Missouri Debt Collection Laws

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Cohen McNeile & Pappas P.C. represents a diverse group of local, regional and national companies to handle their business debt collection, bankruptcy, real and personal property foreclosure and litigation needs. Our attorneys are licensed to practice in both Missouri and Kansas, and are prepared to offer prompt and efficient legal guidance throughout each state, having offices in the Kansas City and St. Louis metropolitan areas. The firm is directed by its board of directors, Clifford A. Cohen, James M. McNeile, and Gregory J. Pappas. Rick Milone has been an associate with the firm since 2008, and Dustin Styles relocated from Nebraska to join as an associate in 2011. Together they've prosecuted hundreds of hearings and trials before numerous state, federal, and appellate courts throughout each of Missouri and Kansas. Mr. Milone and Mr. Styles authored this whitepaper under the direction and supervision of Mr. McNeile.

Statutes of Limitation

Missouri Revised Statutes Chapter 516 lists Missouri's applicable statutes of limitation for nearly all civil actions. R.S.Mo. § 516.120 states that actions on contract (except upon a writing) shall be maintained within five years. Other causes of action filed on debts (such as suits on open account, account stated, quantum meruit, *etc.*) will have their own statutes of limitations. Missouri probably does not include most boilerplate agreements as made "upon a writing," unless executed by the party against whom the contract is to be enforced.

Missouri judgments are governed by statute (Revised Statutes of Missouri Chapter 511) and Supreme Court Rule (Rule of Civil Procedure 74). Most Missouri domestic judgments remain enforceable for a period of ten years, unless revived by statutory action or payment into court upon the judgment. R.S.Mo. § 516.350. Exceptions may arise in the case of support/maintenance judgments or orders.

Missouri has common law remedies to enforce foreign judgments, as well as the Uniform Enforcement of Foreign Judgments Act. R.S.Mo. § 511.760, *et seq.* However, whether and what the statute of limitations might be on a foreign judgment to be enforced in Missouri is not an easy nor straightforward analysis.

Bad Check Law

"Passing a bad check" in Missouri is subject to criminal penalties as governed by R.S.Mo. § 570.120, and as summarized, below:

A. Checks less than $500:

1. Criminal Charge – Class A misdemeanor
2. Potential Sentence – Fines reaching $1,000 and up to 1 year in prison

B. Checks more than $500:
   1. Criminal Charge – Class C felony
   2. Potential Sentence – Fines reaching $5,000 and up to 7 years in prison

C. Checks from $1,000 - $25,000
   1. Criminal Charge – Level 9 felony
   2. Potential Sentence – 5-17 months (typically 6 months if 2nd offense)

D. Checks from $25,001 - $100,000
   1. Criminal Charge – Level 7 felony
   2. Potential Sentence – 11-34 months (typically 12 months for 1st offense)

If a check is written from a fictitious bank account or from a closed bank account, the individual may be charged with a class C Felony regardless of the amount of the check.

Additional civil penalties may ensue from passing a bad check in Missouri, as are provided by R.S.Mo. § 570.123.

Forgery

Missouri's forgery statute is found at R.S.Mo. § 570.090. Forgery is a class C Felony.

General Execution & Garnishment Processes and Exemptions

In Missouri, R.S.Mo. Chapter 513 governs executions and exemptions, R.S.Mo. Chapter 521 governs attachments, and R.S.Mo. Chapter 525 governs garnishment. Additionally, these processes are governed by Missouri Rules of Civil Procedure 74 (judgment, liens, transcripts, and discovery to enforce), 76 (executions), 85 (attachments) and 90 (garnishments and sequestration). Additionally, each judicial circuit might have its own local rules governing specific garnishment or other execution procedures.

In each county (?) of Missouri, certain popular claims of exemption made by consumers against an involuntary execution include homestead claims (to avoid liens), head of household claims entitling a reduction in percentage of monies garnished, certain claims to protected retirement and pension monies, and Federally-protected Social Security Income.

In Missouri, a debtor may claim an additional exemption of personal property of up to $600.00 as a "wild card" claim—and need do nothing more to prove the claim than simply filing the same in a timely manner to be entitled, unless the claim has been exhausted by prior claims to exemption in the same action. Missouri recognizes the legal fiction of "tenancies by the entirety" for married couples. In this instance, the claim of "exemption" isn't a true claim for exemption at all, but a claim that a judgment held against only

one married spouse is not a judgment against the marriage, and therefore execution cannot be had against assets of the marriage. Tenancy by the entirety is presumed to be the status of property of married couples, and it is upon the party seeking enforcement of a lien or involuntary execution to prove otherwise. Finally, it has been held by Missouri courts that a third party may seek enforcement of an exemption on behalf of a debtor, but does so at its own risk (e.g., a bank may unilaterally refuse to withhold funds pursuant to a garnishment on the grounds that the funds are Social Security income).

General Practices Relating to Collections

There are no laws in Missouri particular to controlling the intake process for credit card collection files as opposed to any other general civil litigation matter (and as opposed to any Federal statues such as the Fair Debt Collections Practices Act, Truth in Lending Act, Fair Credit Reporting Act, or the like). In Missouri, the Rules Governing the Missouri Bar and the Judiciary (specifically Rule of Professional Conduct 4) and interpreting case law tend to govern the minimum responsibilities owed to a client, generally, including matters related to the opening, handling, closing, and retention of any given client's file.

In Missouri ("Mo. Rule"), Rule 4-1.6 (and interpreting case law) generally covers "Confidentiality of Information" defining the duty owed to the client to protect information relating to the representation of a client.

Mo. Rule 4-4.4, "Respect for Rights of Third Persons," and interpreting case law might generally apply under certain circumstances; and, KRPC 4.4, "Respect for Rights of Third Persons," and interpreting case law might generally apply under certain circumstances, when handling and safeguarding a debtor's personal and account information.

When handling a client's file, Mo. Rule 4-1.15, "Safekeeping Property," and KRPC 1.15, "Safekeeping Property," and interpreting case law generally applies to record retention of a client's files.

In Missouri, one Rule of Civil Procedure governs waiver of a defendant's right to claim that no demand was made before further collection activity or suit ensued. However, this does not assume that the lack of demand is a defense to any particular action: "A party cannot object that no demand for the subject matter of a civil action was made prior to its institution unless it is expressly set up by way of defense in the answer or reply, and is also accompanied with a tender of the amount or thing that is due; in which case, if the plaintiff will further prosecute the civil action and shall not recover a greater sum or more than is tendered, the plaintiff shall pay all costs. This provision is applicable as well to actions for property as for money; when property is tendered the damages for its detention, if any, shall also be tendered." Mo. Sup. Ct. R. 55.31.

Otherwise, the practice and procedure of debt collection practice in Missouri will be particular to the firm

and its clients' needs and objectives.

Cases Brought by State's Attorney General Related to Debt Collection

State of Missouri, ex rel. Chris Koster v. Professional Debt Management, LLC, 351.S.W.3d 668 (Mo.App. E.D., 2011) and *State of Missouri, ex rel. Christ Koster v. Portfolio Recovery Associates, LLC*, 351 S.W.3d 661 (Mo.App. E.D., 2011): The State, through Attorney General, filed an action against debt collectors alleging unfair or deceptive practices under the Merchandising Practices Act (MPA). The trial court granted both Defendants' Motion to Dismiss for failure to state a claim. The Court of Appeals held that: (1) allegedly deceptive and unfair practices by debt collectors in an attempt to collect debts were not "in connection with the sale or advertisement of any merchandise" in trade or commerce, within the meaning of MPA, and (2) prohibition against unfair or deceptive practices under MPA, in connection with sale or advertisement of merchandise, either "before, during, or after" sale did not extend to allegedly deceptive and unfair practices by debt collector after original sales transaction in which debtor was not involved.

Pertinent Laws and Cases Pertaining to Debt Collection in Missouri

Courts and Rules. Missouri Revised Statutes Chapter 506 states: "506.010. This code shall be known and cited as 'The Civil Code of Missouri' and shall govern the procedure in the Supreme Court, Court of Appeals, and divisions of the Circuit Court in all suits and proceedings of a civil nature,whether cognizable as cases at law or in equity, unless otherwise provided by law. It shall be construed to secure the just, speedy and inexpensive determination of every action. Such code shall not apply, however, to the practice and procedure before a circuit or associate circuit judge in the Small Claims Court or the municipal division of the Circuit Court except to the extent that such provisions are otherwise specifically made applicable." It further states: "506.030. If any part of this code shall be found to be in conflict or discordant with other parts of this code or with other statutes relating to civil procedure, the Supreme Court shall have power to promulgate rules necessary to harmonize the same so as to promote the orderly administration of justice. No such rule shall abridge, enlarge or modify the substantive rights of any litigant. Such rules shall be effective until superseded by legislative enactment."

The applicability of these Missouri statutes could be debatable. To the extent that there is any incongruence, Missouri's Rules of Civil Procedure generally abrogate any provision of this Civil Code of Missouri, as the Supreme Court has deemed its Rules of Civil Procedure controlling, noting that the authority to make such rules is conferred solely upon the court by the Missouri Constitution. Mo. Rule of Civil Procedure 41.02. This is not to suggest that the Civil Code of Missouri is wholly (or at all) inapplicable—but only to the extent that any other rules are inconsistent with the Supreme Court's Rules 41 to 101, inclusive.

Actions in Missouri may be filed pursuant to R.S.Mo. Chapter 517. There are several significant

inconsistencies between the Rules of Civil Procedure and Chapter 517. However, Chapter 517 has been adopted by the Rules of Civil Procedure, and therefore is wholly applicable in prosecuting a case (in contrast to the "Civil Code of Missouri"). One of the main and significant differences provided by Chapter 517 is that a defendant need not file a written Answer to a petition, and therefore may not be in default simply for failure to file a written Answer. However, failure to appear at any given court hearing could result in default judgment being rendered against the defendant.

Commencement of Actions and Savings Statute. An action in Missouri is commenced on the day of filing, without exception, irrespective of when (or even if) the matter is served. If the matter is approaching the original statute of limitations, filing the matter the day before expiration will be timely filed, even if never served, and thereafter may afford the plaintiff the benefit of Missouri's Savings Statute, upon the subsequent "non suit" of the matter (*i.e.*, any dismissal without prejudice). In Missouri, a matter is deemed dismissed without prejudice unless explicitly stated otherwise. Any matter dismissed with prejudice is deemed a decision on the merits, and not simply a non-suit. However, any dismissal "on the merits" must be done so by judgment—not simply order.

In Missouri, a judgment is some writing, signed by the judge, denominated a "judgment" somewhere within that writing, and filed. It can be a docket entry, and the judge's initial's may suffice as the signature. Otherwise, any other decision on the merits, including any so-called "order" of dismissal with prejudice most technically is an interlocutory order of dismissal, and not ripe for appeal (nor fully effective as a dismissal). Thereafter, if a matter is "non-suited," it may be refiled within a year of the date of non-suit. R.S.Mo. § 516.230.

Uniform Business Records as Evidence Law. Pursuant to R.S.Mo. §490.680, business records are competent evidence as a record of an act, condition or event, if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if made in the regular course of business, at or near the time of the act, condition or event. In contrast to Kansas, this could be accomplished without a live witness as prescribed by R.S.Mo. § 469.692. Documents are admissible under R.S.Mo. § 490.692 upon an affidavit of a person who otherwise meets the requirements of R.S.Mo. § 490.680 and the records are evidence of an act, condition, or event made in the regular course of business, at or near the time of the act, condition, or event as sworn to in an affidavit. As further noted below, this process (with or without affidavit) is the subject of significant contention in Missouri. And, although a plaintiff might be able to have evidence admitted without a live witness at trial, counsel should not equate the fact of admission with proof of any element of a cause of action—such evidence so admitted is allowed to be weighed by the court or jury accordingly, and the judge or jury may yet be entitled to believe all or none of the propositions counsel might argue, as such evidence proves. (This sentence is unclear to me, but I might not have made appropriate changes.)

Missouri has further legislation regarding the admission or certain evidence at the pleading stage. Per

R.S.M.O. 509.240: When any claim or counterclaim shall be founded upon any written instrument and the same shall be set up at length in the pleading or a copy attached thereto as an exhibit, the execution of such instrument shall be deemed confessed unless the party charged to have executed the same shall specifically deny the execution thereof. Additionally, per R.S.M.O. 517.132: If any suit, setoff, counterclaim or cross claim is based upon a written instrument purporting to have been executed by the opposite party, and the same or a verified copy is filed with the court, such instrument shall be admitted in evidence at trial unless the opposing party by responsive pleadings or affidavit shall deny the execution of the instrument, prior to admission of the instrument in evidence.

Relevant Case Law

The following cases are exemplary of some of the workings of Missouri's business records as evidence laws:

- Business records have a presumption of truth and veracity. Rossomanno v. Laclede Cab Company, 328 S.W.2d 677, 666 (Mo. banc. 1959).

- Case law in Missouri holds that payment indicates an acknowledgment and promise to pay the debt. Caneer v. Kent, 119 S.W.2d 214, 218 (Mo. 1938). Anderson v. Stanley, 753 S.W.2d 98, 100 (Mo. Ct. App. E.D. 1988).

- Foundation for admitting business records under hearsay exception may be established with affidavit, rather than by direct testimonyof qualified witness. A trial court's decision whether to admit business records under hearsay exception remains a discretionary determination of trustworthiness of records. Tebow v. Director of Revenue, 921 S.W.2d 110 (Mo.App. W.D. 1996).

- Records custodian for debt collector must be qualified to lay foundation for business records exception to hearsay rule for document purporting to show assignment of debtor's credit card account to debt collector, where custodian never had worked for the business that prepared the documents and was not familiar with when or how the document was prepared. To be a qualified witness who can lay foundation for a business record pursuant to state statute governing business record exception to hearsay rule, witness must have sufficient knowledge of the business operation and methods of keeping records of the business to give the records probity. CACH, LLC v. Askew, 358 S.W. 3d 58 (Mo. 2012).

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.