

# ENHANCING DUE PROCESS IN CONSUMER DEBT PROCEEDINGS

A TEMPLE LAW ACCESS TO JUSTICE PROJECT

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Stephen and Sandra  
**SHELLER**

 **CENTER** *for* **SOCIAL JUSTICE**



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## **I. SUMMARY**

As participants in the Access to Justice Clinic at Temple Law, we have spent this fall educating ourselves about consumer debt cases, how those cases are typically managed by Philadelphia Municipal Court (PMC), and reforms that have been introduced in Philadelphia and elsewhere to assist the overwhelming numbers of defendants who lack legal representation. We have spoken to PMC staff, current practitioners before the court, nonpartisan researchers, and a volunteer lawyer-for-the-day program director. We have studied the mounting body of research and reporting on the sharp rise in consumer debt cases and the difficulties that self-represented defendants in such cases experience.<sup>1</sup> The consensus is that, in most cases, self-represented defendants need more information to receive a fair and meaningful hearing, and that even those who appear in court to defend against claims that are legally insufficient often lose if they lack representation.<sup>2</sup>

While further study is needed to determine whether and which types of problems with these cases exist or predominate at PMC, the goal of our project was to understand the challenges faced by self-represented defendants in Courtroom 5. Based on what we have learned, we are recommending a set of reforms focused on enhancing due process for self-represented defendants in small claims consumer debt proceedings. We recognize that a majority of cases end in default judgments, and distinct studies could shed light on whether they are the result of defendants being

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<sup>1</sup> HUMAN RIGHTS WATCH, [RUBBER STAMP JUSTICE: US COURTS, DEBT BUYING CORPORATIONS, AND THE POOR](#) (2016); PEW TRUSTS, [HOW DEBT COLLECTORS ARE TRANSFORMING THE BUSINESS OF STATE COURTS PEW TRUSTS](#) (2020); MARIELE MCGLAZER, [DEFAULT JUSTICE: DEBT BUYER LAWSUITS IN PHILADELPHIA MUNICIPAL COURT](#) (2020); Kathryn Joyce, [No Money, No Lawyer, No Justice](#), THE NEW REPUBLIC (June 22, 2020), <https://newrepublic.com/article/158095/civil-legal-system-no-money-no-lawyer-no-justice>.

<sup>2</sup> See HUMAN RIGHTS WATCH, *supra* note 1, at 50-63; PEW TRUSTS, *supra* note 1, at 13-15, 20-24.

inadequately informed. While it is possible that some of the recommendations would have a positive impact on the default numbers, our focus is on due process for people who receive notice and attend their hearing.

The disruption to normal operations caused by Covid-19, as well as the transition in Court leadership, presents a unique opportunity to make bold changes to the status quo.<sup>3</sup> The reforms that follow would make consumer debt cases flow more efficiently and, just as importantly, they would make due process protections stronger for the hundreds of defendants whose cases are heard in Courtroom 5 in a typical week. These reforms also have the potential to establish a precedent for positive change throughout the Commonwealth.

Innovations in PMC Landlord-Tenant Court have provided an instructive model, particularly the courtroom navigator and lawyer for the day programs. As in PMC, the navigator and lawyer-for-the-day reforms we are recommending that have been introduced elsewhere have often been focused in housing courts, reflecting the focus of access to civil justice efforts on housing as one of several “basic human needs.”<sup>4</sup> However, the rapid growth in the number of consumer debt lawsuits filed in state courts,<sup>5</sup> and the collateral consequences of negative judgments in such lawsuits,<sup>6</sup> support the introduction of these reforms in consumer debt court as well.

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<sup>3</sup> National Center for State Courts, [Key Steps and Tools to Implement Now to Ensure the Fair and Efficient Handling of Consumer Debt Actions](#) (October 20, 2020); Pew Trusts, [How COVID-19 Has Undercut Philadelphians’ Physical and Financial Well-Being](#) (October 7, 2020) (explaining that one-third of Philadelphians reported falling behind on credit card or other bills as a result of the pandemic); Pamela Foohey et al., [The Debt Collection Pandemic](#), 11 Cal. L. Rev. 224 (2020) (“The coronavirus pandemic is set to metastasize into a debt collection pandemic.”).

<sup>4</sup> See American Bar Association, [Basic Principles of a Right to Civil Counsel in Civil Legal Proceedings](#) 1 (2010).

<sup>5</sup> PEW TRUSTS, *supra* note 1, at 8-12.

<sup>6</sup> PEW TRUSTS, *supra* note 1, at 15-19.

Currently, self-represented defendants who appear in Courtroom 5 would not know, from the service packet materials, that they are attending an initial status hearing, rather than a trial. Once they arrive, they may or may not hear or receive a copy of a welcome script that explains the procedure for the hearing. The script covers a wide range of information briefly, is written at an advanced reading level, and does not provide for clarification by court staff whose primary job responsibility is not conducting hearings and entering dispositions. So that these defendants can walk into status hearings with the informational support they need to approach their case fairly, we are recommending reforms that enhance notice before court and information at court and also offer limited-scope representation. Implementing the following reforms in consumer debt court would ensure that PMC more fully lives up to its name as “the people’s court”:

#### **Notice Before Court**

- Expanded information about status hearing procedure in the service packet
- Reduced barriers to case and scheduling information, including virtual appearances
- Fact sheet, legal resources, and financial counseling information in the service packet, or directions for how to access this information, made available in several languages

#### **Information at Court**

- A revised Civil Trial Commissioner welcome script
- A video illustrating the information contained in the welcome script and fact sheet
- A fact sheet explaining relevant consumer debt law, including debt buyer companies and common defenses
- A volunteer navigator program in Courtroom 5 directing defendants to and explaining informational court resources, as well as referring defendants to volunteer attorneys

#### **Representation in Court**

- A courtroom-based Lawyer for the Day program providing defendants with limited-scope representation

## II. NOTICE

To ensure a meaningful opportunity to defend themselves, defendants must receive adequate notice of the commencement of a lawsuit, and information about effectively responding to the action. Some of the advocates we interviewed were concerned that even where the service of process comports with Municipal Court and Pennsylvania Rules of Civil Procedure, the current documents included with the Statement of Claim in the service packet do not contain enough information for self-representing defendants. The service packet contains only the complaint (Statement of Claim) and a one-page Frequently Asked Question sheet.<sup>7</sup> The current PMC service packet can do more to provide a meaningful opportunity for self-representing defendants to defend themselves.

Nationwide, even before the Covid-19 pandemic, self-representing defendants had problems accessing information about case status, court processes, and options to resolve their cases.<sup>8</sup> Now in the midst of the pandemic, PMC should make this information available as soon as possible for self-representing defendants. Along with the court date, the notice should have information about how to schedule court hearings over the phone or video. Especially at a time when appearing in person could jeopardize defendants' safety, PMC should reduce barriers to virtual appearances.<sup>9</sup> Defendants calling on behalf of themselves should be able to do so by phone, without submitting a written request or navigating additional hurdles. One self-representing defendant we spoke to found out too late that she could request a virtual hearing. By the time she knew she had to submit a written request, PMC would not have been able to process it before her hearing date. Even though

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<sup>7</sup> "Frequently Asked Questions about Small Claims Court" accessed from the court docket and in possession of the authors.

<sup>8</sup> NATIONAL CENTER FOR STATE COURTS, [Twelve Essential Steps to Tackle Backlog and Prepare for a Surge in New Civil Cases](#) at 2 (July 8, 2020).

<sup>9</sup> NATIONAL CENTER FOR STATE COURTS, [Guiding Principles for Post-Pandemic Court Technology](#) at 3 (July 16, 2020).

as a senior she is at risk for severe illness with Covid-19, she still appeared in person to make sure her case was resolved properly. For virtual hearings to be effectively implemented, scheduling procedures must be simple, and self-representing defendants need to be notified about how to schedule one as soon as they receive their court date.

Additionally, the service packet should reflect what happens in a Courtroom 5 hearing. Currently, the one-page Frequently Asked Questions sheet included in the service packet refers to a trial. Self-representing defendants unfamiliar with Small Claims Court might then expect to go before a judge in Courtroom 5 and explain their case. The included materials should clarify how to prepare for Courtroom 5 hearings, and the defendant's options to resolve the case before taking it to trial.<sup>10</sup> Explanations of Courtroom 5 hearings should include what trial commissioners are,<sup>11</sup> and let self-representing defendants know they will have an opportunity to negotiate with plaintiffs' attorneys outside of the courtroom. Since most of these negotiations end in judgments by agreements ("JBA"),<sup>12</sup> self-representing defendants should have information about what these are and their ramifications before agreeing to them. It should also be made clear that self-representing defendants can go before a judge instead if they do not want to negotiate with the attorneys.

Besides informing defendants of their option to request a virtual hearing, and providing them with information about court procedure, PMC should also consider providing self-representing defendants with additional information, such as the following:

- Fact sheets or informational videos as mentioned below in Part III

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<sup>10</sup> Lois R. Lupica, [Guidelines for Creating Effective Self-Help Information](#), at 5-8 (2019).

<sup>11</sup> THE PHILADELPHIA COURTS, *Municipal Court - Civil Division: Civil Trial Commissioners*, <https://www.courts.phila.gov/municipal/civil/> (last visited Dec. 2, 2020).

<sup>12</sup> Based on our in-court observations from October 16, 2020 and October 23, 2020 and conversations with debt collection experts.

- Contact information for financial counseling services such as Clarifi
- A small claims handbook inside the service packet<sup>13</sup>, and also post it on PMC's website
- Notice that navigators and/or lawyers for the day are available if they are installed in the court as discussed below in Part III and Part IV
- Notice that translated materials are available on the court website in several languages<sup>14</sup>

Ensuring the notice defendants receive is clear and robust is essential for providing self-representing defendants with a meaningful opportunity to defend themselves in court. For an example of how some of these changes might be implemented in additional service packet documents, please see appendix A below.

### **III. IN-COURT INFORMATION & PUBLICATIONS**

Currently, the materials that self-represented defendants might bring to an initial status hearing include the service packet they have received from the Court—the complaint and FAQ sheet—and whatever documentation they can access relating to the alleged debt.<sup>15</sup> Even if defendants receive a Notice of Defense, the Notice does not identify the claim-specific defenses they may be able to

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<sup>13</sup> Alaska Court System, [Alaska Small Claims Handbook](#) (2018).

<sup>14</sup> See NEW YORK COURTS, *DIY Forms hágalo usted mismo*, New York Court Help [http://www.nycourts.gov/Courthelp/diy/index\\_spanish.shtml](http://www.nycourts.gov/Courthelp/diy/index_spanish.shtml) (last visited Nov. 30, 2020) (providing self-help guides in both English and Spanish on their website); WASHINGTON LAHELP, *Languages* <https://www.washingtonlawhelp.org/languages> (last visited Nov.30, 2020) (providing information, videos and self-help packets in English, Spanish, American Sign Language and several other languages).

<sup>15</sup> Because of the small number of *pro se* defendants we observed during our two visits to the Municipal Court, we cannot provide an estimate of how many bring all or some of this documentation.



raise or explain that the status hearing is not an opportunity to argue the merits of a defense.<sup>16</sup> Self-represented defendants thus do not necessarily know that they can raise a defense to a claim; what defenses they can raise; whether the status hearing is an opportunity to argue those defenses; and what they stand to lose in waiting until they participate in a Court-sponsored meeting with the plaintiff's attorney before deciding to raise a defense, negotiate a standard settlement, or accept a JBA.

There needs to be more clarity surrounding the role and authority of the trial commissioner. Because consumer debt defendants never see a judge in room 5, and most never see a judge at all, the verbal and nonverbal conduct of the trial commissioner forms the basis for defendants' perceptions of the fairness of the court. Both of the defendants we spoke to referred to the trial commissioner as a "judge," though one of them did express uncertainty. She explained that she was confused by the fact that he was both signing people in, as if an administrator, but also clearly seemed to be in charge of the room and docket like a judge. Whether such mistaken impressions affect the decision-making of substantial numbers of defendants is unclear. They nevertheless demonstrate the need for clarity regarding the role of the trial commissioner and their authority in the courtroom.

Such mistaken impressions also demonstrate the importance of uniformity in the way trial commissioners manage the courtroom. For example, during our observations we observed that different trial commissioners handled the welcome script differently. Once defendants arrive in

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<sup>16</sup>Because the Notice of Defense procedures and substantial form are prescribed by state and local rule, our recommendations focus on what may be included as a supplement to or in absence of the Notice. Pa. R.C.P. 1018.1; Phila. M.C.R. Civ.P.No. 114. *Cf.* the form [Answer](#) in New York state courts, which identifies defenses, affirming that the defendant has the right to dispute the claim.

room 5, they should hear the welcome script read aloud by the civil trial commissioner. The script, along with the trial commissioner’s other remarks, is the primary form of legal information the Court provides defendants who are litigating their own cases, beyond what they received in the service packet.

Currently, the script explains the role of the trial commissioner, the rights of the parties, and the issues in the case. On one occasion, the script was not read during the last four hearing lists of the day, defendants were encouraged but not directed to take a copy, and none took one. On another occasion the trial commissioner instructed defendants to take a printed copy of the script. During at least one of the hearing lists, one of the trial commissioners explained, in plain English, what the script said, but this was not done at every session. Neither of the defendants we spoke to who attended their hearing in the past several months recalled hearing or receiving a copy of the script.

These observations suggest that, while the advent of the script in early 2020 represents an improvement over the “judgeless courtroom” in which defendants were only addressed by plaintiffs’ attorneys, a situation Human Rights Watch criticized in 2016,<sup>17</sup> more remains to be done to realize the script’s promise of equipping defendants with essential information. The court could implement a number of reforms, ranging from simply revising the trial commissioner’s script to implementing a courtroom navigator program, to ensure that defendants actually receive the critical information they need for a fair outcome. The recommended additional sources of in-court information—a video, fact sheet, and navigator program —would enable defendants to more

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<sup>17</sup> HUMAN RIGHTS WATCH, *supra* note 1, at 58-59.

effectively understand their position and assess their options with respect to the litigation.<sup>18</sup> This section will discuss recommendations for improving in-court information.

### **A. Trial Commissioner Script Edits**

We understand that the script has already been revised and its form revised and redesigned, through minor textual additions and edits and the stocking of room 5 with printed copies, respectively. We believe, for the reasons stated above, that more fundamental changes should be made. The script should more narrowly focus on the non-judicial role of the trial commissioner and stakes of the hearing, use plain language, and be accessible to defendants in still more formats. Defendants who do not appreciate that the trial commissioner cannot make judicial determinations or that the plaintiffs' attorneys are adversaries may be more likely to enter into JBAs as opposed to considering and pursuing other legitimate options: a settlement, an appearance before a judge to contest the claim, or a continuance to gather evidence or money or obtain representation.

To ensure its focus and relevance to those present in the courtroom, the script should contain a full explanation of what a JBA entails, rather than explaining default judgments, which are not relevant to defendants who are present. A sensible outline for the script would include only the following: who the trial commissioner is; what the purpose of the hearing is; what the range of outcomes of the meeting with the plaintiff's lawyer is; what a JBA is; and what resources are available if the defendant wants clarification, specified additional information, or legal advice or representation. We have included a suggested outline for a plain language revision as Appendix B, preceded by the version we recently picked up in Courtroom 5.

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<sup>18</sup> For an example of how one court system has integrated videos, fact sheets, forms, and other self-help information, see the Legal Self-Help [homepage](#) managed by the Maryland Courts (last viewed December 2, 2020).

Second, with respect to accessibility, the Court should ensure that defendants actually hear or read the script. Ensuring this may require reading the script for each hearing list, rather than once in the morning and once in the afternoon, insisting that defendants take a printed copy, putting a boldface disclaimer on the printed copy alerting defendants that the script explains their rights, making a Spanish-language printed copy available, advertising the availability of translation services for other languages, and posting the script to the Court’s website or including it with the complaint.

### **B. Video**

A video that illustrates the information that the script and the fact sheet (recommended below) contain should be playing in the back room where defendants negotiate with plaintiffs’ attorneys. It should also be available online for defendants to watch before they come to court. This alternative format would ensure that the Court’s communications are accessible to defendants regardless of reading level or learning style. Research from the Harvard Access to Justice Lab on consumer debt self-help materials suggests that a visual format, particularly one featuring illustrations or cartoons and plain language, is conducive not only to increased substantive and procedural understanding but also to the breakdown of cognitive and psychological barriers to the effective use of legal information by defendants.<sup>19</sup> This format contrasts with elaborate, dense legal jargon and talking head footage of court staff. Such a format would also likely result in defendants feeling freer to ask the trial commissioner non-judicial questions while they negotiate and before they sign, a concern raised with us by one trial commissioner.

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<sup>19</sup> J. David Greiner et al., [Self-Help, Reimagined](#), 92 Ind. L.J. 1119 (2017). The authors’ focus on deployability—what qualities of informational materials empower defendants to effectively use them—as distinct from accessibility suggests that PMC changes informed by their research will not be wasted effort.

The Unified Judicial System of Pennsylvania already has a YouTube channel on which the video could also appear. We have included links to possible models, in style and substance, for such a video as Appendix D. The recent PA Courts protection order and state court system videos also linked to in the appendix reflect an ongoing effort to upgrade the design of informational Pennsylvania court materials to be more accessible and user-friendly. The video we recommend would participate in this effort.

### C. Fact Sheet

Although we found the printed version of the trial commissioner’s script ineffective, we are optimistic that a well-designed fact sheet, if handed out by court staff or volunteers, could be an effective way to increase self-represented defendants’ access to information. An effective fact sheet should be user-friendly.<sup>20</sup> Taking into account the fast-moving nature of proceedings in consumer debt court, we recommend the fact sheet be no more than one page and contain only the most important information, for example, an explanation of debt buyer companies<sup>21</sup> and common defenses.<sup>22</sup> Other courts have published information providing this kind of information to self-represented litigants.<sup>23</sup> An effective fact sheet should also be visually appealing, with engaging graphics and legible typography.<sup>24</sup>

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<sup>20</sup> See MARGARET HAGAN, LAW BY DESIGN, CH. 2: DESIGN MINDSETS: USERS AT THE CENTER, <https://www.lawbydesign.co/design-mindsets/#users> (last visited Dec. 2, 2020).

<sup>21</sup> PEW TRUSTS, *supra* note 1, at 11; See also, HUMAN RIGHTS WATCH, *supra* note 1, at 18 (discussing the debt buying industry).

<sup>22</sup> See Peter A. Holland, *Defending Junk-Debt-Buyer Lawsuits*, CLEARINGHOUSE REVIEW JOURNAL OF POVERTY LAW AND POLICY 20-22 (2012) (discussing most common defenses in debt collection cases).

<sup>23</sup> See NEW YORK COURTS, *Common Defenses in a Debt Collection Case*, (last visited Nov. 29, 2020).

<sup>24</sup> See Greiner *et al.*, *supra* note 8, 1136-38 (on illustrations and cartoons), 1158-60 (on typography). Examples of iteratively tested informational graphics for small claims defendants,

It is crucial that any fact sheet be physically handed to defendants as they enter the courtroom with the assurance that if they have any questions, a navigator or lawyer for the day can assist them if court staff is occupied or unable to provide assistance due to the nature of the question.<sup>25</sup> If defendants have access to the script, video, and fact sheet prior to coming to Court, or to some combination, they will be able to prepare to represent themselves as the Court envisions they can. In addition to directing defendants to legal services, a comprehensive fact sheet should also provide information about financial counseling organizations like Clarifi.<sup>26</sup> See Appendix C for examples of information that should be included and possible design formats.

#### **D. Courtroom Navigators**

While the above materials would provide important information to self-represented litigants, there are still practical challenges to ensuring that litigants fully understand the content of those materials. That is where an in-court navigator program would come in and fill any gaps in understanding. A consumer debt navigator program would be modeled after the navigator program that already exists in Landlord-Tenant Court.

Volunteer navigators would be located in Courtroom 5 and would be pointed out by the trial commissioner as available to answer any questions self-represented defendants may have about the trial commissioner's remarks, informational video, fact sheet, or any other in-court materials

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many relating to consumer debt cases, are spread across pp. 1161-65; MARGARET HAGAN, LAW BY DESIGN, CH. 2: DESIGN MINDSETS: GOING VISUAL, <https://www.lawbydesign.co/design-mindsets/#visual> (last visited Dec. 2, 2020).

<sup>25</sup> This assertion is based on our conversations with advocates who expressed optimism at the idea of a fact sheet but only when handed out by court staff or another person who might be able to further explain or answer questions.

<sup>26</sup> Clarifi is a non-profit that helps people get out of "hot water." *Meet Clarifi*, CLARIFI, <https://clarifi.org/about> (last visited Dec. 2, 2020).

available to them. They would also be available to assist self-represented defendants in physically navigating through the building and by helping defendants understand questions asked of them by the trial commissioner or plaintiff's attorney. The presence of in-court navigators would save the trial commissioner and other court staff time to focus on their primary responsibilities, such as signing people in as they arrive in the courtroom, reading the welcome script aloud ahead of each session, calling the parties, and entering dispositions.<sup>27</sup>

The presence of navigators would increase perceptions of fairness and satisfaction with the process<sup>28</sup> by leveling the power imbalance between self-represented defendants and plaintiffs' attorneys, who are more familiar with both the law and court procedures.<sup>29</sup> For example, a survey of navigator pilot programs in the New York City court system staffed primarily by college students found that "litigants who received the help of any kind of Navigator were 56 percent more likely than unassisted litigants to say they were able to tell their side of the story."<sup>30</sup> Such programs are "designed not to affect case outcomes, but rather to support people going through stressful and confusing proceedings."<sup>31</sup>

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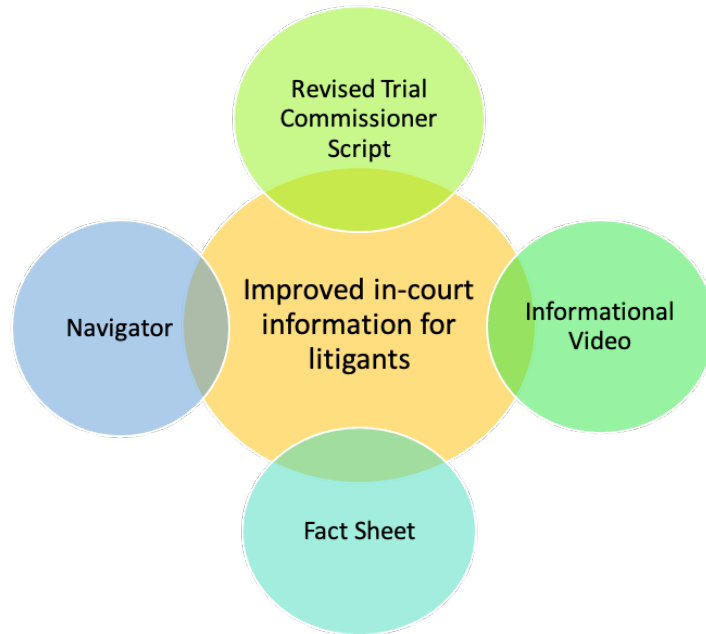
<sup>27</sup> See THE PHILADELPHIA COURTS, *supra* note 11.

<sup>28</sup> Rebecca L. Sandefur and Thomas M. Clarke, [\*Roles Beyond Lawyers: Evaluation of the New York City Court Navigators Program\*](#), 4 (2016).

<sup>29</sup> HUMAN RIGHTS WATCH, *supra* note 1, at 34-36 (discussing defendants' unfamiliarity with debt buyers and the legal processes involved in defending a claim).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 21.



#### **IV. REPRESENTATION FOR SELF-REPRESENTED LITIGANTS**

The entry of a judgment against a defendant, whether by default, by agreement, or following trial, impacts the defendant in ways that reverberate beyond the finding of liability for the claimed debt: pre- and post-judgment interest, court costs, attorneys' fees, permitted means of court-enforced collection, and downstream effects on consumer credit.<sup>32</sup> While wages may not be garnished in Pennsylvania, bank accounts can, subject to a \$300 statutory exemption.<sup>33</sup> The National Consumer Law Center gives Pennsylvania's exemption laws a grade of D.<sup>34</sup> Additionally, judgments, including JBA's, are automatically a lien on any real property owned by the defendant.<sup>35</sup> The result of a judgment is to worsen a defendant's existing financial and related problems and make their path to financial health that much more difficult. Given the serious impact judgments can have on

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<sup>32</sup> PEW TRUSTS, *supra* note 1, at 17-18.

<sup>33</sup> 42 Pa. C.S.A. § 8123.

<sup>34</sup> NATIONAL CONSUMER LAW CENTER, [NO FRESH START IN 2019: HOW STATES STILL ALLOW DEBT COLLECTORS TO PUSH FAMILIES INTO POVERTY](#) 88 (2019).

<sup>35</sup> See *Judgment Liens on Property in Pennsylvania*, NOLO, <https://www.nolo.com/legal-encyclopedia/judgment-liens-pennsylvania-46854.html> (last visited November 29, 2020).



defendants who are already struggling financially, we believe that providing limited-scope representation to self-represented defendants is another worthwhile reform.

A “Lawyer for the Day” program would provide limited-scope representation to self-represented defendants who appear in court.<sup>36</sup> One such program already exists in PMC’s Landlord-Tenant Court.<sup>37</sup> Navigators direct unrepresented litigants to the lawyer for the day program housed on the 6th floor of PMC. Navigators and the lawyers have financial counselors on call to discuss possible options for the litigants. Another model is the Western New England School of Law’s Social Justice Center’s Consumer Debt Initiative, currently directed by Ariel Clemmer.<sup>38</sup> In this program volunteer attorneys and certified legal interns provide representation to self-representing litigants that appear for court.

We recommend that pro bono attorneys and certified legal interns provide limited scope representation to self-represented litigants that appear for court and request representation. One or more sponsoring organizations, such as Community Legal Services or Temple Law, would be responsible for recruitment and training efforts. Those organizations would maintain lawyer- and public-facing web pages advertising the program, and the Court would maintain a public-facing

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<sup>36</sup> Other states have successfully implemented Volunteer Lawyer for the Day Programs. See NY COURTS, [Volunteer Lawyers Program Unrepresented Litigants](#) (last visited Dec. 2, 2020); See also, MASS.GOV, [Lawyer For The Day Programs: A Legal Assistance Program Including Volunteer Lawyers At Some Courthouses](#), (last visited Dec. 2, 2020).

<sup>37</sup> The program in landlord-tenant court involves a coalition of organizations who make up the Philadelphia Eviction Prevention Project. The participating organizations provide attorneys and paralegals to staff the program. It is not widely advertised, but self-represented litigants can be referred to the program through the [Philly Tenant Hotline](#).

<sup>38</sup> See *Initiatives*, [Western New England School of Law’s Social Justice Center](#) (last visited Dec. 1, 2020).

web page advertising the program and providing instructions and directions to those who wish to obtain legal services.

An onsite supervising attorney would evaluate the competence of attorneys and interns, assign cases, and review settlement agreements or other negotiation and document preparation work. The supervising attorney may be a new addition to PMC staff or may be a member of a sponsoring or partnering organization or institution. Like PMC's Landlord-Tenant program, the Small Claims program could have a financial counselor in person or on call to discuss negotiations and judgments, ensuring that the defendant will have a planned path to financial wellness. PMC may consider instituting the program one day a week initially to test and refine the model, as well as to give lead time for recruitment efforts aimed at fielding a larger class of volunteers, including additional supervising attorneys. Once Covid-19 restrictions are lifted, existing space at PMC could be repurposed for volunteers to enter into limited scope engagements with and consult with clients. Until then, the program could facilitate Zoom consultations in advance of hearings, whether in-person or virtual.<sup>39</sup> The sponsoring organization(s) would continually reassess implementation of the program in collaboration with PMC.

This model is largely based on the WNE School of Law's program, especially in its use of student volunteers. It is also based, in part, on the program in Landlord-Tenant court in that it would require sponsorship from local organizations who would provide a supervising attorney to handle cases, but in this case, also supervise student volunteers. While law students do not have a role in the lawyer for the day program in Landlord-Tenant court, based on our conversation with the Director

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<sup>39</sup> See "Notice of Right to Appear In Person, Via Zoom, or Telephonically," <https://www.courts.phila.gov/pdf/notices/2020/Notice-of-Right-to-Appear-In-Person-Via-Zoom-or-Telephonically.pdf> (Nov. 13, 2020).

of the WNE School of Law's program, we believe that trained certified legal interns could effectively manage cases in consumer debt court due to the more straightforward nature of the cases.



## V. CONCLUSION

Study after study has confirmed that self-representing defendants are at a severe disadvantage in consumer debt court. The above approaches to reform approaches, moreover, are relatively simple and straightforward, and are already in operation in other jurisdictions, including to some extent PMC's Landlord-Tenant Court. We urge the Court to consider implementing them in the Small Claims Court.

Further research on the experience of consumer-debt defendants would also be helpful. In particular, more qualitative data on the experience of self-representing defendants in consumer debt court should be gathered. Their perceptions and comprehension of the statement of claim could be beneficial when editing those materials for future self-representing defendants. If navigators and/or lawyers for the day are added to the court, it would be advantageous to have

consumer-debt defendant surveys from before and after implementation to measure the effectiveness of those programs. Additional research should also be conducted on the large percentage of defendants absent from PMC who lose by default in every case. The experts and advocates we spoke with had several theories for the high rate of absences from Small Claims Court. However, we have not found any qualitative data on PMC that could support any of those conjectures.

We hope these proposals provide some helpful guidance as PMC improves access to justice for self-representing defendants in Small Claims Court. We look forward to working with the Court and other interested parties on these proposals.

## **Acknowledgements**

This project was made possible by the experts who provided us with incredibly helpful information on Philadelphia Municipal Court, debt collection lawsuits and access to justice innovations. We would like to express our gratitude to our Professor, Len Rieser, who advised us throughout this project. We would also like to thank Laura Smith of Community Legal Services, Ariel Clemmer of the Western New England School of Law, Fels Institute graduate Mariele McGlazer, Trial Commissioner Aaron Palmer, Jacob Speidel of the SeniorLAW Center, and Jen Clendening, Sophie Bryan and Katie Martin of Pew Charitable Trusts for taking the time to meet with us during the course of this project to share their knowledge and expertise.

Special thanks to Kimberly Oliver of Philadelphia Municipal Court for helping us get to court.

We would especially like to thank the self-represented defendants who spoke to us about their personal experiences navigating Philadelphia's Municipal Court.

# Appendix A - Sample Notice Revision

## Your Court Date in Courtroom 5

### What is Courtroom 5?

It is the room in the Municipal Court building (1339 Chestnut St., 6<sup>th</sup> Floor) where the **first hearing** in your case will be held. **This hearing is *not* a trial and is not before a judge.**

### What will happen in Courtroom 5?

- You will be given a chance to agree, *if you wish*, to pay some or all of the amount requested by the person or company that has sued you (the “plaintiff”).
- If you do not wish to (or cannot) reach an agreement, you will be given a date and time for a second hearing (a “trial”) before a judge. This **trial** may occur on the same day if you wish, or on a later date.

### When should I go to Courtroom 5, and do I have to be there in person?

The date and time of your hearing in Courtroom 5 is at the bottom of the Complaint that you received. You can attend in person *or* by phone *or* by computer (Zoom). To attend by phone or Zoom, call the court at (215) 686-2910 at least 5 days before the hearing.

If you cannot attend on the date and time set by the Court, you can ask for a change. To do that, call the court. The court may or may not change the date.

### Should I have a lawyer?

You may if you wish the Philadelphia Bar Association’s lawyer referral and information service at (215) 238-6333 or visit its site at <https://iris.philadelphiabar.org/>

You may qualify for a FREE lawyer or FREE advice from SeniorLaw Center (215) 988-1244), Community Legal Services (215) 981-3700 – Center City Office or (215) 227-2400 – North Philadelphia Office, Legal Clinic for the Disabled (215) 587-3350, or the AIDS Law Project (215)587-9377.

### If I am handling my case on my own, how should I prepare?

1. Read the Complaint. Pay attention to why the plaintiff thinks you owe money, how much the plaintiff thinks you owe, and what records the plaintiff has provided.
2. Think about whether you have any “defenses,” that is, reasons why the plaintiff should not win. Here are examples:
  - You do not owe money to this plaintiff (even if you do owe money to someone else).

- The amount of the debt is not explained or is wrong.
  - Extra charges to which you did not agree have been added onto the debt.
  - You have already paid some or all the debt.
3. If you received a Notice of Defense, fill it out and mail it back in the pre-addressed envelope 5 days before the hearing. If you did not receive a Notice of Defense, you do not need to worry about this step.
4. Bring the Complaint *and* any papers or records that will show your side of the story.

### **What will happen when I get to Courtroom 5?**

A Trial Commissioner will explain what will happen. Remember that the Trial Commissioner is not a judge and will not decide your case.

The Trial Commissioner will give you a chance to meet with the plaintiff (or their lawyer) and talk about whether you want to agree to pay part or all of the amount that the plaintiff wants. In the meeting, you can discuss any reasons why you think you do not owe, or cannot pay, the amount requested.

[If navigators and or lawyers-for-the-day are added to the court, a short summary can be added here.]

### **Should I agree to pay some amount of what the plaintiff says I owe?**

Only if you wish. You are not required to do so, and you may decide you would prefer to have a trial before a judge.

If you *do* agree to pay some amount, you may be asked to sign a “Judgment by Agreement.” You should sign a Judgment by Agreement ONLY IF you are certain that you want, and are able, to pay the amount stated. Once you sign a Judgment by Agreement, you must follow it, you will not have a trial, and you cannot appeal.

If you do *not* wish to agree or to sign a Judgment by Agreement, let the Trial Commissioner know. You will be given a date for a trial.

### **If I am given a trial date, what should I do to prepare?**

Bring your copy of the Complaint *and* any papers or records that will show your side of the story to your trial. At your trial you will have a chance to tell your defense to the Judge, so be ready to speak clearly and calmly.

If you would like a lawyer, see “Should I have a lawyer?” above for contact information.

[If navigators and or lawyers-for-the-day are added to the court, a short summary about their trial services and any online fact sheets can be added here.]

## **Appendix B - Trial Commissioner Script Revision Outline**

Current version (picked up during 10/16/20 visit):

Good morning/afternoon. My name is \_\_\_\_\_. I am a trial commissioner and am here to welcome you to the Philadelphia Municipal Court. You are all here as either a person who is being sued for the alleged nonpayment of a consumer debt or as an attorney representing the entity bringing a consumer debt case that is scheduled for today. The person being sued is known as the defendant and the person who brought the case is known as the plaintiff.

I will first call each case to find out whether the parties to the case are present and represented by an attorney. Please make sure you stay in this room so that I know you are here.

If only one of the parties is here, the party that is present may be entitled to what is called a default judgment. If you represent the plaintiff, please make sure that you know how much the defendant owes to the plaintiff. Do not include the costs you paid to file and serve the complaint on the defendant.

I will next give defendants and plaintiffs who are represented by a lawyer time to speak with each other in another room. Please be patient because many of the attorneys are here on more than one case.

The purpose of meeting in another room is to see if you are able to resolve your case without the need for a trial. The role of an attorney is to represent the attorney's client. It is not to provide advice to the opposing party or to pressure the opposing party into entering into an agreement. Each party has the absolute right to choose to try to resolve the issues in the case by reaching an agreement or by having a trial before a judge. That choice belongs to each party alone.



The issues involved in resolving a case in which there is an alleged unpaid debt are varied. At a trial, the plaintiff has the burden of proof and the defendant may raise defenses. Frequent areas of discussion include the following: (1) whether the plaintiff has sufficient evidence to prove that the defendant entered into a contract and owes the amount claimed; (2) in cases in which the plaintiff was not the original creditor, whether the plaintiff has sufficient evidence to show that it has the right to collect the alleged debt; (3) whether the defendant is the actual person who entered into the contract; (4) whether there was any fraud; (5) whether all payments made by the defendant have been accounted for; and (6) the financial ability of the defendant to repay any amount due.

If both parties agree, they will enter into a written, binding, final agreement that is not appealable by either of the parties. If the parties are unable or unwilling to come to an agreement, they will come back to this room and either be sent to another courtroom to have a trial before a judge or be given a date for a trial before a judge. Please remember that whatever you talk about in the other room is confidential and should not be mentioned if you later appear at trial before a judge.

The court has no preference as to whether you resolve your dispute by entering into an agreement or by having your case tried before a judge. As I mentioned before, that choice is yours. Court personnel and a judge are always available to assist you and to try to answer any questions that you may have. They cannot, however, provide legal advice. Please note that interpreter services are available by requesting them from court staff.

## Suggested Outline for Script Revision

### I. Preliminaries

- A. State name.
- B. State that translations or translation services are available.
- C. Distinguish the role of the civil trial commissioner from the role of a judge.
- D. Direct defendants' attention to and identify courtroom navigators and lawyers-for-the day when available.

### II. Explanation of Hearing Procedure

- A. Call defendants' names.
- B. Identify them as defendants and those who have sued them as plaintiffs.
- C. Announce that each defendant will meet with the attorney for the plaintiff who sued him or her.
- D. Explain the purpose for the meeting and the possible outcomes for defendants, such as an agreement to make full or partial payment, or a postponement to get additional information, a lawyer, or other help.
- E. State that the Court is placing no pressure on defendants to reach an agreement.
- F. Explain the procedure for establishing a trial date in the absence of an agreement.
- G. Take and answer any questions about II(A)-(G).

### III. Further Explanation of Defendant's Meeting with Plaintiff's Attorney

- A. Identify legal issues in the case the defendant may wish to discuss in the meeting, such as whether the plaintiff owns the debt, the defendant owes the debt, the amount the plaintiff wants from the defendant is correct, or the debt is too old to collect.
- B. Define a Judgment by Agreement and explain its legal consequences for defendants.
- C. Reiterate that each defendant has the right to a trial.
- D. Take and answer any questions about III(A)-(C).

### IV. Closing

- A. Remind defendants of the availability of courtroom navigators and lawyers-for-the-day when available.

## Appendix C - Fact Sheet Resources

### Examples of Information Provided by Other Jurisdictions

- 1) [Your Debt Collection Rights](#) -- LawHelpMN.org
- 2) [Common Defenses in a Debt Collection Case](#) -- NYCourts.gov
- 3) [I Owe Money/Dealing with Debt](#) -- Maryland Court Help

### Local Examples (for design & style, not substance)

- 1) [Philadelphia's Paid Sick Time](#) -- Philadelphia Legal Assistance
- 2) [Immigrant Workers Have Rights](#) -- Community Legal Services
  - a) Note: this flyer is available on [CLS website](#) in the following languages: English, Spanish, Simplified Chinese Vietnamese, Nepali, Arabic, Russian, French, and Khmer.

## Appendix D - Video Models

All links direct to YouTube videos posted by official government or legal aid organization-affiliated accounts.

### Useful Models from Other Jurisdictions

- 1) [Representing Yourself in Consumer Court](#) (2014) - New Media Advocacy Project for CLARO (New York City Civil Legal Aid and Resource Office), particularly 9:00-10:30 (section on defenses)
- 2) [The Court Debt Collection Process](#) (2013) - California Courts Self-Help, Chapter 3 of 4-chapter Resolving your Debt Collection Dispute in California series
- 3) [Debt Collection: Know Your Rights](#) (2017) - Federal Trade Commission
- 4) [What is the best way to negotiate a settlement with a debt collector?](#) (2019) - Consumer Financial Protection Bureau
- 5) [Defending a Small Claim](#) (2016) - Maryland Courts Access to Justice Commission

### Current Pennsylvania Court Videos

- 1) [Representing Yourself in Family Court in Pennsylvania](#) (2015) - PA Courts
- 2) [Protection Orders: How to File for a Protection Order in Pennsylvania](#) (2018) - PA Courts
- 3) [Understanding the Pennsylvania Courts](#) (2019) - PA Courts