



# **National Association for Court Management**

*Strengthening Court Professionals*

## **Supported Resolution 5-2018**

### **In Support of Rules Regarding Default Judgments in Debt Collection Cases**

WHEREAS, debt collection cases comprise the majority of many state court civil dockets; and

WHEREAS, more than one in three adults in the United States have a debt in collections, including debts arising from medical bills, automobile loans, student loans, and credit card use; and

WHEREAS, debt collection litigation disproportionately affects the poor, elderly, disabled, and some racial minorities; and

WHEREAS, the vast majority of debt collection cases result in default judgments that expose defendants to significant and irreparable harm apart from the amount of judgment, including reduction of their credit rating, diminished access to future credit, and current or future loss of rental housing or employment; and

WHEREAS, defendants in debt collection cases often lack the resources to hire counsel and may not understand their rights and defenses, or know how to assert those rights and defenses; and

WHEREAS, plaintiffs who obtain default judgments in debt collection cases often invoke powerful post-judgment collection remedies, including wage garnishments, and additional court actions that can result in civil arrest warrants; and

WHEREAS, debt collection complaints are sometimes initiated after the statute of limitations for such actions has expired, especially where debt collection cases are brought by third-party debt buyers; and

WHEREAS, debt collection cases are increasingly filed by third-party debt buyers that historically have often lacked the documentation necessary to support their claims; and

WHEREAS, debt collection complaints are often served at addresses where the debtor no longer resides and therefore are never received by the debtor; and



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WHEREAS, defendants in debt collection cases often do not recognize the names of the entities filing the lawsuits against them; and

WHEREAS, when plaintiffs file debt collection cases they frequently do not provide defendants with the information necessary to assess the validity of their claims, and often defendants do not know how to discover or otherwise access needed information; and

WHEREAS, the Civil Justice Improvements Committee of the Conference of Chief Justices has recommended that courts devote special attention to high-volume civil dockets that are typically composed of cases involving consumer debt, landlord-tenant, and other contract claims; and

WHEREAS, the Committee specifically recommended that courts implement systems to ensure that final judgments be entered only after compliance with basic procedural requirements for notice, standing, and timeliness, and where the documentation is sufficient to support the relief sought; and

WHEREAS, pursuant to federal law, any creditor seeking a default judgment must file an affidavit either advising the court whether the defendant is on active duty in the military or, if that is uncertain, asserting that the creditor is unable to determine the defendant's military status and detailing the steps taken by the creditor to ascertain that status; and

WHEREAS, as a result of action taken by state courts or legislatures, California, Colorado, Delaware, Maine, Maryland, Massachusetts, Minnesota, New York, North Carolina, Oregon, and Texas require plaintiffs to file documentation demonstrating their legal entitlement to the amounts they seek to collect before entry of a default judgment in certain debt collection cases;

NOW THEREFORE, BE IT RESOLVED, that the Conference of Chief Justices and the Conference of State Court Administrators urge their members to consider enacting rules requiring plaintiffs in debt collection cases to file documentation demonstrating their legal entitlement to the amounts they seek to collect before entry of any default judgment where state legislation or court rules do not currently require the filing of such documentation.



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Adopted as proposed by the CCJ/COSCA Joint Committee on Access and Fairness Committee and the CC/COSCA Joint Committee on Civil Justice at the Conference of Chief Justices and Conference of State Court Administrators 2018 Annual Meeting on August 22, 2018.