

Problems and Recommendations for High Volume Dockets: A Report of the High Volume Case Subcommittee to the CCJ Civil Justice Improvements Committee

By Hannah E. M. Lieberman, Linda Sandstrom Simard & Ed Marks

Introduction

As NCSC's recently completed study, *The Landscape of Civil Litigation in State Courts* reflects, the civil business of state courts has changed dramatically over the last few decades:

State court case loads are dominated by lower-value contract and small claims cases rather than high-value commercial and tort cases. Only one in four cases has attorneys representing both the plaintiff and the defendant. Only a tiny proportion of cases are adjudicated on the merits, and almost all of those are bench trials in small claims and other civil cases.¹

This transformation is evident in “high volume” dockets that present enormous challenges to litigants, judges and court administrators.² The huge volume of cases, mostly consisting of lower-value contract cases, landlord /tenant and debt collection filings, presents one challenge.³ Nationally, landlord/tenant cases number in the millions every year.⁴ Debt collection filings, which also number in the millions nationally, reflect the burgeoning business of third-party debt buyers. A second challenge is the lack of representation for, and sophistication of, most defendants in these cases, which creates unique management problems and asymmetries between the parties. If left unaddressed, these challenges threaten the integrity of judicial processes and can thwart meaningful examination of basic facts and

¹ PAULA HANNAFORD-AGOR ET AL., *THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS* 35 (NCSC, 2015) [hereinafter *LANDSCAPE*].

² There are other “high volume” courts outside the scope of the CCJ mandate (e.g., domestic relations), for which some of the recommendations offered here may be applicable.

³ The *LANDSCAPE* study found that contract cases made up between 64 and 80 percent of the civil caseloads in the jurisdictions that were the subject of the study. Thirty-seven percent (37%) of those were debt collection cases, 29 percent were landlord/tenant, and another 17 percent were foreclosure matters. *Id.* at 17-19.

⁴ For example, a 2008 study estimated that approximately 300,000 eviction cases were filed in New York City annually. Jessica K. Steinberg, *Demand Side Reform in the Poor People's Court*, 47 *CONN. L. REV.* 741, 750 n.22 (2015) [hereinafter Steinberg] (citing Rashida Abuwala & Donald J. Farole, *The Perception of Self-Represented Tenants in a Community-Based Housing Court*, 44 *CT. REV.* 56 (2008)). This is not only an urban problem. The Quincy Housing Court in Massachusetts handles 1,280 cases annually. James D. Greiner et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 *HARV. L. REV.* 901, 917 (2013) [hereinafter Greiner]. See also *LANDSCAPE*, *supra* note 1, at 17-19 (contract and small claims cases comprised 80 percent (as an average) of caseloads in studied jurisdictions). The study notes that some of the small claims cases are also likely debt collection cases. That means that, in those ten jurisdictions alone, debt collection cases numbered in the hundreds of thousands, and landlord/tenant cases exceeded 100,000.

claims.⁵

The outcomes in high volume dockets typically have serious and long-lasting consequences for litigants. Although the average dollar value of the debt collection and small claims cases handled annually is low,⁶ a civil judgment can stand in the way of housing, employment and income. Data-miners check and report court records for prospective employers, landlords and creditors. With jobs, shelter and wages hanging in the balance,⁷ generally for persons of limited means, it is critical that the judgment be the product of a fair and adequate process.⁸ Post-judgment enforcement efforts including wage garnishment follow on the heels of civil judgments in these cases and should likewise conform to applicable state and federal law. Studies reveal, however, that recurrent practices in many jurisdictions undermine the adequacy or fairness of the operations and results of such high volume dockets.

This sub-committee tasked with developing recommendations regarding high volume dockets put together this memorandum to (1) identify the unique characteristics of these cases and dockets; (2) define the most pressing problems they present; and (3) suggest some initial responses for possible inclusion in the final report of the CCJ Civil Justice Improvements Committee. We are motivated by a sense of urgency. A judicial system that is not readily navigated by many, and where outcomes are too frequently not based on a full and fair ventilation of the underlying facts of the case, will lose its integrity and legitimacy. It is thus ultimately our strong commitment to and respect for our system of justice that underlies this effort.

In putting together this outline, we are mindful of the scope of the CCJ Committee mission. Our recommendations focus on changes that court systems can achieve (perhaps to varying degrees based on resources and need) through changes to court administration, operations, rules or "culture" (practices that may have developed over time but are not embodied in law or formal policies). They

⁵ Unlike other types of cases discussed in the *Landscape*, delay and litigation expenses are typically not problems in these courts. Trials are infrequent; discovery rarely occurs and when it does, is limited and streamlined. Greiner, *supra* note 4, at 915-16 (noting simplified rules and standardized forms used in landlord/tenant courts and the rarity of evidentiary hearings, including trials). Indeed, the *Landscape* study indicated a 42 percent higher default rate and a trebling of dismissals over the past two decades, leading the authors to conclude that "very little formal adjudication is taking place in state courts at all." LANDSCAPE, *supra* note 1, at 23.

⁶ LANDSCAPE, *supra* note 1, at 35.

⁷ See Mary Spector, *Litigating Consumer Debt Collection: A Study*, 31 BANKING & FINANCIAL SERVICES POLICY REPORT 1, 3 (2012) [hereinafter Spector, *Litigating*]; Greiner, *supra* 4 at 914, 916, and n. 59. A quick online inquiry reveals the substantial business of record searching, which includes court records. Courts have responded to the increase in efforts to obtain bulk data in varying ways; some charge a fee for the information and restrict its resale. More information can be obtained at the NCSC *Privacy/Public Access to Court Records—State Links* at <http://www.ncsc.org/Topics/Access-and-Fairness/Pravacy-Public-Access-to-Court-Records/State-LOinks.aspx>. Improper garnishments increase the harm of improper practices. FEDERAL TRADE COMMISSION, REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION ii (2010), available at <https://www.ftc.gov/reports/repairing-broken-system-protecting-consumers-debt-collection-litigation> [hereinafter FTC REPORT].

⁸ James D. Greiner et al., *Engaging Financially-Distressed Consumers*, FEDERAL RESERVE BANK OF BOSTON, COMMUNITY AND BANKING, Summer 2015, available at <https://www.bostonfed.org/commdev/c&b/2015/summer/greiner-jimenez-lupica-engaging-financially-distressed-consumers.htm>.

include suggestions for innovative partnerships and new uses of technology, and reflect recognition that court personnel, including judges, have opportunities to use the "bully pulpit" to educate the public and policymakers about the challenges facing the court system. We have steered away from recommendations that would likely require legislation or significant substantive changes in the law. In keeping with our mission, we have concentrated on possible roles for courts in improving the management of high volume dockets.

Distinctive Characteristics of High Volume Dockets

Cases filed in high-volume court dockets tend to share a number of common characteristics. The factual and legal issues alleged in the pleadings tend to be highly repetitive. Plaintiffs are likely to be represented by an attorney who often handles a high volume of similar cases.⁹ Debt collection plaintiffs are almost always corporate entities rather than individual litigants, and landlord/tenant plaintiffs are usually so. Plaintiffs are thus likely to have significantly greater knowledge of formal and informal court practices and far greater resources, including access to both case-specific and general information, than defendants.

Defendants, in contrast, are likely to be self-represented individuals,¹⁰ who are often of low or modest income. These defendants often face additional barriers that impede effective navigation of the civil justice system and their ability to present an effective defense.¹¹ Barriers may include limited literacy; limited English proficiency; cognitive impairments including mental illness; and distrust of the courts based on prior experience or upbringing in a different culture. Many defendants are uncomfortable with the adversarial process and may adopt a non-linear approach to story narration that does not lend itself well to court proceedings. They are likely to be ill-equipped to handle formal court proceedings,

⁹ See LANDSCAPE, *supra* note 1, at 31-32 (of almost 650,000 cases, plaintiffs were represented by counsel in 92 percent of cases compared with 24 percent of defendants). Greiner, *supra* note 4, at 908, n. 26 (over 90 percent of evictors represented by counsel); Carroll Seron et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City Housing Court: Results of a Randomized Experiment*, 35 L. & SOC'Y REV. 419, 421 (2001) (indicating that 98 percent of landlords had legal representation compared to 12 percent of tenants). See also Mary Spector, *Defaults and Details Exploring the Impact of Debt Collection Litigation on Consumers and Courts*, 6 VA. L & BUS. REV. 257, 285 (2011) [hereinafter Spector, *Debt, Defaults & Details*] (noting the concentration of cases in the hands of a few high-volume law firms).

¹⁰ The vast majority of tenants are not represented by counsel. See LANDSCAPE, *supra* note 1, at 32; see also Steinberg, *supra* note 4, at 751. Among the statistics cited in the article, a 2008 study revealed that 88 percent of tenants in New York City did not have counsel, while 98 percent of their landlords were represented. *Id.* at n. 23, 24 (with similar statistics for other jurisdictions including Maine, California, New Hampshire and Illinois). In Maryland, a 2011 report indicated that 95 percent of tenants – approximately 601,751 litigants - were self-represented. *Id.*

¹¹ Steinberg, *supra* note 4, at 758-59 ("Tenants with mental disabilities, victims of domestic violence, overwhelmed single mothers, non-English speakers, and the mentally ill flood the courts and exacerbate the inadequacy of self-representation;" "Even in courts where pro se litigants are the rule rather than the exception, judges and other court players routinely disregard the narrative-style testimony of unrepresented litigants..."); see also *id.* at 756 "[In Baltimore Housing Court] ... judges typically reject the way pro se litigants speak – through narrative – and automatically deem their stories legally irrelevant;" Paris R. Baldacci, *Assuring Access to Justice: The Role of the Judge in Assisting Pro Se Litigants in Litigating Their Cases in New York City's Housing Court*, 3 CARDOZO PUB. POL'Y & ETHICS J. 659, 662-665 (2006) [hereinafter Baldacci].

specialized rules of evidence and procedure, complex or technical federal and state laws or rules related to standing, burdens of proof, and the availability of a wide range of defenses, mitigating circumstances, or opportunities for negotiation or settlement.¹²

Common Problems Experienced in High Volume Dockets

Well-documented, serious, recurrent problems face courts and litigants in high volume dockets. These include inadequate service, insufficient information available to litigants, overcrowded and confusing courtrooms, inadequate explanations to litigants concerning the role of counsel, and insufficient court scrutiny of plaintiff claims. Additional problems that contribute to high default rates and erroneous civil judgments are specific to consumer debt collection cases. These problems are discussed below in roughly the order that cases move from initiation to resolution.

Inadequate Service

The *Landscape* study notes that “traditional procedures for serving notice in civil lawsuits are functionally obsolete, especially in suits against individuals. Typical methods of serving process are riddled with inaccuracies and inadequacies.”¹³ State Attorneys General, including those in New York (2009), California (2013) and Minnesota (2014) have pursued large-scale fraud where hundreds or thousands of persons were not properly served and therefore did not receive notice of the pendency of

¹² For example, landlord tenant cases may require application of federal and states statutes, regulations and common law involving a variety of types of housing (federal subsidies, public housing, private landlord-tenant, condominium). The wide ambit of issues addressed in landlord-tenant disputes can include non-payment of rent; sub-standard conditions; accommodations for persons with disabilities; state laws that protect rights of first purchase; relocation assistance; or the obligations of governmental subsidy providers, to name a few. *See also* Greiner, *supra* note 4, at 915 (“The substantive law applicable in summary eviction cases bears notable complexity. Sources of relevant law include federal statutes, federal regulations, state statutes, state regulations, and state common law. Content includes, for example, non-waivable warranties, allocations of duties that can be shifted only by means of written agreements, dependent covenants, and procedural requirements regarding the service and content of the ‘notice to quit’, the initial document the would-be evictor must serve on the occupant as a precursor to a formal court action.”)

¹³ LANDSCAPE, *supra* note 1, at 2.

a Complaint against them.¹⁴ These fraudulent practices taint untold numbers of individual cases.¹⁵ Victims of “sewer service” may not be aware that they were sued until garnishments, asset seizures or evictions are attempted or a judgment appears on a credit report, at which time it may be extraordinarily difficult, if not impossible to vacate the judgment and restore the individual to the status quo ante.

Debt collection dockets have especially high default rates,¹⁶ which have increased substantially over the past 20 years.¹⁷ Studies show that, in more than half of default cases, consumers had good faith defenses to collection.¹⁸ Other studies suggest that defaults decrease when litigants have more information. Thus it cannot be assumed that defaults are a de facto “admission” of liability or no contest. Indeed, many cases result in voluntary and involuntary dismissals after the defendants appeared.¹⁹

¹⁴ See, e.g., Press Release, The Office [Minnesota] Attorney General Lori Swanson, Attorney General Swanson Sues Legal Process Server for Engaging in “Sewer Service,” (Nov. 6, 2014), <http://www.ag.state.mn.us/Office/PressRelease/20141106SewerService.asp>; Press Release, Attorney General Cuomo Announces Arrest of Long Island Business Owner for Denying Thousands of New Yorkers Their Day in Court, (Apr. 14, 2009), <http://web.archive.org/web/20101117070043/http://www.ag.ny.gov/media-center/2009/apr/apr14a09.html> (also announced intent to sue law firm that used the process server to serve over 28,000 summons and complaints); Press Release, Attorney General Kamala D. Harris Announces Suit Against JP Morgan Chase for Fraudulent and Unlawful Debt-Collection Practices (May 9, 2013), <http://oag.ca.gov/news/press-release/attorney-general-kamala-d-harris-announces-suit-against-jpmorgan-chase>; See also *People v. Zmod Process Corp. DBA Am. Legal Process & Singler*, Index No. 2009-4228 (Erie County Sup. Ct., Apr. 2009) (Civil suit alleged more than 100,000 instances of sewer service in New York. Defendants thereby lost their opportunity to defend and had default judgments entered against them). *People v. Singler & Zmod Process Corp. dba Am. Legal Process, Inc.* (Apr. 2009) (felony complaint); *In re Pfau v. Forster & Garbus et al.*, Index No. 2009-8236 (Erie County Sup. Ct., July 2009) (civil petition to vacate default judgments obtained against consumers in debt collection cases filed against numerous attorney collectors who used American Legal Process to serve process and obtained default judgments in New York); MFY LEGAL SERVICES, JUSTICE DISSERVED: A PRELIMINARY ANALYSIS OF THE EXCEPTIONALLY LOW APPEARANCE RATE BY DEFENDANTS IN LAWSUITS FILED IN THE CIVIL COURT IN THE COUNTY OF NEW YORK, (2008), http://www.mfy.org/wp-content/uploads/reports/Justice_Disserved.pdf (personal service achieved in only six percent of civil debt collection cases in King and Queen Counties, NY).

¹⁵ See, e.g. *Capital Development Group LLC v. Marcus Jackson et al*, 142 Daily Wash. L. Rptr. 2645 (D.C. Super. Ct. Oct. 2014 (Kravitz, J., dismissing landlord's eviction case due to false attestation of service of mandatory 30 day notice, and awarding fees to defendant's counsel, stated: "To the extent the conduct exhibited here. . .may not be unique. . .it is all the more important that the intended message of deterrence emanating from the court's award of reasonable attorney's fees and costs be heard loud and clear by those who would consider litigating other landlord-tenant cases in [this] bad faith manner. . .Perhaps most concerning about the bad faith litigation tactics exhibited here is the reality that the fatal legal and factual deficiencies in the plaintiff's claim likely never would have come to light. . .without counsel. . .").

¹⁶ FTC REPORT, *supra* note 7, at 7 (estimates from 60% to 95%). See also Holland, Peter A., “Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers”, University of Maryland Francis King Carey School of Law Legal Studies Research Paper No. 2014-13 [hereinafter HOLLAND], <http://ssrn.com/abstract=2406289> at 192.

¹⁷ LANDSCAPE, *supra* note 1, at 26.

¹⁸ Spector, *Debt, Defaults and Details*, *supra* note 9, at 272; Spector, *Litigating*, *supra* note 7, at 3. Federal and state laws may provide defenses. Forty-two states supplement the federal Fair Debt Collection Act with legislation governing debt collection. Spector, *Litigating*, *supra* note 7, at 2.

¹⁹ Spector, *Debts, Defaults and Details*, *supra* note 9, at 263.

Insufficient Litigant Information

Many litigants lack sufficient information to enable them to navigate court processes effectively or efficiently, making each step frustrating both for the litigant and for court staff. Frontline court staff often cannot provide detailed information to help litigants answer a complaint; understand how, when and where to present the facts of their cases; understand what will happen in the courtroom and how to respond; distinguish between court employees and other players including lawyers for the opposing party; and understand the language of the law and the courts. For their part, court staff also need assistance with self-represented litigants, many of whom need more assistance than staff have time to provide. Staff also need assistance to attend to litigants who are confused, upset, angry or have mental or cognitive impairments. Staff often need coaching to understand non-English speakers and respond in ways that bridge cultural differences; to identify the line between “legal advice” and “legal information;” and to adhere to appropriate boundaries about the litigant’s case (e.g., seeming to challenge the legitimacy of positions, asking questions such as “why did you default?” or “why do you need more time?”).²⁰

Overcrowded, confusing courtroom environments

In high-volume dockets, large numbers of cases are often scheduled for the same block of time. Courtrooms then become very crowded. Docket calls in the courtroom to determine who is present before the judge takes the bench are often fast-paced and hard to hear and understand. Litigants may miss their case call because they don’t hear it, don’t understand what is required of them, don’t recognize their case by number or plaintiff name or because their name is mispronounced. They can become distracted by competing activities such as loud interruptions from counsel looking for opposing parties. Default judgments are often sought and entered quickly after an apparent lack of response.²¹

Calling large numbers of cases at the same time frequently means that many parties experience long wait times before their case is called. This is difficult for everyone, lawyers included, but particularly burdensome on persons who are employed, disabled, elderly or frail, or have childcare needs. The sequence of handling cases after the initial call may seem skewed to benefit the attorneys, particularly those who have many cases (easily dozens per day) on the calendar.

Lack of explanations concerning the role of plaintiff counsel

The behavior of plaintiffs’ attorneys in the courthouse often leads to coerced or misunderstood settlements. Attorneys who regularly handle landlord/tenant or consumer debt cases in significant volume may occupy desks or places in the well of the court, hallways, or public areas adjacent to the courtroom. Sometimes the positioning of their desks suggests to a newcomer that they have an official court role. To move cases along, judges may encourage parties to return to the hallway to explore

²⁰ Baldacci, *supra* note 11, at 665.

²¹ NEW YORK COUNTY LAWYERS’ ASSOCIATION, THE NEW YORK CITY HOUSING COURT IN THE 21ST CENTURY: CAN IT BETTER ADDRESS THE PROBLEMS BEFORE IT? 13 (2005) [hereinafter NEW YORK COUNTY LAWYERS’ ASSOCIATION].

settlement possibilities. Litigants often read this as judicial pressure to settle²² or they may unnecessarily acquiesce to opposing counsel demands because they mistakenly assume that the attorney with whom they are speaking is connected to the court. Studies have documented repeated instances of lawyers violating the ethical rules against advising unrepresented opponents, or misrepresenting the law.²³ This practice has been well documented for years in both densely populated urban areas and smaller communities.²⁴

As a result of the hallway negotiations, judges often do not obtain complete information from both sides to ensure a legally correct judgment on the facts and the law. When presenting a settlement for court review, attorneys opposing self-represented litigants tend to dominate the courtroom colloquy.²⁵ Self-represented litigants also may not appreciate the far-reaching implications of choices in how a case is resolved and recorded in court records when they agree to settle (e.g., dismissal, entry of judgment).²⁶

Pro se litigant difficulties at trial

Pro se litigants are often unable to present their stories effectively because they do not know how to present facts in technically acceptable forms. The legal vocabulary is unfamiliar. They do not know how to respond to objections, particularly those asserting lack of relevance or hearsay. They may have difficulty getting documents admitted. Those who are from non-American cultures or speak a language other than English may narrate events in ways to which judges and opposing counsel are not accustomed. As a result, their stories may not emerge fully or coherently.

Problems specific to consumer debt collection cases

The explosion of consumer debt collection cases, fueled by the proliferation of third party debt buyers and bulk filings, has created additional procedural challenges for judges and litigants. For example, the

²² See, e.g., Russell Engler, *Out of Sight and Out of Line: The Need for Regulation of Lawyers' Negotiation with Unrepresented Poor Persons*, 85 CAL. L. REV. 79, 120 (1997) [hereinafter Engler] (litigants told by judges to try to work out the dispute in the hall); Baldacci, *supra* note 11, at 665 (primary conversation of pro se litigants in landlord/tenant court is a rushed interchange with the landlord's attorney in the hallway).

²³ NEW YORK COUNTY LAWYERS' ASSOCIATION, *supra* note 21, at 12.

²⁴ E.g., Greiner, *supra* note 4, at 942-43; Baldacci, *supra* note 11, at 665; Joe Lamport, *Hallway Settlements in Housing Court*, GOTHAM GAZETTE (Dec. 19, 2005), <http://www.gothamgazette.com/index.php/about/3083-hallway-settlements-in-housing-court>. See also Erica Fox, *Alone in the Hallway: Challenges to Effective Self-Representation in Negotiation*, 1 HARV. NEGOTIATION L. REV. 85 (1992). We are not suggesting that court personnel directly participate in these documented abuses and overreaching. However, such unchecked practices lead to court cultures that reward litigant asymmetries, enable unscrupulous attorneys to engage in unethical practices and undermine the adequacy and fairness of the fact-finding process, thereby preventing fair resolution of disputes.

²⁵ NEW YORK COUNTY LAWYERS' ASSOCIATION, *supra* note 21, at 13. Self-represented litigants often cannot present their cases effectively and are therefore effectively silenced in court proceedings because they cannot translate their narrative into legally acceptable forms. Their difficulties include unfamiliar vocabulary; problems with evidence (e.g., legal relevance, hearsay objections, difficulty getting documents admitted, dealing with objections); cultural differences in narrating facts).

²⁶ Greiner, *supra* note 4, at 916. See also, HOLLAND, *supra* at 200, 224, citing comments of a Maryland Assistant Attorney General that settlement discussions between plaintiffs' attorneys and unrepresented defendants open the door to settlements "on terms defendants] do not understand and cannot afford"; NEW YORK COUNTY LAWYERS' ASSOCIATION, *supra* note 21, at 13.

practice of buying debt instruments in bulk from original and subsequent creditors means that debt buyers often cannot show, and may not have, ownership of the debt or accurate information about the debt.²⁷ Studies have shown debt buyers/collectors often cannot substantiate the chain of title or legitimacy of the amount claimed.²⁸

This fundamental lack of proof has implications at every stage of the proceedings. Specifically, complaints often do not meet basic “fact” pleading requirements including identification of the original creditor and original debt, date of the default, the chain of title or connection between the plaintiff and the original lender, relevant contract terms, or the portion of the amount sought attributable to penalties, and interest or attorneys’ fees.²⁹ Without identification of the original creditor or terms, defendants may not recognize the transaction, assume it to be an error and will therefore not respond. Studies suggest that defaults decrease when litigants have more information, so it cannot be assumed that defaults are a de facto “admission” of liability or no contest.³⁰

In addition, bulk debt collectors often sue on debts when the suit is legally or factually precluded including those in which the statute of limitations has expired, the debt has been discharged in bankruptcy, has been satisfied, or is not that of the person sued.³¹

²⁷ At the time of the bulk sale, the buyer typically acquires a computerized record of often hundreds of transactions, with only the names, addresses of consumers, account numbers and total amount allegedly owed. The information is “rarely sufficient to support a judgment against the consumer.” Spector, *Debts, Defaults and Details*, *supra* note 9, at 259. See also FTC REPORT, *supra* note 7; Spector, *Litigating*, *supra* note 7, at 1, 2; Jamie S. Hopkins, *Maryland Court Dismisses 3,168 Debt-Collection Cases*, BALTIMORE SUN (Oct. 11, 2012), http://articles.baltimoresun.com/2012-10-11/news/bs-bz-debt-collection-cases-dismissed-20121011_1_debt-collection-cases-judge-ben-c-clyburn-maryland-court (Maryland court dismissed 3,168 debt collection cases and ordered liens released as part of a class action settlement. The debt collection firm was alleged to have been unlicensed, sued for wrong amounts, sued for debt barred by limitations, and included private social security numbers in public filings. The firm was also ordered to pay penalties and damages.); Jamie S. Hopkins, *A Push for More Proof in Debt Collection Lawsuits*, BALTIMORE SUN (July 24, 2011), http://articles.baltimoresun.com/2011-07-24/business/bs-bz-debt-collection-overhaul-20110724_1_debt-buyers-debt-cases-past-due-consumer-debts; Lippman, C.J., Law Day Remarks: Consumer Credit Reforms (Apr. 30, 2014) [hereinafter Lippman].

²⁸ *Id.* See also DISTRICT COUNCIL 37, MUNICIPAL EMPLOYEES LEGAL SERVICES, DEBT COLLECTION ABUSE: 10 TIPS FOR WORKING FAMILIES 4 (2010), http://www.dc37.net/benefits/health/pdf/MELS_DebtCollectionAbuse.pdf (citing their report that found that debt buyers failed to provide documentation in over 94% of the MELS cases in an 18 month period in which a debt buyer sued a consumer; 27% were not properly served and 50% were beyond the statute of limitations).

²⁹ Lippman, *supra* note 27 at 2-3 (plaintiff debt buyers file lawsuits “based on little more than boilerplate language and a few fields of data from a spreadsheet. All too often, these credit card debts are several years old, have been resold multiple times, and critical documents like the original credit agreement and account statements are missing. By the time these so-called “zombie” debts show up in court, it is extremely difficult for debtors —98 percent of whom are unrepresented —to assess the validity of the claims against them: whether they actually owe the debt at issue, whether the amount due is correct, and whether the plaintiff is the actual owner of the debt. As a result, many debtors who receive court papers fail to appear in court.

³⁰ Replacing the notice pleading standard with a fact pleading standard on a pilot basis in two counties resulted in significantly lower default rates. PAULA HANNAFORD-AGOR ET AL., NEW HAMPSHIRE: IMPACT OF THE PROPORTIONAL DISCOVERY/AUTOMATIC DISCLOSURE (PAD) PILOT RULES 10-12 (Aug. 19, 2013).

³¹ Spector, *Litigating*, *supra* note 7, at 1-2.

Exacerbating the legal insufficiencies of the claims themselves, well-documented instances of sharp litigation practices on the part of some debt collection attorneys may also serve to keep relevant information from the trial judge. For example, collection attorneys often do not expect defendants to appear in court on the hearing date, and when defendants do appear, the attorneys frequently claim lack of preparedness and seek continuances that are costly for litigants and inefficient for courts.³² There have been documented instances of recurrent choice of inconvenient forums or improper venue by the same high volume collection attorneys.³³ Some high-volume collection attorneys have engaged in documented practices of “robo-signing” including automated signing of incorrect or false affidavits, inclusion of unlawful rates of interest and claims for improper fees.³⁴ Debt collectors also have high rates of non-compliance with state bonding requirements, which in some jurisdictions provide a defense or an affirmative counter-claim in response to the collection effort.³⁵

Recommendations

The following recommendations are taken from research and information gathered from various jurisdictions. We give particular emphasis to practices that have demonstrated results but also include recommendations from attorneys who have direct experience with these high volume dockets and those emerging from studies conducted by the Federal Trade Commission and the federal Consumer Financial Protection Bureau. The recommendations will hopefully advance the three-fold focus of the Committee's charge: to reduce delay and cost and to achieve fairness. We realize that one size does not fit all, but believe these can be tailored to fit varying circumstances of different jurisdictions. As in the above section, we provide recommendations that may be appropriate generally for high volume dockets and those that are intended to address the unique challenges presented by consumer debt collection cases. We focus on changes that we believe many courts can implement through rules or other policy changes, but also include proposed changes that judges or other court personnel might want to discuss with others, including the public and policy makers, following the model of New York's Chief Judge Lippman.

We have tried to avoid recommendations that are likely to require statutory change (although that varies state by state).³⁶ We also have considered the cost, complexities and benefits to the courts and

³² FTC REPORT, *supra* note 7, at 14. This is not a new problem. See Engler, *supra* note 22, at 120 (plaintiffs' attorneys routinely continue cases where defendants appear, increasing the likelihood of default).

³³ See, e.g., Marisa Kwiatkowski, *Judges Call for an End to Marion County's Small Claims Court System*, INDYSTAR (July 12, 2014), <http://www.indystar.com/story/news/2014/07/12/judges-call-end-marion-countys-small-claims-court-system/12585307/> (describing law suits and investigations of widespread consumer debt filings in jurisdictions where the defendant did not sign the contract, do business, work or have other contact on which jurisdiction could be based).

³⁴ Spector, *Litigation*, *supra* note 7, at 10. Data suggests that collection efforts may be disproportionately targeted at vulnerable populations: studies have found that debt cases are concentrated in cities and counties with significant minority populations, lower median income, and communities with lower rates of home ownership. Spector, *Debt, Defaults and Details*, *supra* note 9, at 273.

³⁵ Spector, *Debt, Defaults and Details*, *supra* note 9 at 280-281.

³⁶ These recommendations do not address the opportunities offered or challenges faced by “problem solving” courts. The growth of such specialized courts underscores the extent to which the courts are called upon to

parties of established and emerging technologies that could help address identified challenges. We are confident that others will have refinements or additions to these recommendations, particularly in the area of technology.

General Recommendations

Recommendation 1: Ensure that Constitutional notice requirements are met.³⁷

- Require or incentivize process servers to use and document GPS records and smartphone photographs to document service location and time. Such systems should have protections against forgery, such as systems that are proprietary to the courts and capable of independently verifying real-time upload locations. If requiring use of GPS documentation exceeds a court's rule-making authority,³⁸ the court could incentivize use of such proof through a rule that would confer a presumption of validity for service that is supported by GPS documentation. Note that some process servers are using their capacity to "geotag" as a marketing device that provides additional assurance of the validity of service, reinforcing the reasonableness of such a requirement.³⁹
- Utilize a procedure such as that adopted in New York City that requires plaintiffs in consumer collection cases to provide the court with a stamped envelope addressed to the defendant with a return address to the Clerk of the Court. The envelope contains a standardized notice of the lawsuit, which the court mails. The Court will not enter a default judgment in instances where the notice is returned to the court as undeliverable, addressee unknown, etc.⁴⁰
- Conduct random audits; announce the fact that the court will be doing this periodically.⁴¹
- Institute penalties for improper service, such as: impose court and other costs incurred by opposing party and the court as a result of moving forward with cases in which the plaintiff had reason to know that service was not properly effectuated; post notices of entities or persons who commit

address problems that have both legal and non-legal dimensions, as well as individual and community-wide impact. Although beyond the scope of these recommendations and this Report, we encourage courts to examine successful experiments in which courts have joined with community organizations and others to find broad-based solutions to the problems they are eventually called upon to resolve. *See, e.g.*, JUDGE HENRY NOWAK, BUFFALO HOUSING COURT REFORM PROJECT: 2006 REPORT (2006),

http://www.nycourts.gov/courts/8jd/pdfs/housing/Oishei_Final_Report.pdf.

³⁷ FTC REPORT, *supra* note 7, at iii, 9-10, n. 23 et seq. Despite lack of comprehensive national evidence, the FTC had sufficient information to recommend that states strengthen protections against inadequate service. *See also, id.* at n. 14, 15.

³⁸ There may be states in which some variant of a GPS requirement can be effectuated by court rule. At least one state – New York – proceeded through administrative rulemaking and legislation. It now has a law that process servers must retain GPS-based records to document service – a product of a Department of Consumer Affairs regulation requiring process servers to log all service attempts with an electronic system such as GPS and legislation passed by the New York City Council.

³⁹ *See, e.g.*, CERTIFIED SERVE, <https://certifiedserve.com/GPS-Introduction.php> (last visited Nov. 11, 2015).

⁴⁰ 22 NYCRR §§ 208.6(h), 208.14-a (2014). Following implementation of this rule, more consumers appeared to defend actions and many said that the notice was the only one they got about the lawsuit.

⁴¹ FTC REPORT, *supra* note 7, at 10, n. 30, noting that such an audit in Cook County, Illinois revealed significant problems.

sewer service in prominent places in the courthouse and in local legal publications or newspapers.

- Require parallel electronic service via court-controlled e-filing portals to allow and confirm electronic delivery and acknowledgement of receipt of summons, complaint and other documents for parties with verifiable smart phone numbers or email accounts.
- Encourage actions of consumer protection agencies and other policy makers, including legislators, to examine the issue of inadequate service and the desirability of additional protections.
- In jurisdictions that require licensing or bonding of professional process servers, maintain and post lists of licensed entities. Refuse to accept service from professional process servers who are unlicensed or who have not documented that they have paid the required bond.

Recommendation 2: Provide information to self-represented litigants about court processes, options and expectations through a variety of portals/sources.

- Notice of the availability of such services should accompany the first communication from the court; perhaps required as a form with service of the Complaint or Summons.
- Inform litigants that they may seek reasonable accommodations for physical or mental disabilities with the first court communication. Provide defendants with a form to indicate that they have special needs that require a reasonable accommodation or assistance.⁴²
- Notices and information should be available in languages that are spoken by significant numbers of litigants and community members.
- Such services should be available on-site and remotely, including web-based and potentially at off-site, community-based locations. Web-based services should include an interactive portal, where a court employee or other informed person provides interactive guidance. The court, alone or in partnership with others, could develop webinars or other canned presentations on common questions or concerns.
- The information should include a step-by-step guide to how particular court processes work. Such a presentation could be offered in video form with an opportunity to select a language preference.
- The information should include sources for additional legal assistance in the community.
- In light of observations that unrepresented individuals often have difficulty using self-help materials, consider "reimagined" tools that draw from other disciplines and take into account other impediments that self-represented persons face, including cognitive, psychological and emotional challenges. Use simple illustrations to explain court layout, logistics and players.⁴³
- Deliver clinics or workshops on-site and/or in the community on the basics of relevant laws and

⁴² Greiner, *supra* note 4, at 33.

⁴³ James d. Greiner et al., *Engaging Financially-Distressed Consumers*, FEDERAL RESERVE BANK OF BOSTON, COMMUNITY AND BANKING, Summer 2015, available at <https://www.bostonfed.org/commdev/c&b/2015/summer/greiner-jimenez-lupica-engaging-financially-distressed-consumers.htm>.

procedures (e.g., landlord-tenant; debt collection) and how the court system works. For example, the Los Angeles Superior Court system offers consumer debt workshops at two of its courthouses which are conducted by legal aid organizations and a county consumer protection agency. Court clerk's offices and self-help centers throughout the county distribute flyers and information about the workshops. They also provide workshops for both tenants and landlords (separately). The workshops for landlords are organized to guide participants through each stage of the litigation process.⁴⁴

Recommendation 3: Develop an interactive system for triaging cases to proper dockets/pathways, notifying litigants of deadlines and hearings and completion of other pre-trial requirements.

- Develop an automated system that takes the litigant through a series of steps (guided pathway) starting with filing a Complaint and an Answer. Based on "Turbo Tax" and A to J models, the system could achieve multiple functions: (1) initial triage – placing a matter into the correct docket or pathway; (2) increased adequacy of filings - requiring completion of standardized forms that require the plaintiff to establish basic service and standing requirements; (3) assistance with answers, including standardized questions that lead to the inclusion of common defenses or counterclaims. The assistance should include an explanation of next steps, options and choices, such as whether the litigant wants a jury trial. This tool could be made available on the Internet and accessible after initial filing/response as a private portal, so that litigants could continue to handle much of their case remotely. Examples of forms that would translate issues into claims are included in the Appendix. Although such an automated "triaging" system may be well suited to high volume dockets where there tends to be an identifiable universe of issues and defenses, some litigants may have difficulty using such a system. Therefore, a qualified person should be available to assist those for whom such a system is difficult and a bail-out option for persons who cannot use it or lack reliable access to a computer. The system be accessible in jurisdiction- appropriate multiple languages.
- Notify litigants of court dates and other deadlines via text messaging.

Recommendation 4: Develop opportunities for optional remote responses and hearings.⁴⁵

- Develop on-line systems for pre-litigation resolution of disputes incorporating user- friendly plain language systems such as Hiil.org's Rechtwijzer 2.0 on-line dispute resolution platform now being implemented for use in the Netherlands and England.
- Provide assisted access to such systems at court-authorized locations for parties otherwise unable to access or use the systems on their own and provide a "bail out" option for persons whose

⁴⁴ Los Angeles Superior Court Self-Help Center, available at <http://www.lacourt.org/selfhelp/selfhelp.aspx>.

⁴⁵ This would avoid loss of work time, avoidance of costly transportation, promote efficiency for all parties. It may only be suitable if persons have adequate access to, and familiarity/comfort with technology, and therefore should be offered as an option and not as a requirement. See FTC REPORT, *supra* note7, at 13.

circumstances (e.g., disability, cultural background, lack of reliable computer access) preclude effective use of such systems.

- Develop systems, including periodic evaluation or monitoring by persons who are neither court personnel nor associated with either party, to ensure that the above systems are not manipulated to coerce or mislead less sophisticated litigants.
- Develop capacity for pro-se friendly on-line filing and answering of complaints. Integrate with the triaging system described above. Remote filing opportunities may enable litigants to avoid trips to the courthouse and facilitate expeditious processing by court personnel.
- For cases or hearings that are procedural or involve very few witnesses or documents, provide opportunities for remote appearances through video-conferencing, skype, face time or other on-line mechanisms. Work with community-based resources, such as libraries, to provide appropriate spaces where litigants who otherwise lack access to technology could participate in hearings remotely. Consider training a cadre of lay persons to assist such litigants with using the technology (a remote version of the Court Navigator pilot described in note 61, below).

Recommendation 5: Provide for exchange of information between parties via the Internet.⁴⁶

Recommendation 6: Limit circumstances that tend to intimidate self-represented persons or create confusion about the roles of the court and counsel.

- Provide clear physical separation of counsel from court personnel and services (e.g., no counsel desks, no negotiations with self-represented opposing parties in the well of the courtroom; no storage of collection attorney file boxes in courtroom).
- Clear signage should reinforce physical separation of court personnel and counsel.
- Provide standardized guidelines to all litigants and counsel regarding how settlement discussions may be conducted and the consequences of settlement. Affirm that the litigants have the right to trial in a way that doesn't suggest that going to trial is something to be feared. Make it clear that the lawyers are not court personnel.
- Adopt a program like New York City's Court Navigator Program that includes making volunteer assistance available to self-represented litigants for "hallway" settlement discussions. *See infra* at p. 15 (Recommendation 12).
- Before accepting settlements, judges should ascertain that both parties understand what they are signing and its implications. It might be helpful to develop a standard set of protocols/questions that both sides answer orally based on clear criteria and incorporating information to avoid common misunderstandings. The inquiry might be analogous to the inquiry a judge makes before

⁴⁶ See FTC REPORT, *supra* note 7, at 13, n. 12. (noting caveats).

accepting a plea in a criminal case or a highly truncated version of the “fair, reasonable and adequate” determination judges make in approving a class action settlement.⁴⁷ Such a review could be integrated readily into a Court Navigator type program.

- Give litigants the opportunity to seek legal guidance from an on-site or immediately accessible on-line resource regarding settlement/mediation process and results before final agreement is reached. *See infra* at p. 15 (Recommendation 12).
- Organize dockets so as not to benefit any category of litigant (for example, volume-driven attorneys) at the expense of other litigants and attorneys. Scheduling cases at pre-designated intervals instead of requiring everyone to appear all at once should benefit litigants and court personnel, including interpreters.
- Establish automated data tracking systems to flag cases with outcomes that exceed predetermined variances compared to standard baselines weighted for amounts in controversy, and defendants' educational levels, age, gender, primary languages, zip codes etc. Require heightened review by a judge or court staff attorney of proposed settlement agreements which exceed the predicted ranges of outcomes before judgment can be made final.

Recommendation 7: Develop an electronic or other user-friendly "sign in" system to reduce possibility that a litigant will fail to respond when case is called.

Recommendation 8: Establish statewide procedures and forms for standard filings and consistent venue (e.g., avoid concurrent jurisdiction of multiple courts in same system).⁴⁸ Standardized forms should:

- Be available online, at court and at other sites where litigants can receive free assistance.⁴⁹
- Use plain English.
- Include check-off lists for standing and other basic claim elements, potential common defenses, and ability to assert counterclaims.⁵⁰
- Include form discovery requests (including requests to conduct discovery where not available as a matter of right).

⁴⁷ *Id.* at 14, 16; *see also* Engler, *supra* note 22, at i, 43-44.

⁴⁸ *See, e.g.*, Virginia's statewide forms for landlord-tenant and consumer cases, which can generally be found at <http://www.courts.state.va.us/forms/home.html>. *See also* Mass. Unif. Summ. Process R., available at <http://www.lawlib.state.mass.us/source/mass/rules/tc/summaryprocessrules.html>.

⁴⁹ *E.g.*, Washington State adopted Court Rule GR 34 regarding uniform fee waivers. *See* Jafar v. Webb, 177 W.2d 520 (2013); Sobota v. Mahlik, 2015 WL 2260852 (Wash. Ct. App. 2015).

⁵⁰ 22 NYCRR §§ 208.6(h), 208.14-a (2014). *See* Maria Aspan, *Top New York Judge Toughens Debt-Collection Lawsuit Rules*, NEW ECONOMY PROJECT (Apr. 30, 2014), <http://www.neweconomynyc.org/2014/04/top-new-york-judge-toughens-debt-collection-lawsuit-rules/>.

Recommendation 9: Provide adequate access for persons with limited English proficiency.

- Multi-lingual notice on each point of contact with the court (summons, complaint, subpoena, etc.) in jurisdictions where there is a significant non-English speaking population.
- Multi-lingual signage at the courthouse.
- Basic forms should be available in multiple languages.
- Staff in self- help centers should be able to access language assistance promptly.
- Front-line staff should be able to communicate with litigants in widely spoken languages in addition to English. Have adequate access to on-demand telephone interpreter services for infrequently encountered languages.
- First filers should be required to provide known language information about any party at time of filing. Courts should use the information to provide the appropriate notice (see above) and language-sensitive scheduling, where possible.
- Institute simple interpreter request processes. Process should not be dependent on request of litigant but should be used by court personnel and judges when it is needed.
- Qualified language assistance should be free in all cases involving LEP parties or witnesses who complete an IFP form, including mediations, settlement conferences, other ancillary proceedings and court services.
- Courts should not use relatives, opposing parties, friends, or other "casual interpreters". Courts must never use children to interpret.
- Courts should seek to avoid delays and continuances to obtain interpreters, so that LEP litigants do not make unnecessary trips to court and so court time is not wasted.
- Judges and other court personnel should receive cultural competency training that includes ways non-English speakers or persons from different cultures narrate events.
- Courts should explore high quality video remote interpreting systems, especially for languages other than Spanish and for courts located away from high LEP population centers.⁵¹

Recommendation 10: Enable judges and judicial staff to have immediate electronic access to case records and to enter dispositions and other information into the system from the bench.⁵²

- Electronic records should significantly reduce the risk of lost or misfiled paper. Electronic records should be available on-line.
- Access to electronic records will enable judges to ascertain a party's adherence to procedural rules

⁵¹ See generally STANDARDS FOR LANGUAGE ACCESS IN COURTS (Am. Bar Assoc.).

⁵² See JTC RESOURCE BULLETIN, MAKING THE CASE FOR JUDICIAL TOOLS 6 (Dec. 5, 2014).

before entering an Order and could facilitate identification of recurrent problems.

- Electronic records and record-keeping systems could simplify and speed up communications between the court and litigants/attorneys.

Recommendation 11: Provide training to enable judges to guide cases involving self-represented litigants more actively.

Groups including the *Pro Se* Implementation Committee of the Minnesota Conference of Judges (2002) and the Idaho Committee to Increase Access to the Courts (2002) have recommended ways that judges should explain the process, legal issues (claims, defenses and elements of each), and evidence. These recommendations generally encourage judges to take a substantially more active role in guiding the fact-finding process.⁵³ Judges reported success using similar strategies.⁵⁴ Generally, the recommendations include:

- Review order and protocols of an evidentiary hearing at the beginning of hearing.
- Explain elements of claims and defenses that each side will need to demonstrate to get the relief they are seeking.
- Explain the burden of proof and what that means in simple, lay terms.
- Explain the kind of evidence that may or may not be considered.⁵⁵ Consider rules that emphasize weight, rather than traditional technical standards of "admissibility."⁵⁶
- Permit litigants to offer narrative testimony.⁵⁷
- Question pro se litigant to obtain general information about litigant's story (claims/defenses).
- Avoid questions that encourage pro se litigants to admit liability or settle.
- Assist self-represented litigants to establish the foundational requirements of claims and defenses by probing for the facts when they are not otherwise clear.
- Consider a standard interrogatory form that judges would follow to establish entitlement to claim and whether defenses exist. Given limited or no discovery in many jurisdictions, judges don't get

⁵³ Discussed in greater length at Baldacci, *supra* note 11, at 670-71.

⁵⁴ *Id.* at 671-72. In *Turner*, the Supreme Court has suggested that, where liberty or other constitutionally-protected interests are at stake, such increased "judicial engagement" may be required to ensure that self-represented litigants receive adequate procedural safeguards. *Turner v. Rogers* 131 S. Ct. 1507 (2011). See also Steinberg, *supra* note 4, at 790-92 (arguing that explosion of self-representation requires judges to assume burdens of litigation traditionally left to parties including notice, availability of defenses, how to elicit factual information, making sure that required findings can be made).

⁵⁵ See Baldacci, *supra* note 11, at 671-72 (citing PRO SE IMPLEMENTATION COMMITTEE OF THE MINNESOTA CONFERENCE OF JUDGES; IDAHO COMMITTEE TO INCREASE ACCESS TO THE COURTS PROTOCOL).

⁵⁶ Steinberg, *supra* note 4, at 747; Baldacci, *supra* note 11, at 680-84.

⁵⁷ See Steinberg, *supra* note 4, at 756.

benefit of developed facts.⁵⁸

- Provide training on cultural competency, mental capacity/disability.

Recommendation 12: Foster opportunities for self-represented litigants to secure assistance, including "unbundled representation" for all stages of the litigation process.

Many of the problems identified in this document would be eliminated or substantially reduced if both parties to a dispute were represented by lawyers.⁵⁹ Courts can play a helpful role in facilitating opportunities that make counsel available to persons who want counsel in civil matters but are unable to afford representation. We encourage courts to collaborate with stakeholders to secure access to representation for civil litigants. We also recommend that courts continue to develop robust collaborations with legal aid and other providers to facilitate informed and balanced case development, presentation and resolution. Examples include:

- Subject-specific self-help centers (e.g., consumer, small claims) where volunteer lawyers provide "unbundled" services, assisting with discrete and limited tasks to help litigants successfully navigate the process. The lawyers could enter a limited appearance to develop or draft pleadings (claims, defenses, counterclaims), write/argue motions, respond to or ask for discovery, gather evidence, prepare a litigant about how to talk to the court or present the case; offer trial assistance, review settlement agreements, and/or accompany a litigant to talk to the opposing counsel, etc.⁶⁰ The assistance should be available to help a litigant at any stage of the litigant's case.⁶¹ Information about such opportunities should be made available to litigants at the courthouse and in the first communication(s) the litigant receives about the pendency of a lawsuit. Self-help centers staffed by volunteers and legal aid programs already exist in some state courts (e.g., Superior Court of the District of Columbia); this recommendation would broaden the scope of services such centers typically provide.

⁵⁸ See FTC REPORT, *supra* note 7, at 26.

⁵⁹ See Greiner, *supra* note 4, at 903 (randomized study found having a lawyer makes a difference in retention of housing and increased positive outcomes for tenants); see also Seron, *supra* note 9 (only 22% of represented tenants had final judgments against them, compared with 51% of tenants without legal representation). The Greiner study also found that defendants' representation didn't significantly add to the burden on the court in terms of number of motions or rulings, although it did increase the time the case took. Greiner, *supra* note 4, at 932, et seq. The FTC also notes that access to counsel would improve outcomes in debt collection cases and provides examples of courthouse-based programs that exist in several states (New York, Illinois and Massachusetts) and are often staffed by a combination of pro bono and legal services attorneys. Such programs are most effective when they offer litigants full representation or meaningful on-going guidance over the entire course of their case, rather than simply helping them complete an initial complaint or answer. See also Rosmarin, Tr. V at 50-52; but see Debski, Tr.V at 29 (claiming that such programs may unethically involve poaching clients or soliciting clients at the courthouse steps while they're in an emotional state").

⁶⁰ We encourage incorporating explicit approval in Rules of Professional Responsibility for this type of "unbundled assistance."

⁶¹ See Steinberg, *supra* note 4, at 785 (the availability of "unbundled" services tends to drop off as litigation continues; litigant satisfaction with unbundled service declines over time as cases progress and become more complex). See also FTC REPORT, *supra* note 7, at 13.

- New York City's "Court Navigator Program", launched as a pilot project in 2014, where college students, law students and other volunteers assist self-represented litigants in housing court proceedings, including helping litigants explain facts to judges (when the judges ask) and opposing counsel, helping litigants organize their papers, and securing other litigant needs, such as interpreters.⁶²
- Law school and legal aid projects that expand attorney availability to those who currently cannot afford representation. Support for such projects could include providing space and logistical support through "attorney of the day" programs and explaining to the public and decision-makers how access to lawyers benefits the justice system and society.

Additional Recommendations Specific to Consumer Debt Collection Cases

Recommendation 1: Establish template forms, accessible electronically, that require demonstration of right to collect (standing), basis of relief sought and amount and timeliness. The form could be used in any of the electronic or court-based access points described above. Require that consumer debt collector's complaints contain:

- Identity of original creditor;
- Date of default or charge off;
- Amount due at time of default;
- Name of current owner;
- Original contract or, if not attached, at least relevant terms;
- Chain of ownership;
- Affirmative statement that the claim is not time-barred under applicable State law or applicable statute of limitations;
- Amount currently due broken down by principal, interest and fees;⁶³
- Attestation that the plaintiff has verified defendant's current address;

⁶² See, e.g., NEW YORK CITY HOUSING COURT, COURT NAVIGATOR PROGRAM, www.courts.state.ny.us/courts/NYC/housing/rap_prospective.shtml (last visited, Nov. 11, 2015) The program has an online manual which could provide a model.

⁶³ See, e.g., MASS. ANN. LAWS UNIF. SMALL CLAIMS R. 2(a), 2(b); MICH. CT. R. 3.101; N.C. GEN. STAT. §§ 58-70-115, 58-70-145, 58-70-150, 58-70-155 (2009); see also FAIRFAX COUNTY, VIRGINIA GENERAL DISTRICT COURT BEST PRACTICES: DEFAULT JUDGMENTS/DEBT BUYERS AND PURCHASED DEBT-DEFAULT JUDGMENT CHECKLIST (2009); State of Connecticut Judicial Branch, Report OR THE Bench/Bar Small Claims Committee at 4.10 (2009). The FTC has also recommended that states adopt such requirements, citing comments of judges who decried the inadequacy of information in debt collection complaints). FTC REPORT, *supra* note 7, at iii, 16, 30; see also Spector, *Litigating*, *supra* 7 at 4.

- In states where bonding or licensing is required of process servers, attestation to their compliance with state requirements;⁶⁴
- Provide sufficient verifiable information with or attached to the Complaint so recipient can identify original debt, original signature, debt amount and billing statement.⁶⁵

Recommendation 2: Provide standardized answer forms, containing check-off list for common defenses. Examples are included in the Appendix and have been adopted in some jurisdictions, including New York.

Recommendation 3: Adopt rule awarding defendants costs of preparing for and attending hearings that are cancelled or postponed at request of collecting party, including lost wages and costs of transportation.⁶⁶

Recommendation 4: Adopt rule that requires plaintiffs to complete standard checklists to demonstrate they are entitled to default judgments.⁶⁷ Models for such standard checklists have been adopted in a number of states, including those listed in the notes. Include a requirement that plaintiff attest, under penalties of perjury, that it consulted reliable sources in an effort to locate the defendant.⁶⁸ This may be substantially satisfied with adoption of standardized Complaints that require much of the information be provided at the outset.

Recommendation 5: Courts should issue a standardized notice that goes to a debtor when a creditor seeks a court Order to permit garnishment of bank accounts. The notice would give the debtor an opportunity to indicate that the funds in the account to which garnishment is directed are exempt from garnishment (SSI, veteran's benefits, etc.).⁶⁹

⁶⁴ Based on Spector *Litigating* discussion regarding rampant violations in Texas at 5-6.

⁶⁵ MD. CT. R. 3-306; Danner v. Discover Bank, 99 Ark. App. 71, 72 (Ark. Ct. App. 2007).

⁶⁶ See, e.g., FTC REPORT, *supra* note 7, at 14, 22 (with example from Blair County, PA judge who reported that if collector fails to appear at mandatory conciliation conference, case is dismissed with prejudice); MASS. ANN. LAWS UNIF. SMALL CLAIMS R. 7(c) (judgment for defendant must be entered if defendant appears and plaintiff does not appear, is not ready to proceed and no good cause for continuance).

⁶⁷ See, FAIRFAX COUNTY [VIRGINIA] GENERAL DISTRICT COURT BEST PRACTICES: DEFAULT JUDGMENTS/DEBT BUYERS (2009), <https://www.ftc.gov/sites/default/files/filings/initiatives/312/091119bestpractices.pdf>. Fairfax County incorporated many of its "best practices" regarding default judgments and debt buyers into the Court's Administrative Procedures Manual. Such a practice may be helpful to judges and court personnel. See also MASS. ANN. LAWS UNIF. SMALL CLAIMS R. 7(d); Small Claims Default Judgment Checklist provided in Trial Court of the Commonwealth of Massachusetts District Court Department Memorandum from Hon. Lynda M. Connolly, Chief Justice (Sept. 11, 2009); N.C. GEN. STAT. §§ 58-70-155 (2009); NEW YORK CITY CIV. CT. DIRECTIVES AND PROCEDURES DRP-182 (May 13, 2009).

⁶⁸ MASS. ANN. LAWS UNIF. SMALL CLAIMS R. 2(b), cited in Spector, *Debts, Defaults, and Doubts*, *supra* note 9 at 261 & n. 14.

⁶⁹ FTC REPORT, *supra* note 7, at 35.