

Key Steps and Tools to Implement Now to Ensure the Fair and Efficient Handling of Consumer Debt Actions

A Pandemic Resource from CCJ/COSCA

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Consumer debt hit a high of \$14.3 trillion just as the pandemic hit, leaving millions of newly unemployed workers without a regular paycheck to pay existing debts and putting them in the position of having to rely on credit cards to pay essential household expenses. These challenges to American finances are likely to extend many years beyond the pandemic crisis, leaving some to speculate that the “coronavirus pandemic is set to metastasize into a debt collection pandemic.”¹

“The COVID-19 pandemic is not the disruption courts wanted, but it is the disruption that courts needed: to re-imagine and embrace new ways of operating; and to transform courts into a more accessible, transparent, efficient, and user-friendly branch of government.”² Recognizing the importance of implementing changes now to ensure the fair and efficient handling of consumer debt actions, this resource offers the following key business practice changes that can be implemented by state courts now—without statutory or rule changes—as well as tools and examples in support. This guidance builds on the National Center for State Courts and IAALS’, the Institute for the Advancement of the American Legal System, prior white paper with broader recommendations: [Preventing Whack-a-Mole Management of Consumer Debt Cases, A Proposal for a Coherent and Comprehensive Approach for State Courts](#).

Triage Cases to a Specific Streamlined Pathway/Process for Debt Collection Cases

1. Develop streamlined processes for debt collection.

When unmanaged, these cases can end up with a mismatch of resources to needs—seemingly needing significant court resources while also underserving the needs of the litigants. Courts should develop a clear set of streamlined processes for these cases, through a formal pathway or by implementing internal business practices, to provide clear management of consumer debt cases from the moment of filing. See generally [Twelve Essential Steps to Tackle Backlog and Prepare for a Surge in New Filings](#).

- Review your workflow to ensure an efficient and streamlined process.

Identify steps in the process where there is a lack of clarity or overcomplexity, with a focus on simplifying. This does not necessarily mean eliminating steps in the process, some of which may be critically important. Look at the process from the perspective

of the user in addition to the court. These cases are particularly suited for a case management team approach, as highlighted in the [Guide to Civil Case Management Teams](#), as they likely need less judicial time and attention, but more dedicated court staff and technology resources.

2. Ensure consistent application of those processes and legal requirements in every case.

- **Checklists**—Checklists are used by a number of courts, including the Los Angeles Superior Court, to ensure that all requirements are met prior to the entry of judgment. Checklists can be completed by court staff prior to a hearing or prior to the judge’s review and entry of judgment.
- **Automation**—Electronic work flows, work queues, and notes in the case management system alongside documents can lead to greater efficiency across teams.
- **Training**—For these processes to become the norm, with consistent application in every case, training for judges and court staff is key.

3. Don’t shy away from technology in this moment—embrace it.

Technology can provide meaningful opportunities for all parties to engage in court processes, “regardless of race, ethnicity, gender, English proficiency, disability, socio-economic status or whether they are self-represented.”³ This is particularly important for high volume cases. Courts should look to those courts that have implemented technology, as highlighted in the [Post-Pandemic Planning: Technology Resource Guide](#), and stand upon their shoulders and experiences. Utah has successfully piloted [online dispute resolution](#) in small claims cases, creating an asynchronous opportunity for parties to resolve their consumer debt cases. Maryland has created a [free mobile app](#) that self-represented litigants can download on their phone that brings together tools and resources in one easy-to-access location.

Address the Challenges in Debt Collection Cases

Consumer debt cases are often characterized by several common traits that make them difficult to manage effectively and fairly, with the potential for long-term negative impacts on the debtor: issues with service, inadequate review of the case file prior to judgment, high default rates, continuances of hearings, and—most significantly—asymmetry in representation with highly experienced lawyers representing creditors and overwhelmingly unrepresented debtors who lack information and expertise to navigate the process.

1. Focus on Service of Process.

Courts have become increasingly aware of issues with service of process in debt collection cases.

- Confirm the existence and legitimacy of service in every case.
- Be aware of changes from USPS and other service of process challenges as a result of COVID-19.

For public health reasons, USPS has [temporarily changed](#) its mail handling procedures, citing its authority to temporarily alter delivery practices in order to continue postal services. USPS temporarily no longer requires an in-person signature, which may compromise the validity of service of process. In addition, delivery of mail may take longer than usual, resulting in the need for extra response time.

2. Provide the debtor a meaningful opportunity to respond.

One of the common reasons defendants do not respond to these lawsuits, resulting in a high default rate, is their lack of information regarding how to respond.

- **Create a form answer and make it easily accessible.**

New York has an extensive [form answer](#) tailored for debt collection actions. Alaska's [answer form](#) has a number of common defenses that defendants can check, including an "Offer to Pay" section where the defendant can start the settlement process without the plaintiff being able to use that as evidence of admission of owing the debt.

- **Ensure access to documentation that the debtor needs to challenge the claim.**

Much of the reform in debt collection has focused on statutory and rule changes requiring the disclosure of information in support of the alleged debt. Oregon's [Consumer Debt Collection Disclosure](#) provides an example. Short of statutory or rule changes, jurisdictions can still focus on ensuring that required information is provided to the debtor. For example, does the debtor have access to the Affidavit of Service in order to challenge service, either from the court or the plaintiff? New York scans this document so that it can easily be provided to the debtor, despite not having a full electronic case file.

3. Provide opportunities for the parties to reach resolution, including mediation.

In this time, what can the court do to facilitate communication between the parties and possible resolution, stipulations judgments, payment plans, etc.? There are creditors who are recognizing the challenges of the pandemic and giving consideration to special needs. Recognizing that in-person opportunities are limited, courts should support other means of communication and engagement between the parties, including through asynchronous communications such as those provided through ODR, while also being mindful of the asymmetry in these cases.

4. Embrace and improve virtual hearings in consumer debt collection cases.

Hearings in high volume cases are often continued, delaying resolution and wasting time for the court and the parties. Ensure everyone has access to information and documents prior to the hearing to make every hearing a meaningful case event. During this time, embrace opportunities for more efficient hearings, such as virtual hearings set for more specific times rather than cattle calls. [LACourtConnect](#) provides a convenient, safe option for appearing remotely.

- Follow best practices for virtual hearings and procedural fairness. See [Conducting Fair and Just Remote Hearings: A Bench Guide for Judges](#).

Provide Information to Litigants in this Critical Moment

1. **Provide increased information and support to litigants, the earlier the better, and in plain language.**

The time of service is a great point at which to provide information to the debtor. New York is one example jurisdiction that has required information to be included at the time of service, either in the summons itself or as a separate document to be served along with the summons and complaint. In Alaska, the plaintiff must provide a [Small Claims Handbook](#) and a copy of the [Answer and Counterclaim form](#) to the defendant along with the complaint and summons. Utah is in the process of adopting a newly designed summons with a QR code that the debtor can easily scan for access to the court's ODR website. Next to the QR code will be a short, simple web address for defendants who do not have a smartphone.

Plain language is critical. Most lay people do not understand what a “default judgment” is or the ramifications of consumer debt court proceedings. In addition, the usual ways in which debtors access information may be limited in this time. See [Guidelines for Creating Effective Self-Help Information](#).

2. **Rethink prior in-person legal information and assistance in the court and through self-help centers so as to continue to provide those services virtually.**

Courts cannot rely on their usual default of foot traffic into the courthouse to answer questions and provide information to the parties. Courts around the country have addressed these needs in multiple ways, including instructional videos, tailored websites, online workshops, flyers, FAQs, process flowcharts, and plain language explanation of key terms. Alaska's [Self-Help Services: Debt Collection Cases](#) website provides an example, including their [debt collection glossary](#).

3. **Be creative, even if it means going back to basics.**

Courts around the country are thinking outside the box in how to meet the needs of the litigants and the court in this moment. Just as courts should be willing to embrace technology and innovation, courts should also think creatively and implement low tech approaches when they work. For example, New York has provided a specific phone number and email address for inquiries with regard to consumer debt actions.

Endnotes

¹ Pamela Foohey et al., The Debt Collection Pandemic 224 (May 1, 2020). California Law Review Online (2020 Forthcoming), U Iowa Legal Studies Research Paper No. 2020-22, Available at SSRN: <https://ssrn.com/abstract=3598623>.

² [Guiding Principles for Post-Pandemic Court Technology: A Pandemic Resource From CCJ/COSCA](#) (July 16, 2020).

³ *Id.* at 2.