

Stephen and Sandra
SHELLER
CENTER *for*
SOCIAL JUSTICE

 Temple University
Beasley School of Law
1719 North Broad Street
Philadelphia, PA 19122
215.204.8800 (F): 215.204.4881
www2.law.temple.edu/csj

Toward a More Level Playing Field: A Navigator Program for Philadelphia's Debt-Collection Court

Cities across the country are recognizing and addressing a problematic access to justice gap that creates unequal outcomes for litigants in their courts. Increasingly, municipalities are adding “navigator” programs to assist litigants who may not be aware of their rights and cannot afford to retain counsel. However, Philadelphia is lagging behind in this effort; it is one of the only major cities in United States without a navigator program to assist litigants in consumer debt collection court.

This proposal seeks to create Philadelphia's first-ever Consumer Debt Navigator Program. This program aims to ensure a fairer and more just outcome for self-represented litigants facing creditors in Philadelphia Municipal Court.

The current system is mired in unfairness and inequality: few, if any, litigants appear on their court dates. Consequently, these defendants routinely incur default judgments without a shred of evidence presented against them, lining their creditors' pockets rightly or wrongly. When they do appear at their hearing, self-represented litigants are often not made aware of their rights and are confused and overpowered by the plaintiff's attorney representing their creditors. They may not understand that the judgment against them is binding or that they have a right to see the evidence being offered against them.

The proposed Consumer Debt Navigator Program would mitigate these inequities with a two-pronged approach. First, the Navigator Program would engage in early outreach, informing defendants ahead of their court date why they should appear at their hearings to protect their rights. Second, the Navigator Program would ensure that a navigator is on site to meet defendants at the Court on the day of their hearing and assist.

This effort would provide a meaningful step in the direction of leveling the playing field in consumer debt court between unrepresented litigants and the sophisticated creditors' attorneys. It would also prevent the Court from wasting time on a twice-daily proceeding that is rarely, if ever, attended by defendants. And lastly, a navigator program would begin to build much-needed community trust in Philadelphia's civil justice system.

Philadelphia's Credit Card Debt Crisis

Philadelphia is at the heart of a national credit card debt crisis that is being willfully exacerbated by predatory collectors. Nationwide, original and secondary creditors have flooded court dockets with lawsuits seeking to collect past-due balances – and the trend has more than doubled in recent decades, making up nearly a quarter of the civil docket around the country.

Recurrently, plaintiff debt collectors bring lawsuits that are riddled with procedural and substantive errors. In a 2016 Human Rights Watch report, investigators noted that debt buyers often sue the wrong people for incorrect amounts or on debts that were already paid, cashing in on a vast number of uncontested judgments, reaping the benefits of failure to serve defendants properly of the suits against them.

This pleading strategy contravenes procedural rules and bears the inference of bad faith because it is more profitable for creditors to file hundreds of improper complaints than to gather account records—especially when most cases will result in either a default judgment or a judgment by agreement. In such circumstances, the plaintiff debt collectors will never have to substantiate their claims because they are up against self-represented litigants who either fail to appear in court or who do not know their rights.

In many major cities around the country, courts have created navigator programs to curb victimization by predatory collectors of vulnerable debtors. But the Philadelphia Municipal Court has undergone little to no meaningful reform in this regard.

Debt collectors have been able to take advantage of this city's debt collection court. From 2013 to 2018, 92% to 95% of cases that resulted in default judgments in favor of the plaintiffs—excluding settlements, withdrawn cases, or cases without service. Although local rules instruct that “default judgment should be entered only if service is made and damages are proven” in accordance with the Pennsylvania Rules of Evidence, the Court seemingly performs

no such inquiry. This means that the court may be, and likely is, producing binding orders in the absence of sufficient underlying evidence to the detriment of already financially vulnerable Philadelphians. The impact of this on the lives of our city's residents cannot be understated: with court orders in hand, plaintiff creditors drain bank accounts, place liens on property, and garnish wages of defaulted defendants.

Rubber-Stamp Justice in Philadelphia Municipal Court

The procedures employed by the Philadelphia Municipal Court differ not only from those of other jurisdictions but also from other small claims in the Municipal Court. Generally, small claims disputes follow the procedure laid out in Local Rule 113, where the time and place for the trial are set within 90 days of filing the complaint. At these trials, the parties are offered the option to participate in mediation with the assistance of a neutral court mediator or to have their case heard by a judge that day.

For debt collection cases, the scheduled "trial" is not a trial at all; rather, it is a hearing without a judge held in Room 5. The hearing is overseen by a trial commissioner who seemingly wields adjudicative authority. When defendants do appear, they are greeted by the trial commissioner and introduced to the creditor's attorney, although it varies whether the attorney makes it clear that they represent the creditor or debt collection agency. Generally, the litigant is not made aware of their right to ask for proof of the contract, amount owed, and privity of contract in the case of debt collection agencies; this often comes down to the plaintiff attorney's discretion. Furthermore, the plaintiff's attorney often does not present proof of these documents to the litigant or the trial commissioner.

Next, the attorney and defendant engage in an unsupervised conversation in either a backroom or the hallway. The defendant is usually offered one of two options: (1) if the defendant is making payments towards the default, the attorney may request a continuance for 30 days to allow the defendant a chance to remedy default without a judgment against them; or (2) the attorney may draft a judgment by agreement ("JBA") for the defendant to pay a certain amount each month. JBAs are binding and cannot be appealed.

These procedures apply, however, only when defendants appear for their hearings. But most defendants do not appear. In this more common scenario, plaintiffs' attorneys request that the trial commissioner enter default judgments for "amount sought plus costs." Although local rules instruct that "default judgment should be entered only if service is made and damages are proven" in accordance with the Pennsylvania Rules of Evidence, in our observation, we did not witness the trial commissioner perform such inquiries. The impact of these judgments on the lives of Philadelphians cannot be understated; with court orders in

hand, plaintiff creditors drain bank accounts, place liens on property, and garnish wages of defaulted defendants without ever having to prove that they were in debt in the first place.

The Proposed Consumer Debt Navigator Program

A Consumer Debt Navigator Program will serve a vital role in Philadelphia Municipal Court and provide services benefiting a wide range of interests. We recommend a robust implementation of the navigator role to have the greatest impact, but we recognize that a small-scale pilot may be more feasible to start. We have provided a model of this pilot program below.

Pilot Implementation

- **Program size:** One to two volunteer, non-attorney navigators will work in conjunction with a supervising attorney from a local legal aid organization such as Community Legal Services or a nearby law school. Alternatively, this supervising attorney could be a person within the court's organizational structure.
- **Goal:** Increase attendance and exercise of rights in consumer debt court. Dismal litigant attendance results in an alarming rate of default judgments entered in favor of creditors.
- **Early outreach:** The navigator will proactively reach out to defendants before their hearing but after they have been served. The supervising attorney will monitor the docket and as soon as the service of a defendant is confirmed, the supervisor will provide available contact information to the navigators. The navigator will then send the defendants a postcard notifying them of the program and offering them information on the court process and their legal rights. If a phone number is available, the navigator will also call the defendant to introduce themselves, confirm the date and location of the hearing, and answer general questions.
- **Day of hearing:** The navigator will meet the litigant at the Municipal Court building and walk them to their assigned hearing room. They will inform the litigant of their rights and their options.
- **Post-hearing:** The navigator will be responsible for compiling a list of outcomes and reporting them to the supervisor to measure the impact of navigator initiatives.

Navigators will also reach out to defendants against whom default judgments were entered and provide information about the appeals process.

Conclusion

This proposal for the Philadelphia Consumer Debt Navigator Program seeks to build more just outcomes for this city's citizens when facing creditors with legal representation in Philadelphia Municipal Court. Philadelphia's lack of a consumer debt navigator program is a grievous omission that unnecessarily subjects Philadelphians to financial harm.

A navigator program would be a relatively low-cost start to solving these inequities. It would inform defendants ahead of time that they should appear at their hearings to protect their rights. There is no reason that Philadelphia should be alone in its willingness to allow self-represented litigants to go without assistance and guidance. The Philadelphia Consumer Debt Navigator Program can be a small but impactful way of leveling the playing field between big creditors and self-represented litigants.

This proposal was developed by Ed DeLuca, Scott Hofmann, Nicole Kerr, and Rory Kress Mandel, students in Temple Law School's Access to Justice Clinic in spring 2022.