

Mississippi Debt Collection Laws

Submitted by J. Ward Conville, Benjamin G. Lambert & Michael D. Troendle,
Couch, Conville & Blitt

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Couch, Conville & Blitt ("CCB") is a multi-state law firm, which focuses primarily upon a consumer and commercial legal collection and creditors' rights practice. CCB represents a variety of local, regional and national businesses, including several publicly traded entities and some of the nation's largest lenders. The Firm serves as a regional legal resource for many of its clients, with its offices in Louisiana, Mississippi, Alabama, and Tennessee.

Members of the Firm have published and lectured extensively on a variety of legal and business issues, including creditors' rights, law office management, effective case management, legal collections, disaster planning and recovery, FDCPA, FCRA, GLBA and other laws impacting the lending and collection industry. Additionally, the Firm is deeply involved in the National Association of Retail Collection Attorneys. Several attorneys in the Firm have been recognized as local and national leaders in the practice of legal collections.

J. Ward Conville is a founding member of Couch, Conville & Blitt. He was an associate of Babovich, Spedale & Chauvin from 2004 through 2007. He is the lead litigation attorney for the States of Mississippi and Tennessee. His practice focuses upon foreclosures, replevin, and a variety of commercial and consumer legal collection matters.

Benjamin G. Lambert is an Associate Louisiana Litigator. His practice focuses upon consumer legal collections and creditor's defense. He is licensed to practice in Louisiana, Mississippi, and Tennessee.

Michael D. Troendle is an Associate Louisiana Litigator. His practice focuses upon consumer legal collections and creditors' defense.

Laws Related to the Collection of Debts in Mississippi

A debt collection law firm is subject to several state laws, in addition to numerous federal laws, that regulate pre and post-litigation collection efforts. In order to properly represent lender clients, a firm must be knowledgeable of the laws and able to execute legal strategies in accordance with client needs and expectations. To that end, this section focuses on areas of law that are important not only to effectively prosecute a claim, but also to protect a consumer's rights.

Communicating with Consumers

Prior to initiating a law suit, many law firms first attempt to reach the consumer via phone. A variety of issues arise with regard to the manner in which a “debt collector” may communicate with a consumer.

Two major issues are:

Call Recording

Mississippi is a “one party” consent state for purposes of recording phone communications.

(<http://www.mscode.com/free/statutes/41/029/index.htm>) Thus, there is no requirement under state law to obtain the consent of a consumer before initiating a collection call.

Voice Messages

Inevitably, collection calls will go unanswered. When this happens, the collector is often faced with the prospect of leaving a message on an answering machine. Since answering machine messages may be overheard by a third party, “debt collectors” must carefully examine such risks. Currently, there are no Mississippi court decisions addressing liability for third party disclosures via voice messages. Further, the Fifth Circuit Court of Appeals is silent on this issue.

Statute of Limitations

Mississippi law requires that claims be brought within a statutorily defined period. These periods vary depending on the nature of the claim. An open account is defined as a credit arrangement whereby the seller allows the buyer, through an advance agreement, to make purchases without security.

(http://www.leagle.com/xmlResult.aspx?page=4&xmldoc=19931527619So2d908_11522.xml&docbase=CSLWAR2-1986-2006&SizeDisp=7) Thus, a credit card is considered an open account.

(http://www.leagle.com/xmlResult.aspx?page=4&xmldoc=19931527619So2d908_11522.xml&docbase=CSLWAR2-1986-2006&SizeDisp=7) Actions on an open account must be commenced within three years

after the cause of action accrues. (<http://www.mscode.com/free/statutes/15/001/0029.htm>) Actions on a note must be commenced three years from the date of last payment or if no payment was made, within three years from the date the note was signed. Mississippi has a short one year statute of limitations on deficiency claims. The statute runs from the date of sale of the repossessed collateral.

Demand Letters

Typically, Demand Letters are sent in Mississippi for Fair Debt Collection Practices Act compliance purposes. Not only does the Demand Letter provide the consumer with statutory notices, but it also creates the possibility that a consumer will make contact to discuss a settlement or resolution that avoids litigation.

Attorney's Fees

In certain instances, Mississippi statutes require certain actions in order for a party to recover attorney's fees where parties do not have a contract that allows for attorney fees. In the majority of the cases, attorney fees are claimed under the contractual language included in the terms and conditions of the credit card agreement or under the language on the statement of account. If no such contract is available, attorney fees can be triggered by compliance with the Mississippi Open Account Statute, which requires that an itemized statement of account be sent to the consumer along with an initial demand letter. If the consumer does not object or question the statement of account, when suit is filed with a supporting affidavit, the creditor may be entitled to reasonable attorney fees in the discretion of the court. (<http://www.mscode.com/free/statutes/11/053/0081.htm>) Mississippi case law has held that attorney fees are reasonable up to 33% of the balance as long as the fees do not exceed \$5,000.00. (http://www.leagle.com/xmlResult.aspx?page=12&xmlDoc=19921588611So2d977_11559.xml&docbase=CSLWAR2-1986-2006&SizeDisp=7) Most Mississippi Courts will want to hold a hearing if a creditor requests attorney fees greater than \$5,000.00.

Jurisdiction and Venue

Prior to filing suit, firms must decide which jurisdiction is the correct place to file the suit. Civil actions of which the circuit court has original jurisdiction shall be commenced in the county where the defendant resides. (<http://www.mscode.com/free/statutes/11/011/0003.htm>) Additionally, state venue laws, as well as Fair Debt Collection Practices Act, require that suit be filed in the county where the defendant resides.

Service of Process

Once suit is filed, it is vitally important to effectuate proper service of process. Service can be made personally on the Defendant or left with a family member who resides at the Defendant's house who is over 16 years of age and willing to accept it.

(http://courts.ms.gov/rules/msrulesofcourt/rules_of_civil_procedure.pdf, Rule 4) If service is not personal, a copy of the summons and complaint must be mailed to consumer's house.

(http://courts.ms.gov/rules/msrulesofcourt/rules_of_civil_procedure.pdf, Rule 4) There are two methods to effectuate proper service of process in legal collection cases: service by process server and service by sheriff.

Service by Process Server

A summons and complaint must be served by any person who is not a party to the action and is not less than 18 years of age. (http://courts.ms.gov/rules/msrulesofcourt/rules_of_civil_procedure.pdf, Rule 4)

When a summons and complaint are served by process server, an amount not exceeding that statutorily allowed to the sheriff for service of process may be taxed as recoverable costs in the action.

(http://courts.ms.gov/rules/msrulesofcourt/rules_of_civil_procedure.pdf, Rule 4)

Service by Sheriff

A summons and complaint must be served by the sheriff of the county in which the consumer resides or is found, in any manner prescribed by law.

(http://courts.ms.gov/rules/msrulesofcourt/rules_of_civil_procedure.pdf, Rule 4) The sheriff shall mark on all summons the date of the receipt, and within thirty (30) days of the date of such receipt of the summons the sheriff must return the summons to the clerk of the issuing court.

(http://courts.ms.gov/rules/msrulesofcourt/rules_of_civil_procedure.pdf, Rule 4)

Judgments

The three most common ways to obtain a judgment are via: Default Judgment, Consent Judgment, and Summary Judgment.

Default Judgments

A default judgment may be entered if a consumer has not filed an Answer to a complaint within thirty days from the completion of service of process.

(http://courts.ms.gov/rules/msrulesofcourt/rules_of_civil_procedure.pdf, Rule 55) The party entitled to a default judgment must apply to the court.

(http://courts.ms.gov/rules/msrulesofcourt/rules_of_civil_procedure.pdf, Rule 55) If the party against whom judgment by default is sought has appeared in the action, he (or if appearing by representative, his representative) shall be served with written notice of the application for judgment at least three days prior to the hearing of such application; however, judgment by default may be entered by the court on the day the case is set for trial without such three days' notice.

(http://courts.ms.gov/rules/msrulesofcourt/rules_of_civil_procedure.pdf, Rule 55)

Consent Judgments

Where possible, Consent Judgments are used to efficiently obtain a judgment against a consumer who does not dispute the debt and is willing to sign the judgment. Mississippi has no laws regulating Consent Judgments. Parties are free to contract as they please. However, every Consent Judgment must be approved and signed by counsel for all parties interested in or affected by the suit before being presented to the Judge for signature. The court may also require the parties to sign the judgment.

(http://courts.ms.gov/rules/msrulesofcourt/uniform_chancery_rules.pdf, Rule 5.03)

Summary Judgments

A party seeking to recover upon a claim or to obtain a declaratory judgment may, at any time after the expiration of thirty days from the commencement of the action or after service of a Motion for Summary

Judgment by the adverse party, move with or without supporting affidavits for a Summary Judgment. (http://courts.ms.gov/rules/msrulesofcourt/rules_of_civil_procedure.pdf, Rule 56) The motion shall be served at least ten days before the time fixed for the hearing.

(http://courts.ms.gov/rules/msrulesofcourt/rules_of_civil_procedure.pdf, Rule 56) The adverse party prior to the day of the hearing may serve opposing affidavits. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (http://courts.ms.gov/rules/msrulesofcourt/rules_of_civil_procedure.pdf, Rule 56)

Effect and Enforcement of Judgment

Once a judgment is obtained, Firms must enforce the judgment. A judgment is valid for seven years from the rendition of the judgment. (<http://www.mscode.com/free/statutes/15/001/0043.htm>) The entry of a judgment creates a lien on all of the property of the consumer within the county where the judgment is entered. (<http://www.mscode.com/free/statutes/11/035/0023.htm>) Within that time, a judgment may be enforced through various means including wage and bank garnishments and a Judgment Debtor Examination.

Garnishment

Mississippi maintains two kinds of garnishments: wage and bank. The property exempt from seizure by garnishment under Mississippi law is extensive, but Mississippi Exemptions are similar to Federal Exemptions. A wage garnishment will seize up to 25% of take home wages of the consumer, while a bank garnishment will seize all funds available to the bank as long as it is clear that the funds belong to the consumer and are not social security proceeds.

(<http://www.mscode.com/free/statutes/11/007/0191.htm>)

Judgment Debtor Examination

To aid in the satisfaction of a judgment of more than One Hundred Dollars (\$100.00), the judgment creditor may examine the judgment debtor, his books, papers or documents, upon any matter relating to his property. (<http://www.mscode.com/free/statutes/13/001/0261.htm>) However, no single judgment creditor may cause a judgment debtor to submit to examination under this section more than once in a period of six (6) months. (<http://www.mscode.com/free/statutes/13/001/0261.htm>) Additionally, the judgment creditor may utilize the discovery procedures set forth in the Mississippi Rules of Civil Procedure for the purpose of examining the judgment debtor.

(<http://www.mscode.com/free/statutes/13/001/0261.htm>)

Conclusion

Attorneys representing lenders or entities that have purchased debt strive to achieve the best possible resolution by attaining the fastest and least costly disposition of each case. This is achieved by combining knowledge of applicable laws and procedures with the expectations of clients. While this White Paper is certainly not an exhaustive list of all Mississippi laws that affect legal collections, it highlights many major points of the legal collection process.

Please be advised that this is not intended as legal advice. Changes to laws, statutes, regulations and costs can and do occur. We recommend that you contact an attorney for advice specific to your legal matters and your state.

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