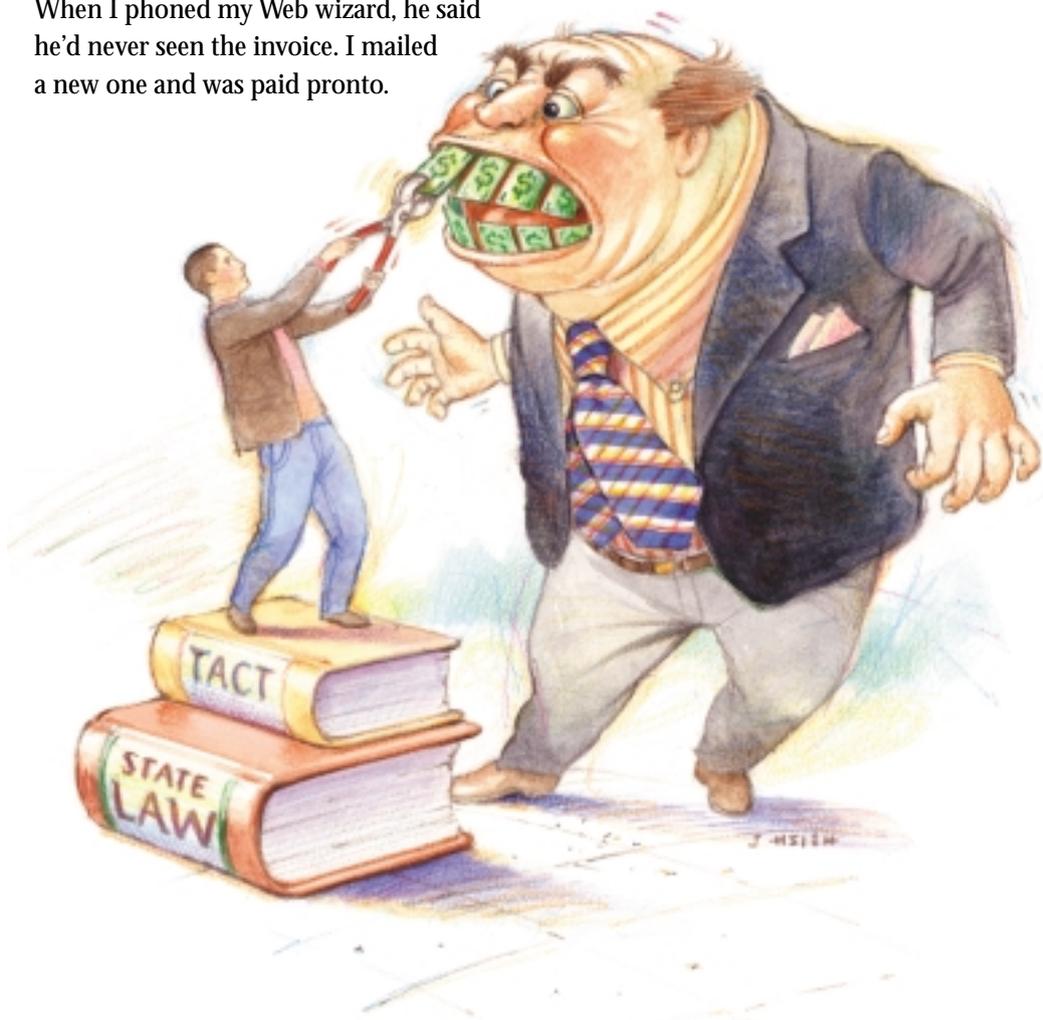
### What's the Problem Here?

The first rule of collections is that the early bird gets the deadbeat. The longer you wait to collect a debt, the less likely you'll succeed. Which is to say, don't start sweating if a payment is only a day or two late. But if a check is more than 10 days overdue, hitch up your pants and get ready to work.

Begin by contacting the client to find out what the problem is. There are four ways to do this: Send a letter, write an email, pick up the phone, or pay a visit. Face-to-face is the way to go, but if you can't get your client to sit down with you, grab your cell phone and start punching numbers. During your visit

or phone call, politely say that payment is past due and ask why. Among the common reasons for nonpayment:

- **Problems with invoices.** Much of the time, a payment is late because of an invoice screwup. The client didn't receive the invoice or didn't understand it, or you addressed it to the wrong person or department. Sending a new one may clear up the problem. I once wrote an article for a Web site, sent a bill, and was waiting for payment 30 days later. When I phoned my Web wizard, he said he'd never seen the invoice. I mailed a new one and was paid pronto.



by Stephen Fishman

Want to get paid? Get writing. If your client's cash flow is drying up, but he agrees to pay you in dribs and drabs, put the terms in a letter. (Exhibit A is a fine model.) On the other hand, your client may not be so cooperative. In that case, try something like the final-demand letter in Exhibit B.

- **Problems with your services.** Some clients may refuse to pay because they feel your work was lacking. If a client's complaints seem reasonable, try to solve the problem. Offer to redo the work or to reduce your fee. If the client is unhappy with only part of the job, ask for partial payment. But if a client's complaints are unreasonable, demand full payment immediately.

April 5, 2001  
 Dick DuBois, President  
 White Woods Advertising  
 1124 Hughes Road  
 Shermar, IL 60062

Re: Your account no. 778  
 Invoice no. 202

Dear Mr. DuBois:

Your outstanding balance of \$6,000 is over 90 days old.

If you do not make full payment by April 15, 2001, I will file a lawsuit against you. A recorded judgment is a lien against your property and can only have an adverse effect on your credit rating.

I hope to hear from you immediately so that this matter can be resolved without filing a lawsuit.

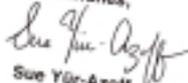
Best wishes,  
  
 Sue Yür-Azoff

EXHIBIT B

April 15, 2001  
 Joe Dokes, President  
 Acme Corporation  
 420 Easy St.  
 Marred Vista, CA 90900

Re: Your contract no. 1234  
 Invoice no. 115

Dear Joe:

Thank you for your offer to send me \$500 a month to pay off your company's outstanding balance on the above contract.

As agreed, I am willing to accept \$500 monthly payments for six months, until this debt is paid. The payments are due on the first of each month, beginning May 1, 2001, and continuing monthly through October 1, 2001.

As long as the payments are timely made, I will take no further action.

Thank you for your cooperation.

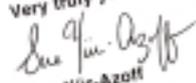
Very truly yours,  
  
 Sue Yür-Azoff

EXHIBIT A

- **Problems with cash flow.** Other clients may be happy with your work but then cry poor. One all-too-common excuse: "I can't pay you until my client pays me." If this is the case, get a firm commitment on when you

will be paid. You can give the client more time to pay or work out a reasonable payment plan. For example, have the client pay a certain amount every two weeks until the entire balance is covered. Be sure to write down any new payment terms in a confirming letter and send it to the client (see Exhibit A). And keep a copy for your files.

## Final Demands for Deadbeats

Before you start legal action against a client, try sending a *final-demand letter*.

This is a formal warning: "Pay me by X or we're going to court." Sometimes just the threat of a lawsuit does the trick. Most clients don't want to go to court, and they certainly don't want their credit rating damaged if you obtain a judgment against them. What's a final-demand letter look like? See Exhibit B.

## Bring a Suit Against a Suit

If you're convinced that the client is not going to pay you voluntarily but has the money or assets to pay, it's time to get legal. Don't be shy: That's what our legal system is there for. Make a date with that cheapskate client of yours in small-claims court.

Every state has a court specially designed to help people resolve disputes involving IP-sized amounts of money. The maximum amount you can sue for varies from place to place, from \$1,500 in Kentucky and Rhode Island to as much as \$25,000 in Tennessee. In most states, the limit is between \$3,000 and \$5,000. If you're owed more than the small-claims limit, you still can sue in small-claims court, but you must *wave* (or, as they say outside the legal profession, "give up") the excess amount. See "Dollar Limit for Small-Claims Lawsuits" for state-by-state limits.

## Collect Yourself

Think your only option is to pass a client debt over to a lawyer or collection agency? You're wrong.

Small-claims lawsuits are a great way to collect debts because they are fast, cheap, and within your control. You don't need a lawyer to go to small-claims court. In fact, lawyers are barred — *barred*, get it? — from small-claims courts in some states, including California, Michigan, and New York.

Your local courthouse probably has a small-claims court. Visit the court clerk's office — the people there will shower you with the necessary forms — and then follow this fun four-step plan:

- **Step 1: File the court papers.** Fill out and file your papers with the small-claims court. Usually this means completing a simple form that identifies the defendant and explains your case. (The *defendant* is the person who is sued. The *plaintiff* is the person who files a lawsuit. If a client owes you money and you sue him, you are the plaintiff and the client is the defendant.) In a few states, you'll need to attach the client agreement or other written evidence of the debt. You may want to make a copy of the evidence. Oh, and don't forget to pay the filing fee: Small-claims court filing fees tend to be modest, if not downright humble, ranging from \$10 to \$50. When you file the papers, ask for a court date. The whole experience should last as long as an episode of *Law & Order*.

- **Step 2: Serve the papers.** Next, you must get a copy of the court papers to the defendant. Legal people call this *service of process*. In most states, you can serve the papers by mailing them to the defendant via certified mail. In some states — New York, for example — you can even send them by first-class mail. Certain states require that the papers be served by a sheriff, marshal, constable, private process server, or local superhero.

- **Step 3: Get ready.** If the defendant

doesn't settle the case — read: pay up — get ready to rumble. Gather together and review all the documentation proving that the defendant owes you the money. That includes written contracts, letter agreements, invoices, and purchase orders.

Preparation time: no more than a couple of hours.

- **Step 4: Go to court.** Winning your case in court shouldn't be hard.

Honestly. Most defendants in debt cases don't even bother to show up for the court hearing. If that happens, ask the judge or clerk for a *default judgment*.

If the defendant does show up, forget *Ally McBeal*, the O.J. trial, and all the other high-powered courtroom drama you've seen on the tube. Small-claims court is informal. There is no jury. Think *Judge Judy*. It's as simple as show-and-tell: You show the judge your documentation and tell your story. If you have a written contract or purchase order signed by the defendant, proving your case should be easy like Sunday morning.

Depending on how crowded your small-claims court is, the whole process should take a half a day or less. You'll spend most of that time waiting for your case to be called.

### Winning Isn't Everything

After you've won your case and the court has *entered its judgment* (reached a decision and recorded it in the court records), you get paid, right? Wrong. Winning doesn't guarantee that you'll ever see a dime. Though many defendants do pay up, others don't. And the court does relatively little to help you collect the judgment.

Lucky for you, there are several techniques for collecting a court judgment:

- In every state, a person with a court judgment against a debtor can obtain a lien on the debtor's real or personal property. Translation: The debtor won't be able to sell or refinance the property until you're paid and have the lien removed. It may take a while to get paid this way, but it usually works.

- Can't wait until the debtor wants to sell property? Then go directly after his assets. You can have a sheriff or marshal levy the client's bank account and get whatever it contains at the time of the levy. However, you have to know where the debtor banks for this to work. And it probably will work only once: The debtor is sure to move the moolah once he sees that you can get your mitts on it. (It's a good idea to make a photocopy of each check you do get, so that you have the client's account information.)

- In many states you can have the law go to the debtor's office and collect any cash on hand. They call this a *till tap*, and it's particularly effective when a debtor is a retail business with a cash register. Ask the sheriff to do the till tap at the end of the day, when the business should have the most cash available.

- Small-claims courts can be a good source of information. Most require debtors to answer questions about the extent and location of their assets. The Q&A process varies from state to state, but many courts force losing defendants to fill out question-

naires about their assets. And in some states, plaintiffs get to question debtors personally in court. This table-turning procedure often is dubbed a *debtor's examination*.

## Hired Help

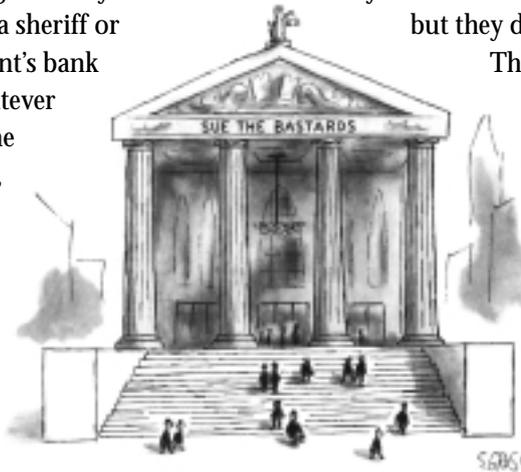
Should you ever hire a collection agency to collect from a deadbeat client? The good news about collection agencies is that they work on a contingency basis: That is, they take a percentage of what they collect. If they don't collect, you don't get your money, but they don't earn anything either.

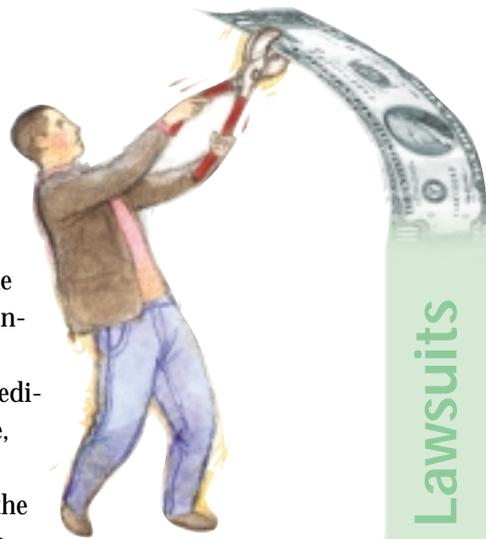
The bad news? These agents of collection take a healthy cut, 30 to 50 percent. So even if they're successful, you'll end up getting far less than what you're owed. Besides, all an agency does is call the client or send collection letters. You can do that yourself. And because these people work on a

high-volume basis, they'll never give your debt the time and loving attention that you will.

Collections lawyers usually work on contingency as well, and they slice themselves the same cut as collection agencies do. Hiring a collections lawyer makes sense only if you're owed substantially more than you can sue for yourself in small-claims court — at least \$5,000 more — and are going to have to conduct a full-blown trial to get it. If you need a collections attorney, find a good one. Ask business associates or friends. A lawyer you've used for another purpose also may be able to refer you to a collections specialist.

There's another, far cheaper, way to use a lawyer. You can hire an attorney — any





attorney, not just a collections specialist — to send a *dunning letter* to a client. This is a letter that asks the client to pay you. Lawyers frighten most people, sometimes enough to get them to write a check. You shouldn't have to pay more than a C-note for this. And remember: When you hire a lawyer to write a dunning letter, you're buying the letter, not a collection.

**Uncle!**

Know when to give up. If your client goes down for the count, chances are you'll get little or, as they say in the legal profession, bupkiss. As soon as a client files for bankruptcy something called an *automatic stay* goes into effect, and all collection activity must stop. Note: You might even be required to turn over to the bankruptcy court any money you collected from the client shortly before he flipped to Chapter 11.

When a debtor files for bankruptcy, he is supposed to list all debts and creditors. The bankruptcy court then notifies all of the creditors. If you believe a client has filed for bankruptcy but you haven't received notice from the court, you probably weren't listed in the debtor's papers, or the notice was sent to a wrong address. Call the bankruptcy

court in your client's area and ask if he has filed for bankruptcy. If the answer is yes, get the name and phone number of the bankruptcy trustee handling the case. Then call the trusty trustee, say that you're a judgment creditor who did not get notice of the case, and ask for notice.

After you receive the notice from the bankruptcy court, you'll need to file a *proof of claim*, a simple document stating how much the debtor owes you. If, like almost all IPs, you're an *unsecured creditor* — the client hasn't pledged real estate or other property as collateral for the debt — don't count on ever getting more than pennies on the dollar, if that, when the bankruptcy case ends.

**Be Cool**

Finally, whatever happens, keep your cool. It's wrong and unfair that you haven't been paid, but losing your temper will just make things worse. It could even get you sued or arrested. Don't threaten a client or use physical force. Don't yell or swear. Don't phone the client 100 times a day or at three in the morning. Remember: You're a pro, even if your client isn't. **1099**

Jurisdiction	Limit		Limit		Limit
Alabama	\$3,000	Kansas	\$1,800	North Dakota	\$5,000
Alaska	\$7,500	Kentucky	\$1,500	Ohio	\$3,000
Arizona	\$2,500	Louisiana	\$2,000	Oklahoma	\$4,500
Arkansas	\$5,000	Maine	\$4,500	Oregon	\$3,500
California	\$5,000	Maryland	\$2,500	Pennsylvania	\$10,000
Colorado	\$5,000	Massachusetts	\$2,000	Rhode Island	\$1,500
Connecticut	\$2,500	Michigan	\$7,500	South Carolina	\$5,000
Delaware	\$15,000	Minnesota	\$7,500	South Dakota	\$4,000
District of Columbia	\$5,000	Mississippi	\$2,500	Tennessee**	\$15,000
Florida	\$5,000	Missouri	\$3,000	Texas	\$5,000
Georgia	\$5,000	Montana	\$3,000	Utah	\$5,000
Hawaii	\$3,500	Nebraska	\$2,100	Vermont	\$3,500
Idaho	\$3,000	Nevada	\$3,500	Virginia	\$3,000
Illinois	\$5,000	New Hampshire	\$5,000	Washington	\$2,500
Indiana*	\$3,000	New Jersey	\$2,000	West Virginia	\$5,000
Iowa	\$4,000	New Mexico	\$5,000	Wisconsin	\$5,000
		New York	\$3,000	Wyoming	\$4,000
		North Carolina	\$3,000		

\*\$6,000 in Marion County.

\*\*\$25,000 in counties where the population is over 700,000.