

### Checklist for Volunteer Attorneys Handling a VIP Debt Collection Case

Thank you for accepting a VIP debt collection case! VIP greatly appreciates your willingness to defend a low-income client against a debt collection lawsuit.

Debt Collection cases will either be filed in Municipal Court (\$12k or less) or the Court of Common Pleas (Between \$12k and \$50k). In handling your client's case, please refer to VIP's training manual and power point. These materials are available on the "Collections" page of our website, available at <http://www.phillyvip.org/resources/>. You should then do all of the following:

- Promptly review the complaint and any other case documents. Ask yourself whether the plaintiff is the original creditor or an assignee. What evidence of the debt is included with the complaint? Who is the plaintiff's attorney? What are the applicable deadlines? What is achievable given the facts?
- Conduct your initial interview with the client and execute a representation agreement. Ask your client what they want, what they know about this debt, and whether they can afford a payment plan. Consider reviewing the client's credit report via annualcreditreport.com to see the current status of the account, the amount owed, the date of last payment, and the history of the account.
- Decide on a case strategy. Consider the creditor's theory of recovery and burden of proof (contract; open account; account stated; or quantum meruit/unjust enrichment). Consider the available defenses (no standing; statute of limitations; usury; and unauthorized post charge-off interest). Also look for potential affirmative claims, such as challenging the plaintiff's business records or violations of the FDCPA. For more information about each theory of recovery, defense, and affirmative claim, please see the Consumer Debt PowerPoint pp. 7-17.
- If you decide to pursue settlement, contact opposing counsel. Only consider settlement if the plaintiff proves it actually owns a valid debt or your client wishes to settle the matter. For important settlement considerations, please see the Consumer Debt PowerPoint pp. 17-18.
- If you decide to attend the Municipal Court hearing, your client need not appear. Return the Notice of Intent to Defend so you have a right to a hearing that day. A trial commissioner will review the complaint and attachments and dismiss the case without prejudice if it does not have the required documents. If there is disagreement between the trial commissioner and plaintiff, the case goes to a judge. If you win, make sure a judgment is entered for client rather than simply a dismissal of the case.
- If your case is in the Court of Common Pleas, consider whether Preliminary Objections or an Answer is appropriate. Be prepared to go to arbitration.
- If your case proceeds to arbitration, the rules of evidence apply.