Report of Default Judgments in Debt Collection Study Committee
June 2020

Recommendation: **Based on the information collected and the input of both commissioners and observers, the study committee recommends that a drafting committee be appointed to draft an act as defined by the scope of the resolution appointing the study committee. The conference has had more success in enactment with acts which are narrowly drafted to address a well-identified issue. However, the study committee would not oppose expansion of the scope of the study should that be the direction of the executive committee.**

Report: The Study Committee held two meetings - one on December 12, 2019, and the second on March 19, 2020. At the second meeting, information prepared by Paula Hannford-Agor of the National Center for State Courts and her colleagues was presented. That information is attached and included detailed information about debt collection statutes in all the states with attention given to categories of subject matter, including statutes dealing with state legislation dealing withjudgments sought in debt collection cases brought by third party debt collectors and debt buyers.

When combined with the information provided in requesting the study and information gathered in earlier consideration of a broader act, the study committee had accumulated at least enough information to focus on the task of attempting to measure whether there was support for requesting appointment of a drafting committee and other matters which would impact such a request.

Members of the committee and observers were polled with the assistance of Odessa Glaza. Eighteen responses were submitted. Fourteen of those who responded indicated that they believed the committee should work toward a recommendation for drafting an act with the scope referenced in the resolution which created the study committee. That resolution calls for, "a study committee . . . to study the need for and feasibility of state legislation on default judgments in debt collection cases brought by third party debt collectors and debt buyers." Nine commissioners were among those who responded. Eight of them favored moving ahead to request drafting of an act.

Several comments were included in the responses. One commissioner wrote, "I believe the committee should work toward a recommendation for drafting an act on default judgments. I can understand why it would be more efficient and perhaps more enactable to limit the act to third-party debt collectors and buyers but there may also be a need for an act that does not limit the scope to third-party debt collectors and buyers."

The commissioner opposing a recommendation for drafting wrote, "I see little evidence that states would be willing to consider a uniform solution and any project would be seen as a consumer regulatory statute, and area where the ULC has little to no success. . ."

An observer wrote, "State courts will likely see a dramatice increase in consumer debt filings due to the economic fallout from the covid-19 pandemic. Now more than ever it will be important to push for a more comprehensive approach to consumer debt collection litigation that does not depend on the type of debt (credit card, medical debt, etc.), the type of creditor (original or third-party debt buyer), or the stage of litigation."

Those comments provide a fair summary of the overall position of those involved in the study process.

The second question on the poll was whether an uniform act dealing with default judgments in debt collection cases brought by third party debt collectors and debt buyers would be enactable. Twelve of those who responded believed enactment was possible, four disagreed. Among the commissioners, eight believed enactment was possible, while one did not.

The third question was directed to observers and asked whether their organizations would be willing to work in drafting and toward enactment, with the understanding that an act may not be exactly what their organization would advocate. Seven responded their organization would be willing to do so. One indicated her organization would not do so. It must be understood that the responses were not binding and the question was posed to inform the process rather than to receive assurance.

The poll went on attempt to identify consensus as to what issues a proposed act might address. Following are the issues suggested and the percentage of those who responded who believed the identified issue should be addressed.

Service of process	59%
Evidentiary proof required	82%
Standing to bring action	53%
Statute of limitation provisions	59%
Judicial review of settlements	29%

It was also suggested that it might be useful to have an optional provision on mediation.

Those polled were asked whether it would be advisable to draft an act which could be enacted as both a statute and a rule. Fourteen of those responding indicated it would be advisable. Three indicated it would not be advisable. Of the commissioners responding, six believed the act should be drafted to facilitate enactment as both a statute and court rule, three disagreed.

The poll also requested input as to whether the committee should request that the scope of the study should be expanded to include consideration of consumer debt other than debt of which a default judgment is sought by a third part debt collector or debt buyer. Eight believed that a request for expanded authority should be made, eight disagreed. Expansion might involve considering drafting of an act which would cover civil collections not resolved by default judgment. Expansion might also involve providing a framework not limited to third-party collectors and debt buyers. Of the commissioners weighing in, five would support a request for expanded authority, and four did not.

Finally, those responding were asked what they believed would be the greatest benefit of drafting an act dealing with consumer debt other than debt for which a default judgment is sought by a third party debt collector or debt buyer. The responses included:

- "A required standard of proof could apply to all actions filed to collect consumer debt whether filed for the original creditor or an assignee of the debt."
- "The broader scope would serve a purpopse in modernizing and regularizing current state statutes and it could assist hard-hit consumers as well as helping creditors by providing a predictable process."
- "Relief to consumers and the courts. Uniformity of process for third party

collectors and debt buyers."

- "I would focus on the greatest problem, which is default judgments. I see little benefit in addressing consumer debt collection more broadly. There are a lot of statutes already to protect consumers."

After the committee met, New Mexico Uniform Law Commissioner Jack Burton provided a proposed rule to expand enhanced requirements for obtaining a defrault judgment in consumer debt cases. The sixty pages of material he forwarded are included in the study committe's library available on the ULC website. Rules had been adopted which applied to district courts (courts of general jurisdiction) in 2016, but debt collectors began filing the cases in courts of limited jurisdiction. The current proposal would expand the requirements imposed in district court to the courts of limited jurisdiction. Commissioner Burton provided a copy of responses to the proposed rule changes, and those responses are most likely the type of responses which would be expected should a uniform act be adopted and presented in the states.

Attorney David Humphreys commented in support of the rule noting that The Federal Trade Commission research on the debt buyer industry conducted in 2013 noted that debt buyers paid an average of four cents per dollar of debt face value. Buyers received few underlying documents concerning the debt and accuracy of information provided about the debts was not guaranteed. Mr. Humpreys supports the expansion of the rule.

Attorney Harvey Moore commented as past president of the National Creditors Bar Association, which he describes as "a bar association dedicated to serving law firms engaged in the practice of creditors right law." Mr. Moore wrote: "When onerous requirements are imposed by the courts on creditors and small businesses attempting to collect valid debts it creates an appearance of judicial impropriety and bias toward debt collections. . . The proposed rules disproportionately target creditors and small businesses and fly in the face of judicial impartiality empowering the judge/magistrate to investigate and argue against a case brought by legitimate plaintiffs at the initial pleading.?

Attorney Elen Leitzer, the executive director of the Senior Citizens Law Office, wrote: "The proposed rule changes are fair. Defendants in consumer debt claims should be given proper notice of the allegations against them – in particular, the existence and amount of the alleged debt, and the plaintiff's basis for claiming the right to collect it. . .These rules do not impose any undue burden upon creditor plaintiffs. It is perfectly reasonable to expect a business that seeks to avail itself of our state's courts to be able to product the relevant facts and documentation to prove its case."

Attorney Nicholas Mattison, a partner in a firm dedicated "to protecting consumers," wrote, "The purpose of the proposed rule changes is to ensure all litigants have access to justice. While industry opponents claim that the rules unfairly disfavor debt collectors, this is untrue. The rules simply require that debt collectors provide full and transparent documentation of their claims.:

We can anticipate the same type of reactions to any uniform act addressing this subject area. It is clear that there would be organized and well-funded resistance to an act, and it is also clear that there are voices which will support an act. Members of the study committe are not so naive as to believe an act would be an easy sell in state legislatures.

(Report drafted by Gail Hagerty and reviewed by committee members and observers.)