

# Sometimes the Best Defense is a Good Offense

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## Debt Law and Motions for Summary Judgment

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If you're being sued for debt, your case is going to head for a show-down on a couple of main issues. These will probably involve some billing records or some record-keepers wanting to testify. And these are primarily "legal" issues – that is, the facts may be clear and undisputed, and the judge might be able to make the important decisions in the case. When a judge does that by motion and before trial, it's called a "summary judgment," and the parties ask for that by filing a "motion for summary judgment." You will want to consider trying this.

Before we get deeply into motions for summary judgment, let's discuss the way cases develop, go away, or are decided. It's really just one process after the case is filed and you've answered.

### The Way Debt Cases Develop

First, the parties conduct discovery which aims to find out what facts are, indeed, uncontested, which ones are disputed, and what evidence there is in support of them. What this really means is, discovery looks for what you can prove about your case or their case. In debt law, you either want to prove it was all a horrible mistake (if that's what's going on) or that the debt collector cannot prove its case. Since most debt cases come from what were at one time legitimate debts, most debt defense boils down to an attack on the debt collector's case. And you will have an excellent chance of winning.

In your discovery, you will probe for what evidence they have and how they plan to get it "into evidence," i.e., into the court's consideration at trial. (Incidentally, our [Discovery Pack](#) is designed to help you do this.)

## Conduct Discovery Quickly

As facts emerge, and as work happens and becomes necessary, the debt collector might decide to drop the case. In fact that often happens, and of course it often doesn't, too. Sometimes the debt collector will try to shorten things up by motion for summary judgment, but more usually they just want to get to trial as quickly as possible. If they do either one of these things before you have conducted your discovery, there's a good chance you will be snowed under. Thus you should do your discovery quickly.

You want to aim for the motion for summary judgment right from the time you file your answer. If it doesn't work, well, you're halfway to being ready for trial anyway, and you will have started talking to the judge about the issues that matter.

Now to talk more specifically about motions for summary judgment.

## Motions for Summary Judgment

A "motion" is just the formal way you ask the court to issue a ruling of some sort. A motion for summary judgment is asking the court to find that all the necessary facts for a ruling in your favor have been established, and to grant you a judgment as to them. It's possible to get a summary judgment about some parts of a case but not others (a "partial summary judgment" in legalese). To end the case, you have to get a judgment on all of the claims.

## What to Do from the beginning

If you are being sued, you need to begin with the ending in mind. That is, right from the beginning you should think long and hard about what it takes to win your case. In debt law, the first big challenge most defendants face is to answer the petition – just to take that first step in defending yourself. If you've managed that, congratulations. Just by doing that you've given yourself a better chance to win than approximately 90% of the other people being sued. And in some cases, to be sure, that's all you need – the debt collector may walk away right now. But in most cases they won't.

So your next specific step is to start discovery – the sooner the better. And you should start discovery with the firm goal of finding and proving the things you need to win. We have a product that can help with that, but this video is about the next step following discovery: the motion for summary judgment.

In a way, it's simple, although this is one time you should never confuse "simple" with "easy." If they're alleging a breach of contract, for example, you will discover that they must prove the existence of a valid contract, its breach (failure to pay as agreed), and damages. The burden of proof is on the debt collector as to each of these things, and they have to show it using admissible evidence.

In your discovery, you should have narrowed down exactly what they have to offer as proof. In the case of a debt collector this is usually documents created by some other person, usually the

original creditor. And they may have documents or testimony by some of their own employees as well. This material is generally intended to try either to fool the court into believing the other evidence is admissible, or to pull it within the rules of evidence.

Your job will be to look at each bit of evidence and show why it cannot do what the debt collectors want it to do.

## Filing a Motion for Summary Judgment

Of course this isn't very easy, and there are significant procedural requirements, but going through this process increases your chances of winning dramatically in three important ways. First, if you can show your right to a summary judgment, you should win the motion and get the case kicked out. Before that happens, though, you will be putting the plaintiff to the expense and effort of responding, and if they think they will lose (and often even if they think they will win), they'd rather just drop the case than keep going. And finally, even if the court does not rule, or rules against you, you will have learned a tremendous amount about the law and begun the process of teaching the judge what he or she needs to know, improving your chances of winning at trial a lot.

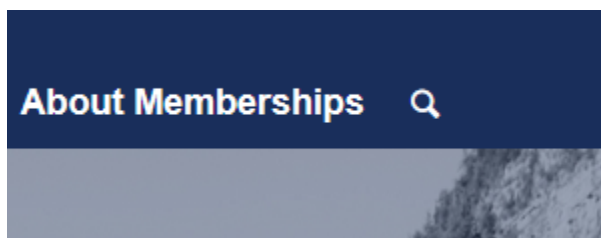
There's every reason to do it. You just need the energy and courage to try. We can help.

## Your Legal Leg Up

[Your Legal Leg Up](#) is a website and business dedicated to helping people defend themselves from debt lawsuits without having to hire a lawyer. As you can see below, we have a number of products as well as memberships that should help you wherever you are in the process. In addition to that, our website is a resource for all. Many of the articles and materials are reserved for members, but many are available to everyone.

## Finding Resources

Every page has a site search button in both the header and footer. It's a little magnifying glass icon that looks like this:



Click on the magnifying glass icon, and a small window opens. Put in a key word – a word you think relates to what you're looking for – and enter. You will get a page of results.

## Product Information

Because much of this article involves taking action and creating legal document, we include an addendum of the products we have that can help. First, if you are at the beginning stages of your case and needing to answer (or otherwise respond to) the petition, our [First Response Kit](#) is designed to help with that. If you have already answered and need to start (or restart) conducting discovery, our [Discovery Pack](#) will help. The Discovery Pack is included within the First Response Kit, so don't get both. If you are trying to force the debt collector to respond to your discovery, you may want our [Motion to Compel Pack](#).

If they're filing a motion for summary judgment and you are not ready to file a motion for summary judgment yourself, our [Motion for Summary Judgment Defense Pack](#) could help. But if you want to respond to theirs and file one of your own, you will want our [Cross-Motion for Summary Judgment Pack](#). And if they haven't file a motion for summary judgment but you want to, that would be our [Motion for Summary Judgment Offense Pack](#). Don't get more than one of the MSJ packs.

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What you will not receive is any marketing from other people – or much from us, either. Our goal is to make the site more useful to members and visitors, not to swamp anyone with sales materials. The information we send will have links to information or products that we think may be helpful.