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WHEN YOU'VE BEEN SUED TO COLLECT A DEBT

This is some information about what to do if you've been sued for money you owe, also known as a debt. First, I'm going to give you information about the formal process, second, about the laws that protect you, and finally about how you might work it out.

The creditor or collector who filed the lawsuit is called the Plaintiff and you are the Defendant. The Summons which comes with the Complaint will give you a deadline to file an Answer. Sometimes the Plaintiff will put a blank Answer form in with the paperwork. If not, look online at nmcourts.gov to find the court the case is filed in. Then look under Self-Help or Forms. There will be information about how the court is handling civil cases like yours.

It's a good idea to get legal advice right away, but don't let the deadline to file the answer pass. If you do, the court will likely enter a default judgment against you, which means the Plaintiff gets everything they're asking for, including costs and fees. You can make your Answer simple by denying you owe this debt, even if you believe you owe the money. Put the name of the creditor in the Plaintiff blank and your name in the Defendant blank. Write something like, "Defendant denies all allegations and demands Plaintiff prove them." Finish by signing it and writing in your mailing and email address and phone number. Also write in the date you mail a copy to the plaintiff or plaintiff's lawyer. The courts are encouraging filing by email or fax to limit the number of people coming into court buildings. Look on nmcourts.gov and see what your court is recommending. Most of the courts have email and fax information on nmcourts.gov. To figure out exactly what you need to do, call the Court Clerk's office or their Self-Help Center if they have one. The phone numbers are probably on the nmcourts.gov website. If you can't find them, look in your local phone book or call the Plaintiff's lawyer to help you find the number to call. The way we used to file things before coronavirus was to take your answer and two copies to the courthouse. The clerk will take your original and stamp the copies as having been filed. Mail one of the copies to the Plaintiff's lawyer and keep the other one for yourself. You always have the responsibility to get a copy to the Plaintiff, even if you file via email or fax.

The law doesn't allow creditors to collect from you if you are low income and don't have anything valuable beyond what is needed to meet your basic living expenses. This means that a lot of Defendants are exempt from collections as a practical matter. If your income is all from benefits and all the property you own is what you need for your basic living needs, you are

probably exempt from collections. If you are low income (that is, making less than 40 times the hourly federal minimum wage each week), you may also be exempt. The Plaintiff may still want to get a judgment in case your financial situation changes in the future. You can get free legal advice by calling New Mexico Legal Aid at 1-833-LGL-HELP (1-833-545-4357). If you are over 55, you can contact the Legal Resources for the Elderly Program at 505-797-6005 or 1-800-876-6657. They can give you advice no matter what your financial situation is. The State Bar also has a general referral service, and the information for that will be at the bottom of your Summons.

You can make arguments (called defenses) that you don't have to pay this debt. These include telling the court that the debt is too old to collect on (this law is called the Statute of Limitations), or that you already paid the debt, or that the collector who is suing you can't prove they have a right to sue you after they bought the debt from someone else, or they have the wrong person and you never owed this money. You can put these defenses in your answer, but it's hard to know which ones apply to you without talking to a lawyer. The Court Clerk can give you some ideas about free and low cost services, as can the State Bar of New Mexico (505-797-6000). And you might want to consult a lawyer on an hourly basis even if you think you can't afford to pay a big fee for the lawyer to handle the whole case.

If you are sure you owe this money to the creditor who is suing you, which is often a third party who bought the debt from the original lender, and none of the defenses protect you from having to pay it, you might be able to work something out with the creditor. Don't assume you are going to have to pay the full amount asked for in the complaint. Call the creditor's lawyer and ask what the creditor is willing to take. You can often pay less if you can pay up front with cash.

Before you call the creditor or their lawyer, look at your financial picture. Pick your most important bills to pay first: your home mortgage or rent, car payment, utility bills and food. Next is probably paying off debts like credit cards and loans. If you realize you owe much more than you can afford to pay back, you may be able to file bankruptcy, which can help with most consumer debts. You should talk to a lawyer if you're thinking about bankruptcy. The State Bar at 505-797-6000 can help you with this.

Next, look at what you have left over after paying for your basic needs. You won't want to agree to give the creditor everything left every month, because you'll likely need some money for unexpected expenses. On the other hand, the bigger your payment, the quicker you'll pay the debt off. Write down the most you could realistically pay, either in one up-front cash payment, or as a monthly payment, while making sure you can cover your monthly expenses and have a little left for things that come up, like car repairs or medical bills.

If you can't work something out, then the case will head to court where the creditor will likely get a judgment against you. Once they get a judgment, they can take part of your paycheck or your bank account through a process called "garnishment." They can also put a lien against your

house, so they can get paid if you sell your house, and they can put the judgment on your credit report. They can't put you in jail or threaten you. However, generally speaking, the Plaintiff who is suing you would probably rather work something out with you than spend the time and money going to court to get a judgment.

New Mexico's courts have also set up an Online Dispute Resolution (ODR) system which kicks in pretty early in the process, even before you file an answer in some courts. If the Plaintiff has your email address, the Plaintiff emails you an offer and you can take it or email one back. If you want someone to help the two sides work this out, you can ask for a mediator, a neutral person who is trained to help people work things out. ODR is free and voluntary, and nothing that happens there can be used in court. Using ODR isn't likely to hurt you unless you agree to pay more than you realistically could, and you can't keep up the payments. The creditor has five years to take you back to court to get a formal judgment and your agreement can be used against you then. Some courts have other mediation services which are also free and voluntary. Even though you don't have to try these services, they almost always help move the case forward in a way that works better for you than the traditional court process of trial, judgment and collections.

To pay off your debt, eliminate luxuries like cable TV, eating out, new purchases, any kind of borrowing. Look for a side job, ask your boss for a raise or ask your Mom for help, but *don't* borrow more money to pay the debt.