

NARCA

THE NATIONAL CREDITORS BAR ASSOCIATION™

Best Practices for Hiring and Working with a State Lobbyist

Why You Should Consider Hiring a State Lobbyist

While the actions of the United States Congress and the rest of the Federal government can certainly have a significant impact on creditors rights and debt collection issues, these issues are also regulated at the state level of government. State legislatures introduce and act on several bills related to creditors rights and debt collection issues each year, and state attorneys general and consumer financial services bureaus are constantly taking regulatory action that affects your practice of law. Keeping tabs on all of this legislative and regulatory activity can be a daunting and extremely time-consuming task, even for the most experienced and dedicated volunteers. Since the vast majority of SCBA members already have very demanding full-time careers practicing law, it can be very difficult to find a volunteer that can devote full-time attention to advancing an SCBA's agenda in the state capital. A professional lobbyist can provide a very valuable service to an SCBA by filling that void. In addition, a professional advocate will understand the intricacies of the state's legislative and regulatory processes, have an extensive network of legislative and regulatory contacts, and be able to assist with coalition building in ways that would be difficult for volunteers working on their own to achieve.

What to Look For In a Lobbyist

When hiring a professional lobbyist for your SCBA, it's imperative to find one that is a good fit. Ideally this is a relationship that will be serving your SCBA for years to come, so making the right decision is crucial. Some items to keep in mind when searching for professional legislative representation include:

- **Experience.** Does the individual or firm have experience working on creditors rights and debt collection issues? What about representing attorneys, law firms, collection agencies, etc....?
- **Contacts and Reputation.** Does the individual or firm have extensive contacts in the state capitol, and are the contacts that this firm or individual has a good match for the needs and objectives of your chapter? What do other people and groups you respect think of this advocate?
- **Regulatory and Legislative Knowledge.** Creditors rights and debt collection is not just affected by legislation. Financial Services regulators play a critical role in our field as well. As such, it's crucial that you find an advocate who has the ability to monitor and influence both the legislative and the regulatory processes in your state.
- **Other Clients.** It's very important to review which other groups a lobbyist represents and determine how the lobbyist handles potential conflicts between clients. You may want to think carefully about hiring a lobbyist that also represents collection agencies, debt buyers, consumers, consumer attorneys or any other organization with which your interests may potentially conflict.
- **Political Background.** You should definitely consider how the individual or firm's political views match up not only with the needs and interests of the SCBA, but also with

the current political climate in your state. It's a two-party system, and the party your SCBA identifies with most closely may not always be the one running the show in your state. Therefore, it's important to find a representative that can work on both sides of the aisle to advance your SCBA's agenda.

- **Record of Success.** A proven track record of getting things done is critical.
- **Size and Location of Firm.** You don't necessarily need to hire the biggest firm on the block, but do make sure that whoever you hire has the resources at his or her disposal to get the job done. You also want to make sure that whomever you hire has easy access to the state capitol. In most states, showing your face every day counts for a lot, so you want a lobbyist that can always "be there" for you. Also, close proximity to the capitol means no travel fees for the SCBA.
- **Comfort Level.** Perhaps the most important factor in choosing a lobbyist is the comfort level the SCBA feels with the individual or firm. The most effective lobbyists work hand-in-hand with their clients. You will want to seek out a representative that welcomes client input and involvement and always includes you in critical decisions.

Finding a Qualified Lobbyist

Like most things, the best way to find an excellent lobbyist is through word of mouth. Ask other creditors rights, financial services, banking, credit unions, DBA, ACA and other coalition partners whom they use and if they have any recommendations. If you have strong ties with any legislators and/or regulators in your state, you might also want to ask them whom they think the most effective advocates are in the state.

In addition to seeking recommendations from others, you should also keep in mind that many law firms, association management organizations, political consultants and public relations firms located in and around the state capital have government relations' practices. Also, some SCBA's have had great success hiring current and/or former members with strong legislative and regulatory ties to represent them on a professional basis.

Developing a Request for Lobbying Proposals

When developing a request for proposals, you will want to include background information about the SCBA and the issues you wish to monitor and advance. Some questions you might want to consider including in your solicitation are:

- What is your legislative background?
- Have you worked in the legislature?
- How are you connected to the legislative process?
- What is your background working with executive branch agencies?
- How are you connected to the creditors rights, debt collection, and financial services regulatory process?
- Who do you currently represent?
- Do you include non-conflict clauses in your client contract agreements?
- How do you handle potential conflicts between clients?
- What experience do you have working on creditors rights, debt collection, and financial services issues?
- What are some of your greatest legislative successes? Please provide specific examples of proactive initiatives (e.g., getting legislation introduced and passed on behalf of a client) and reactive campaigns (e.g., preventing the passage of a measure a client opposed).
- Please provide some examples of cases when you were not successful in achieving a client's interests.
- Why do you want to represent us? Please explain why you feel that your firm would

- be a good match for our association.
- Please explain your procedures and philosophy for communicating with clients.
- What is your fee structure?

Selecting the Best Possible Legislative Representation for Your SCBA

It's always a good idea for SCBA leadership to interview several lobbyist candidates, even if the SCBA has a clear favorite candidate in mind. The lobbyist will be a key contractor of the SCBA, and you wouldn't hire any key consultant without at least one job interview. Interviews will help you determine your comfort level with each candidate and help you assess whether or not his or her style of representation will fit your SCBA's needs. Furthermore, keeping the selection process competitive will also help your SCBA when it comes to fee negotiations.

Financing Lobbying Expenditures

The primary reason an SCBA decides not to retain a professional lobbyist is cost. While hiring a lobbyist is a serious financial commitment for any SCBA, lobbying expenditures need not be cost-prohibitive. Many SCBA's have found creative methods for financing their lobbyists. Some states have started out with minimal contracts (e.g., bill monitoring only, lobbying services for only one specific issue of interest) and have increased their levels of service as SCBA funds grew. Some SCBA's dedicate the profits of special events (e.g., golf tournaments, auctions, seminars) toward lobbying fees, and many SCBA's have members in the SCBA contribute towards the cost of a lobbyist.

The Lobbying Contract

Once you select a lobbyist, you will need to enter into a representation agreement. Some things such a contract should include are:

- **Service Expectations.** You will need to clearly define in any lobbying contract the services you expect your representative to provide. Examples of such services include:
 - Lobbying members of the legislature and representing your SCBA before all state agencies regarding all issues of interest to creditors rights attorneys.
 - Reviewing all pending legislation and regulations that have the potential to impact creditors rights or debt collection and communicating the details of those measures to the SCBA.
 - Attending relevant hearings, coalition meetings, regulatory sessions, etc. and reporting outcomes to the SCBA.
 - Identifying opportunities for SCBA members to present testimony to the legislature and regulatory agencies.
 - Drafting legislation, issue papers, and correspondence with legislators and regulators.
 - Organizing an SCBA lobbying day at the state capitol.
- **Communication Methods.** Be sure to specify how you expect your lobbyist to communicate with your SCBA. For example, you should indicate who the representative's main point of contact within the SCBA will be, the frequency and types of reports the lobbyist will provide the SCBA (e.g., daily, weekly or monthly, written newsletter, email updates, etc.). You should also specify if you expect your lobbyist to attend and/or give presentations at certain SCBA events Furthermore, you should clearly identify a structure by which your lobbyist will consult with SCBA leaders to make decisions and plan strategy on critical issues.
- **Compensation.** Your contract should clearly specify a fee and payment plan for services rendered. Some lobbyists will request that their entire retainer be paid in a lump

sum prior to the beginning of a legislative session, and other may accept a monthly payment. Negotiating a monthly payment schedule may be wise, since an SCBA would have little recourse against a lobbyist they were dissatisfied with if they had paid his or her entire fee up front. Also, in addition to their general fee, many lobbyists will bill clients for direct expenditures incurred during the performance of contract services (e.g., postage, telephone charges, reasonable travel expenses). If your lobbyist does bill for such charges, it may be wise for an SCBA to stipulate that any direct expenditures in excess of a specified amount (e.g., \$100) be approved by a designated SCBA contact. In any case, make sure that a fee structure is clearly defined in any contract to prevent any surprise charges on your bill.

Developing and Maintaining an Effective Relationship with Your Lobbyist

Once you retain a professional lobbyist, your SCBA will need to devote significant time to educating your representative about the role that creditors rights and debt collection play within the economy and credit ecosystem, the public policy issues of interest to your membership and the legislative and regulatory goals and objectives of your SCBA.

Your lobbyist needs to understand what your members do and how they feel about the issues in order to represent you effectively.

In addition, the SCBA needs to develop a formal process for managing their lobbyist and staying engaged in the legislative process. Ideally, the SCBA should create a legislative management team (perhaps chaired by the SCBA legislative chair and composed of the SCBA president and the SCBA president-elect or Executive Committee) to serve as the primary point of contact for the lobbyist. This group should meet on a regular basis both with and without the lobbyist to not only manage the SCBA's representative services, but also to monitor and discuss critical issues, approve SCBA positions, develop grassroots strategies, and work on coalition building.

NARCA – The National Creditors Bar Association and SCBA Assistance

NARCA and its State Creditor Bar Forum is always available to help SCBA's as they navigate the process of hiring and working with a state lobbyist. For more information or assistance, please contact Mark Dobosz, Executive Director at 202-861-0706 or mark@narca.org.

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