



# PRESS RELEASE

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Unified Court System**

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## **NY Court System Adopts New Rules to Ensure A Fair Legal Process in Consumer Debt Cases**

**New York** – Chief Judge Jonathan Lippman today announced the adoption of new rules to prevent the entry of unwarranted default judgments in the 100,000-plus credit card collection cases brought yearly in the state courts against ordinary consumers, including many elderly and disadvantaged New Yorkers. First proposed by Judge Lippman on Law Day earlier this year, these reforms reflect the most comprehensive effort by a court system nationally to ensure a fair legal process in consumer debt litigation, building on the collective efforts of the Attorney General’s Office, the State Department of Financial Services and the State Legislature to combat deceptive debt collection practices and protect consumers.

The new rules address a number of documented abuses in this area, particularly default judgments obtained on the basis of insufficient or incorrect factual proof or hearsay testimony; default judgments granted in cases where the applicable statute of limitations had expired; and failure to provide consumers with a notice of lawsuits started against them, a troubling practice dubbed “sewer service.”

Most consumer debt cases are brought by third-party debt buyers who routinely purchase large portfolios of delinquent credit card debt and initiate lawsuits based on little more than boilerplate language and cryptic data from financial spreadsheets, with critical documents like copies of credit agreements and final account statements frequently missing.

Since the debts at issue are usually several years old and have often been resold multiple times, it is extremely difficult for these defendants — 98 percent of whom are not represented by a lawyer — to assess the validity of the claims against them by the time their cases appear in court. Creditors have frequently secured default judgments for the wrong amount of money or even against the wrong party, or for debt that has already been paid or for which the statute of limitations has already expired. While the vast majority of these lawsuits involve a few thousand dollars, the consequences — ruined credit ratings and garnishment of wages and bank accounts — can be devastating for many consumers.

“While creditors have every right to collect what is legally owed to them, the Judiciary has an obligation to prevent inequitable debt collection practices in the courts. The adoption by the Unified Court System of these rigorous new requirements will undoubtedly avert unwarranted default judgments in consumer debt cases and serve to protect the rights of all New Yorkers, including some of our most vulnerable citizens,” said Judge Lippman.

Following is a summary of the new measures to be implemented:

- New court rules governing consumer credit collection cases will require creditors to submit affidavits containing detailed proof in support of default judgment applications, including the validity of the debt at issue and the chain of ownership for that debt.
- In actions started by third-party debt buyers, affidavits will be required from the original creditor and all intervening debt buyers, and will have to be executed by individuals having personal knowledge. Copies of key documents must be attached to the affidavits, including the party’s credit agreement, the most recent monthly statement and other documents that serve to identify the correct defendant, the last four digits of the account at issue, a final itemized summary of the balance allegedly due and the complete chain of ownership for the debt, going back to the original creditor.
- To prevent the practice of suing on time-barred debt, creditor’s counsel must submit an affirmation that the statute of limitations has not expired.

- To ensure that defendants receive notice of a lawsuit, the plaintiff must provide the court with an additional notice of the lawsuit to be mailed by the court to the defendant at the address where process was served. No default judgment will be entered if that notice is returned to the court as undeliverable.

The new rules and affidavits for default judgments will take effect on October 1, 2014, except in debt buyer cases, where the rules will apply to default judgment applications involving debt purchased from an original creditor on or after October 1, 2014. Effective July 1, 2015, however, the new affidavit requirements will apply in all debt buyer actions, irrespective of when the debt at issue was purchased from an original creditor.

The rules, available at [www.nycourts.gov/RULES/Consumer-Credit-Rules-Affs-Notice-091614.pdf](http://www.nycourts.gov/RULES/Consumer-Credit-Rules-Affs-Notice-091614.pdf), were the subject of a 30-day public comment period and were finalized on the basis of input received from over 50 representatives of the banking and debt-buying industries, consumer advocacy groups, state and local government agencies, bar associations and legal services organizations.

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