

# GETTING PAID FOR YOUR HARD WORK

By Attorney Judy Gedge

**Q:** I started my own consulting business last year and things have been going pretty well until lately. A few months ago I finished a big consulting project for a new client, Star Enterprises, Inc. and I sent them an invoice for \$17,500. They were very pleased with the work that I did. The problem is that I haven't seen a dime from them for all my hard work. When I've called over there to ask about the payment, they always assure me that my invoice will be paid 'next week'. Lately, when I call, though, I get put into voice mail and no one returns my call. Now I'm getting really concerned about when or whether I'll see that money. The president of the company lives in a big house in an exclusive executive neighborhood, so I know he's got the money to pay my invoice. What can I do to make sure that I get the money owed to me as soon as possible?

**A:** Unfortunately, in the current economic climate, your story is not unusual. Let's take a look at your options and then we'll identify steps you can take in the future to help avoid this kind of problem.

It's important to recognize that your client is probably in financial difficulty which means that management has to decide which creditors to pay and which creditors to stall. Clearly, you are falling into the second category. One way to encourage payment of your invoice is to offer a payment plan or you might consider offering a substantial discount for immediate payment. While it's disappointing to get paid less than you're owed, in the scheme of things, this may be your best option. If your client doesn't pay you voluntarily, your only other option is to sue to collect your fee and that is not a very pretty picture.

Bringing a collection suit can be a lengthy and expensive process. If you do sue, don't be surprised if your client suddenly claims that your work was unsatisfactory so they don't owe you anything and claim that you owe them money for faulty services. (This is a very common defense strategy.) If you're successful in your lawsuit, you will end up with a monetary judgment which you are legally entitled to enforce. But if the corporation has no available assets, you won't be able to collect anything. Keep in mind that your client is the corporation not the guy with the big house in that nice neighborhood.

Chances are you're not the only creditor who hasn't been paid by this company. It's very likely they're having trouble paying others including their bank, landlord, suppliers, etc. At any point in the process, the company may file for bankruptcy protection (or it may be put into bankruptcy by its creditors). If this happens, your only recourse is to file a claim in the bankruptcy proceedings. You'll be one of many unsecured creditors and it's unlikely you'll receive any significant payment in the company's bankruptcy.



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It's not a pretty picture! But let's see how you can try to avoid a problem like this going forward.

- **Retainer.** Your best protection is to get a substantial retainer/deposit from your client before you start the work. If the potential client is unwilling to provide an up-front retainer, this may be an indication they're in financial difficulty. Wouldn't you rather learn about this before you do the work?
- **Structured Payments.** If possible, structure the consulting project in stages with payments due at the end of each stage. That way, you'll be able to stop work if your client fails to make a required payment.
- **Written Contract.** Use a written contract that clearly details the scope of the services, the amount of your consulting fee, the payment terms and other provisions to protect you.
- **Personal Guaranty.** If your client is an LLC or a corporation, you can request/require that the owners of the business personally guarantee the contract. Without a personal guaranty, your recourse will be limited to the assets of the business entity. If the business goes bankrupt, you will probably recover little or nothing. It's true that the owners can also file personal bankruptcy but this is generally done only as a last resort.

It's important to structure our business dealings in light of the current business and economic climate. As a consultant, you'll want to take appropriate steps so you can improve your chances of getting paid for all your hard work.