

Prologue

Law review articles span 60 pages. Great legal treatises exceed 20 volumes. Practice guides add hundreds of page inserts each year. Every tree cowers.

In launching this 300-page missive of collection, demand, and commercial letters, we are offering a set of basic rules that fit on a T-shirt. One superstar physics professor mused that the key to winning a Noble Prize was a formula embossed on a T-shirt.

This is the T-shirt approach to demand letters. Don't underestimate the importance of a demand letter, which is a cotter pin in legal machinery. Without these cotter pins, the wheels of justice roll off.

These are the T-shirt slogans and what they mean:

Measure twice, but cut once. A carpenter's motto. For attorneys, this means reading the file, familiarizing yourself with the contract, and talking with the client.

Trust but verify. Some clients make all sorts of claims. Upon making the demand, the respondent might issue a stout, and maybe supportable, denial. Don't take the word of anyone, friend or foe, for a claim. Verify what your client is telling you.

Know your customer. This adage comes from banking. Who is the client? Who is the debtor (assuming the claim is of a debtor-creditor relationship)? A standard call from the prospective client is "Look, I just need to hire an attorney to write this letter. If the money doesn't come, all you have to do is levy on the money . . . it's there! Easy money for you. I will give you 40 percent of haul for five minutes of work." The corollary is "Too good to be true."

Your first loss is your best loss. Demand letters test the waters. If the mail is returned, maybe the debtor is out of business, is bankrupt, or has had the assets seized by a secured creditor. Find the bankruptcy, file the claim and request for special notice, and close the file. If the demand letter provokes the threat of Armageddon should a suit be filed, stop and think whether you want to stand shoulder to shoulder, or face to face, with zealots, maniacs, or folks with an intractable grudge. Demand letters let you out, depending on the response. "This is above my pay grade" is a nice way to exit a mess. Get out when you can and always gracefully.

You had me at hello. Neatness counts. Spelling counts. Getting the facts right counts. Anything less means that the other side will not take you seriously.

The canary in the coal mine. If the mine was full of noxious gases (methane or carbon monoxide), the canaries would die first. The canary in the coal mine means that someone,

or something, would die first as an imminent warning of an impending disaster. A demand letter that draws a lot of nasty flack is the canary. “Dear attorney, How could you write a letter that demands payment of a debt that I paid and for which I have the signed receipt in my hands? If you sue, I will win and sue you back for malicious prosecution.” Or something like that, and hence the canary in the coal mine.

Tire kicker. A tire kicker is the fellow who feigns interest in a new car by kicking the tires. Demand letters that seek payment of a troubled or disputed debt feign a possible interest in settlement or some resolution. Some demand letters are serious and others just test the water to see if the respondent might bite.