



May 8, 2014

## NEW YORK UNIFIED COURT SYSTEM PROPOSES REFORMS FOR CONSUMER CREDIT COLLECTION CASES

The New York State Unified Court System is proposing reforms to be used in consumer credit collection cases aimed at preventing unwarranted default judgments and ensuring a fair legal process. The reforms include (i) requiring creditors to submit affidavits based on personal knowledge that meet standards for default judgment under New York law, (ii) requiring additional notice be mailed to debtors in courts outside New York City and (iii) providing unrepresented debtors with additional resources and assistance.

The proposal results from the New York judiciary's concern over the more than 100,000 consumer credit collection lawsuits filed annually in New York, most of which are brought by third-party debt buyers based on scant evidence of the debt. These alleged "zombie" debts are difficult for debtors (most of whom are unrepresented) to defend, with more than half resulting in default judgments as debtors often do not answer or show up in court. The failure to respond many times is a result of not receiving notice of the lawsuit (alleged "sewer service"). Additionally, while debt buyers are required to submit affidavits of merit, default judgments routinely are awarded based on alleged "robosigned" affidavits containing hearsay allegations. As the judiciary noted, while consumers should pay their debts and businesses are entitled to use the courts to collect what is legally owed to them, the judiciary has an obligation to address perceived inequities in the system.

### Form Affidavits for Use in Default Judgments

The proposed rules would require affidavits to be submitted as part of an application for a default judgment in a consumer credit case. The form of affidavit would depend upon whether the action is one brought by the original creditor or a debt purchaser. In an action by an original creditor to collect on a consumer credit debt, the creditor would need to submit (i) an affidavit of facts by original creditor, (ii) an affidavit of non-expiration of statute of limitations and (iii) a true and correct copy of the original agreement. In an action by a debt buyer to collect on a consumer credit debt, the debt buyer would need to submit (i) an affidavit of facts and sale of account by original creditor, (ii) an affidavit of purchase and sale of account by debt seller, (iii) an affidavit of facts and purchase of account by debt

buyer plaintiff, (iv) an affidavit of non-expiration of statute of limitations, (v) a true and correct copy of original agreement and (vi) true and correct copies of all written assignments of the account. Form affidavits are included in the proposal.

### Additional Notice of Consumer Credit Action

The plaintiff in a consumer credit action will be required to submit to the clerk of courts a stamped envelope addressed to the defendant, along with a written notice, in English and Spanish, that contains language set forth in the proposed rule. The notice essentially tells the defendant that a claim has been filed for an unpaid consumer debt. It instructs the defendant to file an "answer" and to possibly contact an attorney. It also discusses the consequences of a default judgment. The clerk will mail the notice to the defendant. No default judgment based on a defendant's failure to answer may be entered unless the notice has been provided and at least 20 days have passed from the date of mailing by the clerk. The court will not enter a default judgment where the additional notice is returned because of a wrong or unknown address. A sample notice is included in the proposal.

### Additional Resources for Unrepresented Debtors

The proposed rules would expand to all courts the use of certain forms now in use in the New York City Civil Court, including an answer form specially designed for unrepresented defendants. The answer form contains a list of standard defenses, which the defendant can check off as applicable. There also is a form Order to Show Cause to Vacate a Default Judgment with check boxes that may be used by an unrepresented defendant. Both of these forms are included in the proposal.

Comments must be submitted by May 30, 2014. The rules are expected to be implemented by June 15, 2014.

✧ *Mike Tomkies and Margaret Stolar*

Darrell L. Dreher  
ddreher@dtllaw.com

Judith M. Scheiderer  
jscheiderer@dtllaw.com

Elizabeth L. Anstaett  
eanstaett@dtllaw.com

Charles V. Gall  
cgall@dtllaw.com

2750 HUNTINGTON CENTER  
41 S. HIGH STREET  
COLUMBUS, OHIO 43215  
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600  
WWW.DTLAW.COM

*To see all previously sent ALERTS, visit our website at [www.dtllaw.com](http://www.dtllaw.com)*

*To decline future ALERTS, please contact us at [ALERTS@DTLAW.COM](mailto:ALERTS@DTLAW.COM). This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.*

Michael C. Tomkies  
mtomkies@dtllaw.com

Margaret M. Stolar  
mstolar@dtllaw.com

Robin R. De Leo  
robin@dreher-la.com

Susan L. Ostrander  
sostrander@dtllaw.com

Susan M. Manship  
smanship@dtllaw.com