

The Big Deal with Small Claims: Companion Materials

A Product of the Volunteer Lawyers Project

2021

Link to Video: <https://vimeo.com/543252873/13e01044e0>

Contents:

Storyboard/Video Outline

Volunteer Timeline Flowchart

****** If you are a VLP volunteer viewing this video, and have not received our Consumer Law Manual, please contact VLP. We recommend viewing the manual alongside this training video.

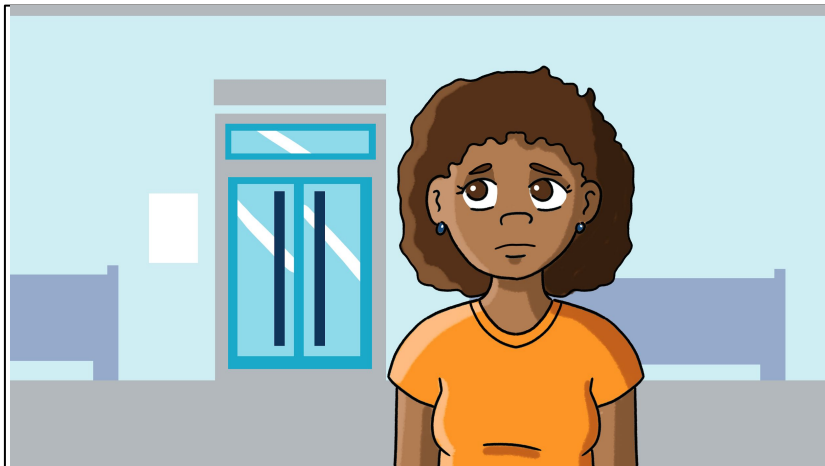
Scene 1

dialogue action



Key Takeaways:

- Watch “Consumer Training 101” before starting.
- This video is not the same as legal advice.



Key Takeaways:

- Introduction of characters and premise.

Scene 2



Key Takeaways:

- Clients may approach VLP to be screened for Intake (offscreen).
- Client must have paperwork pertaining to case such as the notice from the court and the statement of Small Claim.

AND NOTICE OF TRIAL		Use Only: 1901SC1234	Small Claims Session	
<input checked="" type="checkbox"/> BOSTON MUNICIPAL COURT	<input type="checkbox"/> DISTRICT COURT	<input type="checkbox"/> HOUSING COURT		
COURT <u>Boston</u>		Division		Division
PLAINTIFF'S NAME, ADDRESS, ZIP CODE AND PHONE		PLAINTIFF'S ATTORNEY (if any)		
Midland Funding 789 Finance Ave. Boston, MA, 12345		Name: Rich Phillips, Esq. Address: 456 Hedge Dr. Boston, MA, 12345		
PHONE NO: (555)555-5555		PHONE NO: (555)555-5555 BBO NO:		
DEFENDANT'S NAME, ADDRESS, ZIP CODE AND PHONE		ADDITIONAL PLAINTIFF (if any)		
Sofia Hernandez 123 Hope St. Boston, MA, 12345		Name: Address:		
PHONE NO: (555)555-5555		PHONE NO:		
PLAINTIFF'S CLAIM. The defendant owes \$ <u>815.76</u> plus \$ _____ court costs for the following reasons: Give the date of the event that is the basis of your claim.				

Key Takeaways:

- It is crucial that the information on the statement of Small Claim is accurate.
- The statement of Small Claim tells you a lot of key information about the opposing party and what they claim your client owes.

Scene 3

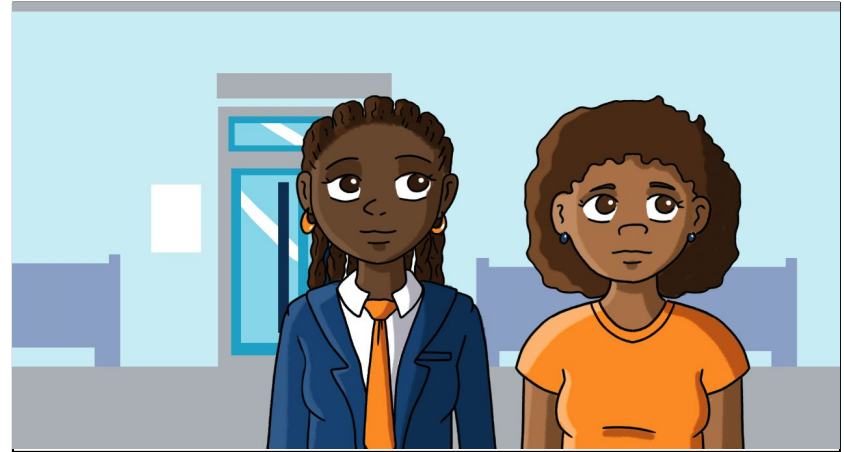
Question: The date of last payment is an important piece of information because it usually starts the clock on the statute of limitations.

What is the SOL for most collection cases brought by debt buyers in Massachusetts?

- a) 2 years b) 4 years
- c) 6 years d) 8 years

Question: The date of last payment is an important piece of information because it *usually* starts the clock on the statute of limitations. What is the SOL for *most* collection cases brought by debt buyers in Massachusetts?

C. 6 years



Key Takeaways:

- It is possible to reach an agreement with the opposing party before trial, but it is not guaranteed.

Scene 4



Key Takeaways:

- You can (and should) ask to see relevant documents from the opposing party.



Key Takeaways:

- Making a payment plan is sometimes an option to make up the debt opposing party is seeking.
- It is necessary to have an up-to-date, accurate financial statement.

Scene 5

**If a judgment enters against her today,
will Sofia have to pay the judgment?**

- a) Yes, she will have to pay the judgment within 30 days
- b) Yes, she will have to pay the judgment after a payment review is held
- c) No, she will not have to pay the judgement as long as she is collection-proof
- d) No, Sofia will never have to pay anything towards a judgment because she is judgement-proof.

If a judgment enters against her today, will Sofia have to pay the judgment?

C. Sofia will not have to pay the judgement as long as she is collection-proof.

Bank Account Statement

Customer Name
Branch Address
Account No.
Branch

DATE DUE TO DEPOSIT
(DATE)

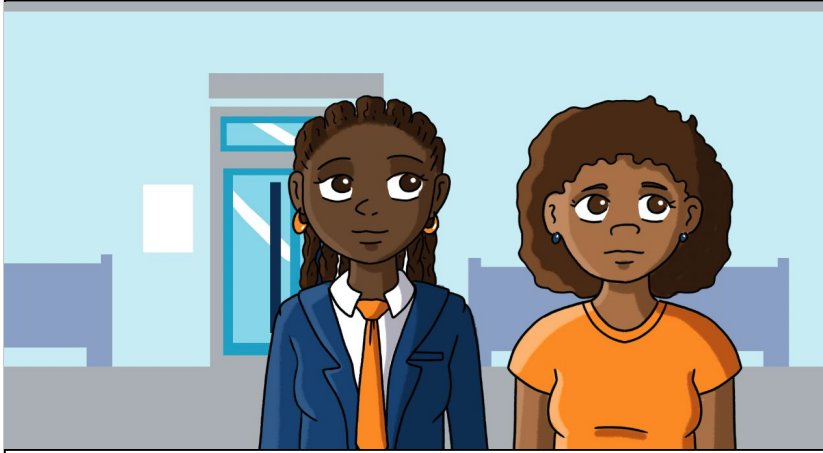
Expenses

Hopewell Gas & Oil	46.75	
Mike's Coffee	2.50	
Market Basket	113.50	

Key Takeaways:

- Definition of the term “collection-proof.”
- Review of Bank Account statements.

Scene 6



Key Takeaways:

- The bill of sale is incomplete. It is missing key information, and as such, it is not clear to whom your client owes money.



Key Takeaways:

- Opposing parties may not want to settle, or waive judgments, even if your client is collection-proof.

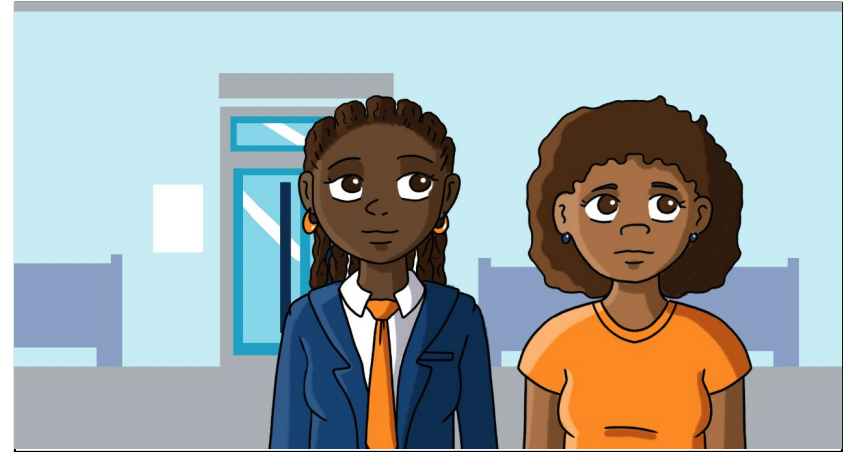
Scene 7

**An AFJ is an Agreement for Judgement.
Why might it be a good idea to sign an
agreement saying that your client owes
the entire amount claimed without a hearing?**

- a) because this is the fastest way to get a resolution
- b) because the rules of evidence aren't enforced in small claims court
- c) because if your client thinks they owe the money a hearing is not necessary
- d) because pre and post judgement interest would be waived and the debt will not accrue

An AFJ is an Agreement for Judgement. Why might it be a good idea to sign an agreement saying that your client owes the entire amount claimed without a hearing?

D - Because pre and post judgement interest would be waived and the debt will not accrue.



Key Takeaways:

- Your client has taken time out of their day, and possibly missed work, to come to trial today. Sometimes they will not be able to come back at a later date.

Scene 8



Key Takeaways:

- Your client only needs to speak when directly asked a question. The clerk may also ask your client questions but “I don’t know” is an acceptable answer if it’s true.



Key Takeaways:

- Introduction of court proceedings by clerk.

Scene 9



Key Takeaways:

- Client does not dispute that they owe a debt, but they dispute they owe a debt to the debt-buyer rather than the original creditor.



Key Takeaways:

- Opposing party may provide evidence that is not complete or verified. Objections can be made, but ultimately it is up to the clerk's discretion.

Scene 10



Key Takeaways:

- Client never got notice that their debt had been bought by a different organization than the original creditor.



Key Takeaways:

- It is the debt-buyer's responsibility to show that it bought your client's specific account. The opposing party has not met its burden to show that it was assigned the Defendant's specific account.

Scene 11



Key Takeaways:

- Debt-buyer must prove their damages to a reasonable degree of certainty.



Key Takeaways:

- Explanation of timeline and next steps.

A. MEETING CLIENTS

1. VLP staff meet potential clients at one of our clinics.
2. VLP provides our contact information in a live court Zoom session.
3. Any time a potential client wishes to speak with us, the court postpones their hearing to a date roughly one month into the future.



B. INTAKE

1. Potential clients contact VLP at the number provided during the previous court session.
2. A VLP staff member conducts an intake to determine client eligibility and case merit.
2. If the client is eligible, their case is discussed at unit case review the following week.



C. ASSIGNING CASES

1. At unit case review, a client's case is assigned to a VLP staff attorney and paralegal to oversee placement of the case.
2. The unit will decide to whether to refer the case to a volunteer for representation or to a staff attorney.



D. PREPARING FOR REFERRAL

1. VLP staff attorneys will direct interns or paralegals to obtain preliminary documents from clients and add court dates to a shared calendar.
2. If the case will be referred to a volunteer, a VLP intern will draft a referral memorandum with key information about the case.



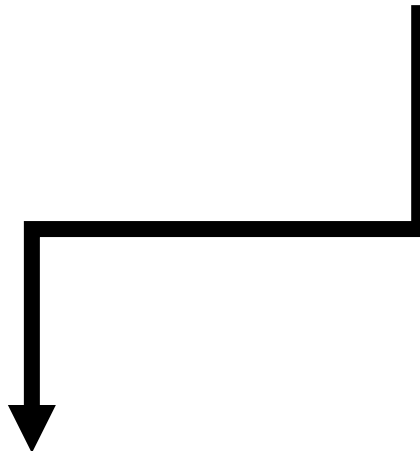
E. REFERRING CASES

1. Once all necessary documents are signed by and collected from the client and the referral memorandum has been reviewed by a staff attorney, the case will be referred to VLP's "consumer pro bono panel."
2. VLP staff write a short blurb describing the case, place the case in the appropriate status in our case management system (Legal Server), and inform VLP's Pro Bono Unit that the case is ready for referral.
3. VLP's Pro Bono Unit refers cases once a week via email with a description of each case.



F. ASSIGNING CASES TO VOLUNTEERS

1. When a volunteer wishes to take a case, they inform the Pro Bono Unit.
2. The Pro Bono Unit will assign the case to the volunteer in Legal Server and inform the staff attorney, client, and volunteer of the assignment.



G. VOLUNTEER ACTIONS (FIRST STEPS)

1. Volunteer contacts the client and discusses the case and next steps.
2. Volunteer confirms client's income to understand potential avenues for settlement.
3. Volunteer asks the client to sign or obtains the client's written permission to sign the Notice of Limited Appearance (NLA) on the client's behalf.
4. Volunteer files or asks VLP to file the NLA with the court.
5. Volunteer contacts opposing counsel to discuss settlement, dismissal, and obtain any documents needed for trial. Volunteer provides a copy of their signed NLA to opposing counsel.



H. VOLUNTEER ACTIONS (SECONDARY STEPS)

1. Volunteer reviews any credit card statements with the client to confirm purchases & payments.
2. Volunteer discusses settlement details, if applicable.
3. Volunteer continues to negotiate with opposing counsel to obtain a settlement or dismissal.
4. If the case cannot be settled, volunteer prepares for client's small claims trial.
5. Volunteer keeps VLP updated about case status and progress at least once every 30 days.



I. VOLUNTEER ACTIONS (CONTINGENT ON RESULT)

1. Trial:

Volunteer represents client at trial.

Volunteer keeps client updated with result of hearing.

After trial result is entered, volunteer explains the result to the client and any action needed on the client's part.

Volunteer sends client a closing email or letter summarizing assistance provided and any other necessary details.

2. Settlement:

Volunteer sends client details of settlement in writing to ensure client has all necessary information.

Volunteer sends client a closing email or letter summarizing assistance provided and any other necessary details.



J. VOLUNTEER ACTIONS (FINAL STEPS)

1. Volunteer informs VLP that the case has been resolved and sends VLP any documents from the case.
2. Volunteer fills out and files (or asks VLP to file) a copy of their WNLA (not necessary when case was dismissed with prejudice or a judgment for Defendant entered)
3. VLP will send the volunteer a closing survey, which the volunteer should promptly complete. The survey will automatically be sent to VLP.



K. CLOSING THE CASE

1. After VLP receives the closing survey from the volunteer, a VLP paralegal or intern will prepare the case for closing.
2. As part of the close prep, the paralegal or intern will ensure any dispositive documents are in the file, all staff and volunteer time is recorded, and that the case notes are clear about the result.
3. Sometimes, a VLP staff person will also ask the client to fill out a closing survey about their experience.
4. After the case is prepped for closing, a VLP staff attorney will review the case for completeness.
5. The case is then closed and the assistance for that client's case is concluded.