

What is the difference between litigation attorneys and collection attorneys?



In order to effectively utilize the courts to collect a debt owed, a creditor must understand the difference between litigation attorneys and collection attorneys.

Litigation attorneys, also known as litigators, engage in the litigation process from the

drafting of the summons and complaint, through discovery pre-trial, trial, and appeal. In simplistic terms, litigators start lawsuits, and continue the process until judgment is rendered and all appeals have been exhausted or waived.

Collection attorneys, on the other hand, are experts in enforcing the judgments litigators obtain; they have the substantive and procedural knowledge, as well as the resources and relationships needed, to enforce the judgment obtained by the litigator.

Litigators are typically paid on an hourly basis, with hourly rates varying greatly, until the case is settled or a final judicial determination has been made;

Collection attorneys are typically paid on a contingency basis, and are retained, more often than not, after the final judgment has already been entered.

Litigation attorneys charge the same fee regardless of the outcome of the litigation; Collection attorneys earn a substantial percentage of the money collected, but charge no fee at all if no money is received.

While litigation attorneys rarely attempt to engage in “collection work” and enforce the judgments they obtain, (and don’t accept contingency fees in any event!), collection attorneys will often include “basic litigation,” either at a lower

rate than litigators usually charge, or in exchange for a higher percentage of the recovery that results, or a **“hybrid” of the two.**

Regardless of who commences the lawsuit and obtains the judgment, if the judgment debtor fails to satisfy it, enforcement may require some of the more common tools utilized by collection attorneys, such as information subpoenas, restraining notices, and wage garnishments. In order to restrain a bank account or garnish a salary, however, one must “find” the bank or place of employment (POE). Locating a judgment debtor’s bank account or POE requires multiple resources, including **proprietary software, access to various databases, relationships with vendors to the collection industry,** etc. Skip tracers are needed to locate parties required to be served with restraining orders, income executions and information subpoenas. Relationships with vendors to the collection industry allow collection attorneys to maintain “cutting-edge technology” in locating bank accounts and/or places of employment. **Custom proprietary software enables direct communication** with banking institutions, searching bank accounts to matching Social Security numbers and other contact information to identify any bank accounts owned by the judgment debtor.

Collection attorneys will often serve restraining notices on numerous banking institutions, in the hope that the judgment debtor maintains an account in one. **A restraining notice “freezes” the judgment debtor’s property,** so it cannot be transferred while a sheriff or marshal can be obtained, via property execution, to seize the judgment debtor’s assets.

Once the account is restrained, an information subpoena may also be served so additional information regarding the judgment debtor’s assets may be obtained. New York’s CPLR § 5223 authorizes attorneys to issue information subpoenas – a legal document that compels the judgment debtor or a third-party to answer specific questions – to obtain information that can lead to locating a judgment debtor's assets; however, unlike a restraining notice, an information subpoena can only be served on those whom the collection attorney reasonably believes has information that would aid the judgment creditor in collecting his or her judgment.

Wage garnishment differs from restraining bank accounts, but also requires skip tracers and relationships with multiple database vendors to locate places of employment. In New York, the garnishment is commenced by sending an income execution to a sheriff or marshal, who will then serve the judgment debtor with it and advise that a voluntary payment plan must be arranged in twenty (20) days, or the judgment debtor's employer will be notified of the garnishment. If a payment arrangement is made, the judgment debtor's employer is not notified and the judgment debtor makes payments to the sheriff or marshal. If no payment arrangement is made within twenty (20) days, the judgment creditor may direct the sheriff or marshal to serve an income execution upon the judgment debtor's employer and garnish up to ten percent (10%) of a judgment debtor's gross income.

While litigation attorneys can obtain the judgment, enforcing it requires these types of assets be located, and a collection attorney will usually be required to do so.



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