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and the "economy of the State" in fixing rates. Furthermore, the principles of *Hope* and *Bluefield* have been adopted by the Maryland Court of Appeals in their handling of appeals involving decisions of the Public Service Commission.

The Maryland courts have ruled that "fair value of property used and useful in rendering service to the public" does not require the inclusion of reproduction cost or trended original cost in arriving at an appropriate rate structure. See *Chesapeake & Potomac Telephone Co. v. Publ. Serv. Comm'n.*, 201 Md. 170, 93 A.2d 249 (1952). The Court of Appeals has held that the Commission may base its decision upon those consumer interests which it has examined. See *Potomac Ed. Co. v. Publ. Serv. Comm'n.*, 279 Md. 573, 369 A.2d 1035 (1977). It has also been decided that an order of the Commission fixing rates will not be disturbed except under a clear showing that it is unjust, unreasonable, or unlawful. See *Publ. Serv. Comm'n v. Byron*, 153 Md. 464, 138 A. 404 (1927); *Publ. Serv. Comm'n. v. Balt. Gas & Elec.*, 273 Md. 357, 329 A.2d 691 (1974); *Potomac Ed. Co. v. Publ. Serv. Comm'n.*, 279 Md. 573, 369 A.2d 1035 (1977). All of these views initially were put forth by the Supreme Court in 1923 and 1943.

The Maryland regulatory process has been forever colored by the decisions of the United States Supreme Court in *Hope* and *Bluefield*. This year, as in years past, principles enumerated in those decisions became the focal points of the Maryland Public Service Commission as it engaged in the intricate process of ratemaking. It is only reasonable to believe that in the future *Hope* and *Bluefield* will remain as cornerstones in the complex structure of regulatory law.

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## A Primer on Consumer Debt Collection

by R.M. Dapkunas

Experience in the credit and collection field has revealed two important points. First, collection work need not be looked upon as some sort of clandestine, back-room business. Second, collection work can be very profitable and predictable in terms of income.

### Debt Collection Defined

Collections is a very mechanical process for resolving delinquency. It is not necessarily getting people to pay all that they owe on a debt. It is encouraging the delinquent to become a paying customer once again. Many times people don't have *today* what they owe from *yesterday*. With the proper inducement, they may set aside money from future earnings to cover these debts.

In Maryland, consumer debt collection is covered by the Consumer Protection Act. MD. COM. LAW CODE ANN. §14-201(1975). Debt collection under this Act involves collections on consumer transactions; that is, those transactions involving a person seeking or acquiring real or personal property, services, money or credit for personal, family or household purposes.

Consumer debt collection is also governed by a federal statute, popularly known as the FAIR DEBT COLLECTION PRACTICES ACT §1692, 15 U.S.C. §1692 (Supp. 1975 to 1980). The Act took effect in 1968 as a result of evidence indicating the use of, "... abusive, deceptive and unfair debt collection practices by many debt collectors." The Federal Act is more comprehensive than the state act, but it provides exemptions for State Regulations under §1692(n) and §1692(o), where the state requirements are substantially the same as the federal regulations. Even where the debt collection is purely intrastate, the Federal Act has determined that there is a direct effect on interstate commerce.

### A "Collectable" Account

Once a person is determined to be delinquent, a decision must be made as to whether he is "collectable." "Collectable" as usually defined by the industry, refers to someone who has something to lose, either money, reputation or another asset that this debt could jeopardize. Often in the process of trying to effect a collection, it is necessary to inform the debtor of the potential affect of his delinquency on his future credit.

In explaining the consequences of the failure to resolve delinquency, both the Maryland and federal law prohibit certain actions. Section 14-202 of Maryland's Commercial Law lists nine specific acts which are prohibited. They include: threatening force or violence; threatening criminal prosecution, except for violation of a criminal statute; threatening or disclosing false credit information; contacting the debtor's employer prior to final judgment, except as permitted by statute; threatening or disclosing information on the debtor's credit to one who does not have a legitimate business need; communicating with the debtor in such a way as to harass or abuse; using obscene or abusive language; knowingly threatening or attempting to enforce a right which does not exist; using communications which simulate legal or judicial processes. Section 1692(d) of the Federal Statute prohibits many of the same acts prohibited by the Maryland Act; that is, "[a] debt collector may not engage in any conduct the natural consequences of which is to harass, oppress or abuse any person in connection with the collection of a debt."

The credit and collection industry has made the following demographic observations concerning collection potential;

— Collection is more effective with those who are older, principally

because they seem to recognize the seriousness of credit refusal, salary attachment, etc.

- Females seem to be more concerned about debt and credit reputation than males, particularly in the lower age brackets.
- The spouse of a well-paid male is normally concerned about *her* affect on *their* credit standing.
- Certain geographic areas of a municipality are more apt to produce greater or lesser delinquency, the resolution of which seems to be in direct proportion to the degree to which the delinquency occurs. That is, a blue collar, high unemployed area will usually produce a lot of delinquent "paper" which is difficult to resolve.
- As a general statement, those who are employed will be more apt to resolve past debts, than will those who are unemployed. The reason seems to be that the employed person has a potential for future earnings and is concerned about his past, present and future obligations. The unemployed are often preoccupied with meeting current needs.

The definition of a debt collector varies between the Maryland and

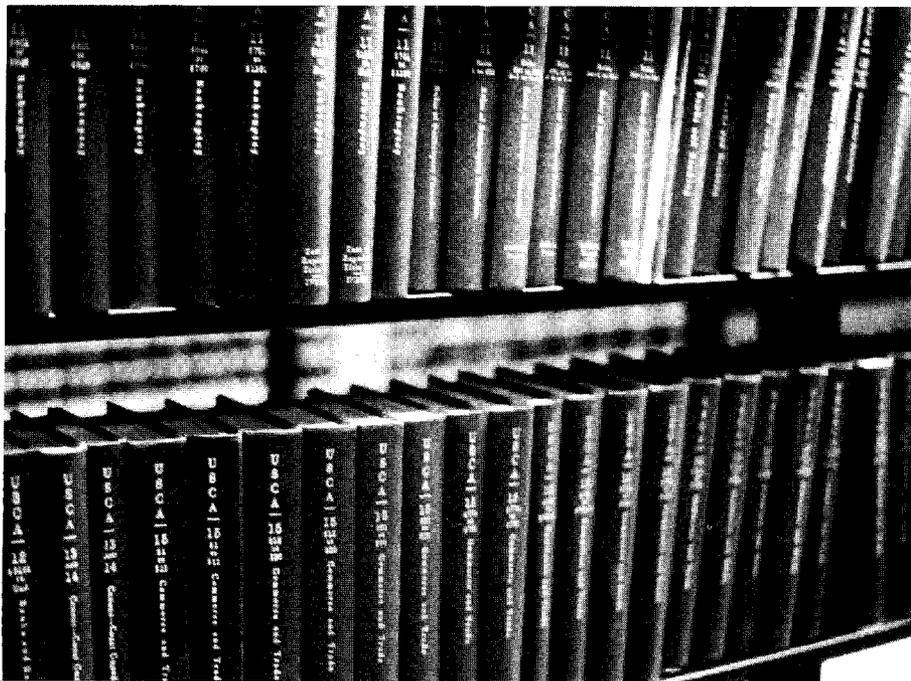
Federal statutes. In Maryland a "collector" is defined as, "...a person collecting or attempting to collect an alleged debt arising out of a consumer transaction." MD. COM. LAW CODE ANN. §14-201 (1975). The Federal Act defines a debt collector as a person who is collecting debts owed or due another. FAIR DEBT COLLECTION PRACTICES ACT §1692(a). This is an important distinction in that Maryland's definition significantly broadens the definition of a debt collector.

### The Debt Collector

Although some businesses make collections their only business, this is not always the case. Attorneys are an example of businessmen who usually have collection work as a portion of their practice. A lawyer normally does collection work for a client on an account by account basis. However, some attorneys handle multiple accounts for a company and routinely pursue all of them. When an attorney is involved in occasional debt collection, the process is less important than the result. If he works with numerous accounts for a client, or numerous individual clients he must use a standard processing technique that will achieve a predictable result.

There are two situations when the lawyer himself should go beyond managing the process and actually do the collection work. The first is when he handles a few accounts and he can afford to spend time dictating a letter or making a phone call to the debtor. The second is when suit must be instituted. Where the attorney is handling a "healthy" collection practice, it is best that he only manage the operation and refrain from direct contact with the debtor. By staying in the background, the lawyer does two things. First, he is managing all the work rather than directing a disproportionate amount of attention to one account or debtor. Second, by refraining from personal contact, he has left himself as the final 'lever' to get payment. In order to stay in the background, a clerk with the appropriate training is best equipped to handle the job of personal contact with the delinquent. The collector needs a "canned" conversation that he can use that emphasizes the positive aspects of resolving the delinquency. The "canned" conversation must be developed around and in conjunction with the applicable state and federal laws.

Both the Maryland and federal laws provide that the delinquent can only be told what is, in fact, true and cannot be threatened with illegal action or with false or misleading statements. While Maryland does not provide for it, the federal law requires that the debtor be provided with written information regarding his debt including: the amount of debt; the creditor to whom it is owed; request for the consumer's written repudiation of the debt, if warranted; indication that if the debt is disputed, the dispute will be answered in writing; indication that a request by the consumer for the creditor's name and address will be answered. FAIR DEBT COLLECTION PRACTICES ACT §1692(g). In addition to working within statutory guidelines, the conversations should be developed around what might be called "house rules." House rules may include: the acceptable number of attempted contacts made and promises received, the method of payment, when to talk



about suit and attachment and when the collection effort ceases.

Under the Federal Statute the "house rules" may be pre-empted if the debtor sends in a written notice of refusal to pay. If this occurs, further communication with the debtor is severely limited and confined to notification that collection efforts are being terminated and that the collector or creditor will now invoke specific remedies available to him.

One of the principal reasons for having standard conversations for all collectors in an office is to insure that the most effective technique is consistently used. This type of mechanical handling of the conversation and disposition of the delinquent results in a standard pattern of collection effectiveness which is best insured by regular training as well as by monitoring the conversations from time to time.

However, a less expensive contact than personal contact may achieve the same end. A simple letter directed to the delinquent pointing out the fact that he is delinquent, that it is a serious matter with potential repercussions in terms of his future ability to purchase on credit will suffice. The letter basically reiterates the content of the personal conversation and should be sent according to a time table rather than haphazardly. If letters are used, they should indicate that failure to resolve the delinquency promptly will mean that the delinquent will be called by the attorney authorizing the letter, or his representative. In the more sophisticated collection operations, once the collection process is initiated, a letter is sent at the same time the account is assigned to a collector who is "told" by a computer all the basic information about the delinquent. One of the principal reasons for having a standard operating procedure is to establish and maintain predictable collection effectiveness. The procedures insure that all accounts are worked to the same degree and none are favored or forgotten.

### **The Attorney as Collector**

The collection which costs the least is the most effective collection. A let-

ter, a phone call and then the attorney involvement is the normal progression. While this sequence applies to the overall collection procedure, it also applies to the final stage when the attorney becomes involved. If the account is unresolved by the collector and referred for the attorney's attention, the process of using a letter, making a call and finally filing suit should be followed. The letter used at this stage is basically the same. It should reinforce the efforts used thus far to resolve the account. As with the first letter, a deadline for resolution should be set. Within that deadline if payment is not received, the attorney should call and remind the delinquent of the seriousness of the matter. The conversation should be brief and to the point as the delinquent has already been approached by the collector and a rehash of issues only forestalls the ultimate answer, which is that the delinquency will be resolved, amicably or otherwise.

The most costly form of resolution of delinquency is through suit, and the conclusion reached at trial is not assured. Because of the pattern created by a delinquent, i.e. ignoring his obligations, suit will often result in a default judgment for non-appearance. Even though default judgments are common, they are often not successful in resolving the delinquency. The delinquent may have moved his assets before attachment, or may be "judgment proof" in that he has nothing to lose. It is always important to consider the client's position before pursuing a judgment. Some of the questions which should be resolved are: Does your client have a public reputation that may be affected? Does the debt and the potential collection through suit warrant the time and expense of a hearing? How strong or weak are the facts of this particular suit versus other accounts of the same client?

Before attempting to pursue the delinquent through suit, his assets should be checked. There are a number of readily available indicators that determine whether it is feasible to go to court. First, did the delinquent fill

out a credit application for the current debt? Is there a permanent address where he has resided for at least a year? Are there any credit cards? What are their spending limits? Did the professionals feel they could "lend" him money? Did he indicate a savings or checking account and the size and the name and branch of the bank? This information is vital for an attachment. Is there a place of employment? What is the exact name and location; if so, how long has he been there, what is his position, his income, and number of dependents? Does he own a car, and what year is it? Did he finance that car and through whom? Is it paid off? These facts may tell you whether he has paid other debts and whether you should continue to pursue him without going to court. The rule to keep in mind is that a judgment without assets is useless.

### **The Mechanics of Collecting**

The key words in collecting are persistence and follow-up. Get the initial phone contact. Once contact is established maintain the contact until the delinquency is resolved.

Although the Maryland law does not indicate specific times when calls may or may not be made, it refers generally to calls which may be harassing by being made at unreasonable hours. The Federal Statute on the other hand in §1692(c) indicates that unless the consumer has given permission to the debt collector, calls may not be made to the consumer at any unusual time or place. The act goes on to say that the debt collector "...shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location." FAIR DEBT COLLECTION PRACTICES ACT § 1692(c).

While the initial phone contact is vital, it should be preceded by letter contact which is non-mechanical and personal and concentrates on delinquency. A few simple suggestions on format: Don't use a pre-printed letter with a signature on it. If possible use a letter produced via word processing or a printed letter of high resolution.

The letter should be on letterhead and the signature genuine. The style of the letter should be direct: "You are delinquent, and this delinquency will be resolved." In the letter encourage prompt payment or immediate contact by a specific date. Gain the delinquent's respect by doing what the letter indicates. The letter should also ask if there is a reason for non-payment. This approach will encourage the delinquent to make contact to vent his frustrations, etc. Generally people become delinquent either because they can't afford what they are already committed to, or they are seeking attention. Continued contact to hear out their objections is vital.

When you advance from the letter to the phone, the presentation should be "canned" but equally direct. It is important that if a different collector works the same account that each collector pick up where the previous collector left off in the last contact in with the delinquent. Since the issue is not always the inability to pay, it is easy to get off the pertinent issues and end up in an argument. Arguing is ineffective and normally results

from differences of opinion. Collection work is a fact situation, and there should not be any questions that are arguable. In the event an argument arises it will probably concern the product or service for which the delinquent is refusing to pay. Try to present pertinent questions or resolve problems. If they cannot be answered or resolved, establish a time for re-contact and a commitment to payment if the problems are resolved. Tell the delinquent that the vendor will be contacted. By gaining the confidence of the delinquent, he will often feel obligated and will in effect "pay" for the help.

### Finding the Delinquent

The use of a letter or phone call is all predicated on the residence and employment information on hand. Generally, the creditor will have such records, but as time passes the information often becomes inaccurate. If that happens it is necessary to use a variety of techniques to locate the delinquent. A good starting point is the most recent residence or employment address. These addresses may be obtained from employers listed on the employment application. If the residence has changed, leads on the debtor's whereabouts may be obtained through neighbors who may be contacted by telephone through the use of a "criss cross" directory. Also the application may list names and addresses of references or relatives who can provide additional information about the delinquent.

Regardless of the technique used, it is important to keep confidential the reason that the debtor is being sought. Because of the nature of the work, any indiscretion creates liability in a tort action. Tell the third party that your business is of a personal nature if he asks.

While Maryland is silent on the issue of gathering location information, section 1692(b) of the Fair Debt Act deals specifically with this point. Generally, where the debt collector is communicating with anyone other than the delinquent in his attempt to get location information, the collector

shall identify himself but not his employer unless expressly requested to do so; not indicate that the consumer owes any debt; not communicate with any third party more than once unless requested to do so; not communicate by postcard; not use any language or symbol or any envelope that indicates the communication is related to debt collection; not communicate with any person except the attorney of the consumer, if he has retained one. FAIR DEBT COLLECTION PRACTICES ACT § 1692(b).

### The Business of Collections

Collection work when pursued as a business with the appropriate monetary motivation can be very successful. The amount of money collected represents a percentage of the receivable for each client. This percentage should be tracked separately for each client because the unique nature of each business will cause varying collection resolutions. By careful analysis you can determine those clients with whom you are most successful and attempt to concentrate on certain kinds of accounts. It is important to avoid becoming "attached" to particular clients unless your resolution of the accounts warrants it.

In many ways the collection of debt is similar to the sales effort that brought about the debt. In sales the equation is usually:

Leads - Attempts -  
Promises - Sales

Collection work on the other hand looks like this:

Accounts - Contacts -  
Promises - Collections

In the more sophisticated operations this information is highly quantified, but the basic characteristics are the same.

As with the majority of "services," the basic attribute to accumulating a substantial collection business is efficiency and predictability. The story about "building a better mouse-trap" has a lot of validity. Attracting collection work can be done by contacting businesses operating in your geographic area with a simple package that tells how effective the service is.

