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The following comments are being submitted on behalf of Pine Tree Legal Assistance in response to the proposed adoption of Differentiated Case Management principles to all civil cases by the Maine Supreme Judicial Court.

INTRODUCTION

Pine Tree Legal Assistance is a statewide nonprofit providing free legal assistance to low-income individuals in the civil justice system in Maine. It has been in operation since 1967 and currently maintains offices in six locations (Portland, Lewiston, Augusta, Bangor, Machias and Presque Isle.) It currently employs 39 lawyers, most of whom regularly appear in Maine District Courts throughout the state, and, less frequently, before the Superior Court, Supreme Judicial Court and Maine probate courts.

The Maine Supreme Judicial Court has invited comments on proposed amendments to the Maine Rules of Civil Procedure. The proposed amendments would make significant changes to the way cases are generally processed through the court system and make additional changes to specific procedures.

Pine Tree Legal Assistance generally supports the proposed amendments to the Rules of Civil Procedure and improving efficiency in the court system. However, we are aware that a significant percentage of litigants are not represented by attorneys. Meaningful access to and understanding of our courts is critical, especially for pro se litigants. We encourage the use of plain language in the rules and any new notices and forms that are created as the result of any new rules. The average American adult reads at about a 7th to 8th grade level and notices and instructions should be written with this in mind.

Pine Tree Legal Assistance would like to comment specifically on the proposed amendments to Rule 16, Rule 26A, and Rule 55. Additionally, we would like to comment on how the changes in the rules would affect consumers in debt collection cases in the proposed addition of Rule 80N.

RULE 16

We support the idea that cases would be separated onto different tracks based on the legal issue and complexity of the particular case. In reading the rule, it does not make reference to family law cases. It would clarify the status of family law cases if Rule 16 explicitly stated that family matters are track A or neither Track A, Track B, nor Track C.

RULE 26A

The requirements of the proposed Rule 26A would be challenging for a number of practical reasons. Regarding the time limits, while actions are often filed after careful planning and investigation, emergency litigation is sometimes necessary (e.g., to request a temporary restraining order.) If litigants have the bad luck of needing to file right before a holiday weekend, there would be very limited time to prepare the information, especially in Track B cases. Further, seven day time limits can be very difficult given the realities of practicing law (e.g., if a client is delayed in responding to requests, if an attorney is set for trial in another matter, or if new information continues to arise.) For these reasons, we would ask that the deadlines in Track B be extended to 28 days for the plaintiff and an additional 14 days for the defendant, and 35 days for the plaintiff in Track C and an additional 21 days for the defendant.

Additionally, the requirements of Rule 26A would be very challenging for pro se litigants. While pro se litigants are presumed to have knowledge of the rules, from a practical perspective, it would be difficult to know the automatic disclosure rules exist. If the Court were to create an “automatic disclosure” form, it would guide pro se litigants on how to comply with the rules and help the new process work more efficiently. Two copies of the form could be provided with every civil summons, one for the plaintiff and one to be served on the defendant with the summons and complaint. In addition, we encourage the court to publish a pro se guide to civil court requirements and process that explains in plain English the required steps for bringing a case and defending a case and identifies the required forms and where to get them. Pine Tree is prepared to assist in any effort to publish such a guide.

RULE 55

Pine Tree Legal supports the changes to the rules regarding defaults and default judgments. However, we think it is important that the default process for protection from abuse matters remains the same. Plaintiffs seeking protection from abuse orders must be able to leave court with a judgment. The rule does not reference any exceptions to the process it lays out and it would be helpful to clearly state how the rule affects the process in summary proceedings.

RULE 80 N (DEBT COLLECTION CASES)

Pine Tree Legal Assistance supports M.R.Civ.P. 80N. Pine Tree’s support is informed by our extensive experience in assisting low income Maine residents defend against third party debt collectors and purchasers. The practices of third party debt collectors and purchasers is well documented and relies heavily on the premise that uninformed defendants without counsel will default and only minimal or no effort to verify the debt is required before bringing suit. See *infra* at p. 5.

Pine Tree Legal Assistance represents consumers against third-party debt collectors in District Court and Small Claims Court. In 2017, Pine Tree Legal Assistance provided

legal services to Maine families and individuals in 7,735 cases, of which 973 involved representation of clients in consumer cases.

Pine Tree Legal Assistance has a project in ten courts that provides representation to consumers in small claims court. These courts include small claims court located in Springvale, Biddeford, Portland, Lewiston, South Portland, Farmington, Augusta, Machais, Calais, and Ellsworth. We appear in Court on the day that Small Claims cases are heard, announce our presence, and represent those consumers who seek our assistance. We typically do not meet these clients until the day of court and are often successful in defending these cases due to the lack of reliability of the evidence presented by the plaintiffs who include Midland Funding, Portfolio Recovery, LVNV and others.

Small Claims Court was originally designed to provide a venue whereby litigants with claims under \$800 could appear *without attorneys* and present their claims to the court. Since the Small Claims Court has been established, the law has been changed so that Small Claims Court now have the jurisdiction to hear claims of up to \$6,000. In addition, since the establishment of a Small Claims Court in 1979, the Small Claims docket is typically dominated, not by litigants who appear without an attorney, but by out of state corporations (third party debt collectors) who appear *solely by counsel*, and who bring cases against consumers who are largely unrepresented.

Pine Tree Legal Assistance also represents consumers who contact us to represent them in regular District Court cases.

The original creditors have typically written off the debt resulting in a substantial tax benefit for them. These debts are then sold to third party debt collectors, often for pennies on the dollar. The third party debt collectors then attempt to collect the debts.

In District Court, we typically serve discovery on the third-party debt collector requesting a copy of the documents that resulted in the third-party debt collector acquiring the debt. These documents usually involve the transfer of hundreds of accounts and contain language whereby the seller expressly states that they do not warrant the validity of any of the debts being sold, and expressly warrant that some of the debt being purchased may have been discharged in bankruptcy. In some responses to our requests for discovery, we have seen sales documents that specifically state the seller will not be providing any additional documentation to the debt buyer that is not contained in the original sale documents. In other cases, the contracts contain provisions that expressly state there is no warranty as to the validity of the debt.

We also see similar cases that involve the collection of private student loans, both in Small Claims Court and in District Court. In these cases, the plaintiffs suing on the balance of the student loan are not the original lenders and are often unable to provide evidence as to the transfers. The transfer documents in these cases also contain language whereby the seller states that there is no warranty of title or enforceability.

Even if we are successful in an affirmative case, and no matter how many Small Claims Court cases we win, in the vast majority of cases, the plaintiff obtains judgment by default. This occurs even if the plaintiff does not possess the evidence necessary to prove its cases in a contested hearing. In our view, the problem with the current process is not that it is too burdensome on the debt collector. The problem is that it has become too easy for debt collectors to obtain judgments to collect debts in which the debt collector is not able to prove either the amount due or ownership of the debt.

WHAT M.R.Civ.P. 80N WOULD DO

1. Require plaintiffs in consumer debt collection cases to prove they own the debt they are trying to collect.
2. Provide to the Court and consumers the information necessary to demonstrate the existence of the debt.
3. Provide a form answer to defendants to assist consumers in responding to complaints filed in consumer debt collection cases.
4. Provide for Court review of filings in consumer cases to determine the adequacy of the Court filing.
5. Provide a specific process for Court review before the entry of a default judgment in consumer debt collection cases.

WHY WE SUPPORT M.R.Civ.P. 80N

As set forth at 4 M.R.S. §8, the Maine Supreme Judicial Court has the power to prescribe, by general rules, for the Probate, District and Superior Courts of Maine, the forms of process, writs, pleadings and motions and the practice and procedure in civil actions at law. The requirements set forth in this proposed rule are necessary to protect consumers and ensure that the judgments issued by courts are upon reliable evidence and that unsophisticated consumers do not unknowingly waive their rights. The provisions of this rule are an appropriate exercise of the court's rule-making power as they provide these protections to consumers while not abridging, enlarging nor modifying the substantive rights of any litigant.

The information that debt collectors must provide consumers to document the debt is at the heart of the issue. The third-party debt collector's business practice appears to be largely based upon obtaining default judgments against consumers or convincing consumers to agree to pay debts that the debt collector knows it cannot document.

The documents that a plaintiff would be required to produce pursuant to Rule 80N are necessary so that the defendant can determine the validity of the debt. Many defendants who request our assistance are unsophisticated. Many fear going to jail if they are unable to pay their alleged debts, even though their income is exempt from attachment (such as disability benefits) and they have no assets. The plaintiff needs to provide to the defendant evidence of the debt that would be admissible under the typical Rules of Evidence demonstrating the amount of the debt and the debt collector's ownership of the debt. Anything short of this unfairly influences the defendant into thinking that they are legally liable to pay a debt that the plaintiff has no ability to prove.

The importance of these requirements is critical, given the lack of reliability of the information provided by many third-party debt collectors. The Consumer Financial Protection Bureau (CFPB) entered into consent orders with Encore (Midland Funding) and Portfolio Recovery Associates because Encore and Portfolio Recovery Associates threatened and deceived consumers to collect on debts they should have known were inaccurate or had other problems. The CFPB found that Encore Capital Group and Portfolio Recovery Associates bought debts that were potentially inaccurate, lacking documentation, or unenforceable. Without verifying the debt, the companies collected payments by pressuring consumers with false statements and churning out lawsuits using robo-signed court documents. As a result of these consent orders, both Encore and Portfolio were ordered to overhaul their debt collection and litigation practices and to stop reselling debts to third parties. Encore was required to pay up to \$42 million in consumer refunds and a \$10 million penalty and stop collection on over \$125 million worth of debts. Portfolio was ordered to pay \$19 million in consumer refunds and an \$8 million penalty, and stop collecting on over \$3 million worth of debts.
http://files.consumerfinance.gov/f/201509_cfpb_consent-order-encore-capital-group.pdf;
http://files.consumerfinance.gov/f/201509_cfpb_consent-order-portfolio-recovery-associates-llc.pdf.

In 2017, the CFPB also took action against National Collegiate Student Loan Trusts and Transworld Systems for Illegal Student Loan Debt Collection Activities that required that 800,000 loans be independently audited, and required companies to pay at least \$21.6 million and stop suing for invalid or unverified debts.
<https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-national-collegiate-student-loan-trusts-transworld-systems-illegal-student-loan-debt-collection-lawsuits/>

In January 2016, Human Rights Watch published a study of the debt buying industry in the United States that found that the debt buying process “places a huge, unfair burden on alleged debtors and is often the reason poor families struggle to pay these debts over time. This can come at the expense of alleged debtors’ ability to secure basic economic and social needs such as food, clothing, and medicine.” *Rubber Stamp Justice*, p. 7.
<https://www.hrw.org/report/2016/01/20/rubber-stamp-justice/us-courts-debt-buying-corporations-and-poor>.

The requirements set forth in the proposed Rule 80N are also important given that the Maine Supreme Judicial Court has repeatedly held that the Maine Rules of Evidence apply in all judicial actions, including actions in which parties appear *pro se* without representation of counsel.

The debt collector's choice to develop a business model that routinely does not include the purchase of billing statements cannot be allowed to impact the requirement that these entities comply with the Maine Rules of Evidence when they institute legal action against a Maine consumer. At the very least, third party debt collectors should be held to the same standard as *pro se* litigants.

In a significant majority of the debt collection cases defended by Pine Tree Legal Assistance, the matters are dismissed because of (1) the debt buyer's refusal to comply with discovery orders that they produce purchase and sale documents regarding transfers of the debt, (2) the debt buyer's failure to produce a witness at trial able to authenticate business records, or (3) the debt buyer's decision to dismiss the case on the eve of trial because the debt buyer decides not to produce a witness to appear at trial.

We believe that the proposed Rule protects the integrity and the legitimacy of the Court process and prevents court-sanctioned abuses by debt buyers. The proposed Rule helps to further this goal by (1) requiring that Plaintiff debt-buyers file cases only after they demonstrate the ability to produce relevant documents; (2) streamlining the process by which defendants can respond by providing a court-sanctioned answer form; and (3) by requiring Court review before a default judgement may be entered to ensure that the Plaintiff debt buyer has met its burden of proof in compliance with the Maine Rules of Evidence.

Respectfully submitted on October 5, 2018,



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