

SIX PRACTICAL WAYS COURTS CAN REDUCE DEFAULT JUDGMENTS IN DEBT COLLECTION CASES

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SHELLER

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INTRODUCTION

HOW BIG IS THE PROBLEM?

In the Philadelphia Municipal Court, an enormous percentage - over half - of all debt collection cases brought by the three largest debt buyers in the city resulted in default judgments in 2018.¹ When default judgments are entered because a defendant did not appear at their hearing, the defendant loses their case without being heard.

While parties subjected to default judgments do have the right to petition to open the judgment in certain circumstances, only a tiny minority (about 1%)² actually do so.³

There are likely multiple reasons for this, including defendants' lack of awareness that the option is even available. Regardless, the fact is that about one of every two debt cases results in a default judgment.

IMPACTS

Default judgments can have devastating impacts on defendants. Wage garnishment and seizures of assets, which include money from bank accounts, can keep people in a cycle of debt, which in turn makes them unable to afford basic needs like rent, utilities, car loans, and more.

When our team reviewed litigants' petitions to open a judgment, we found many legitimate, practical, and easily solvable issues that caused the defendant to miss their hearing. In this report we lay out practical, effective solutions courts can implement to improve appearance rates, increase access to justice, and support all parties in resolving their matters on the merits.

REASONS DEFENDANTS DO NOT APPEAR

There are several prevalent and preventable reasons that people miss their hearings in consumer debt court. We reviewed court dockets for petitions to open default judgments. These dockets listed petitioners' stated reasons for failing to appear on all petitions ruled on by the Philadelphia Municipal Court in 2022.⁴ The following are some of the most common reasons that we saw:

	Issues Relating to the Commute to Court
	Procedural Confusion
	Mixing up Dates and Times
	Court Errors
	Work, Illness, and Combined Challenges
	Misleading Information from Opposing Party
	Issues with Service

REASONS DEFENDANTS DO NOT APPEAR

ISSUES RELATING TO THE COMMUTE TO COURT

Petitioners' stated reasons for failure to appear often include issues involving travel to the courthouse. This includes traffic, difficulty finding parking, delays in public transportation, and other delays. These issues are especially likely to impact individuals with longer travel times to court.

A recent study analyzing evictions filed against Philadelphians between 2005 to 2021 (in proceedings that occur in the same building as consumer debt hearings) found that individuals with longer travel times were more likely to suffer a default judgment.⁵

PROCEDURAL CONFUSION

Another common reason is confusion about court processes. Many defendants stated that they did not understand from the information provided on the statement of claim that they were supposed to appear at a hearing. Others reported that they did not understand what procedures were required to respond. Some did not know what the form was, and did not think that they would need to respond.

MIXING UP DATES AND TIMES

Some petitions reported that defendants missed their hearing because they mixed up the date and time on the summons. This lends support toward simple interventions such as text reminders.

COURT ERROR

Several petitioners wrote that they were directed to the wrong hearing room by court staff, and missed their hearings as a result. Some also wrote that they were given incorrect information regarding the time of their hearing from the court. Incorrect information from a court, when combined with confusing forms, all but ensures that a party will miss their hearing and receive a default judgment.

MISLEADING INFORMATION FROM OPPOSING PARTY

Petitioners were sometimes mistakenly under the impression that they had reached an out-of-court settlement with the other party, avoiding a hearing. In some cases, petitioners stated that debt-collection plaintiffs informed them that they would not have to attend their hearing, only to subsequently be subjected to a default judgment for failure to appear.

ISSUES WITH SERVICE

The most frequently listed reason for not appearing at a hearing was a lack of service and/or notice of hearing. The PA and Municipal Court service rules allow service to be made to individuals other than the defendant in certain circumstances. Often, affidavits of service do not specify the name of the individual served, or their relationship to the defendant. Some defendants seeking to open their default judgments stated that service was never made as required.

While this report focuses primarily on issues other than service of process, the high frequency that lack of service is given as the reason for a failure to appear demonstrates that this is an exigent area for reform.⁶

WORK, ILLNESS, AND COMBINED CHALLENGES

Parties also reported that they were unable to appear to court due to illness or other medical issues. Defendants often received default judgments after missing hearings for various reasons. For example, several defendants wrote that they initially had a harder time than was expected finding parking in the area and had to park further away, and it took longer to walk to the court due to a disability.

These reasons can also cause people to reconsider whether or not to miss a day of work or try to find childcare for a hearing they don't understand or aren't sure they need to attend.

IMPLICATIONS

Many of these stated reasons for failure to appear demonstrate that parties often miss their hearings through no fault of their own. While the court does have procedures to open default judgments in certain circumstances, more effort should be made to prevent common, non-negligent failures to appear from occurring in the first place.



THE HUMAN TOLL OF A DEFAULT JUDGMENT

PAYING FOR MUCH MORE THAN THE DEBT

Default judgments can have devastating impacts on people's lives.



In addition to the initial amount of the alleged debt, the person could be responsible for additional costs including compound interest, as well as court and attorney fees. This amount can end up far exceeding the amount owed in the original complaint.⁷



Not only do people have to pay more than the original amount owed, there are financial consequences that reach far into the future. A default judgment on a debt can negatively impact a person's ability to achieve financial success in the future.⁷



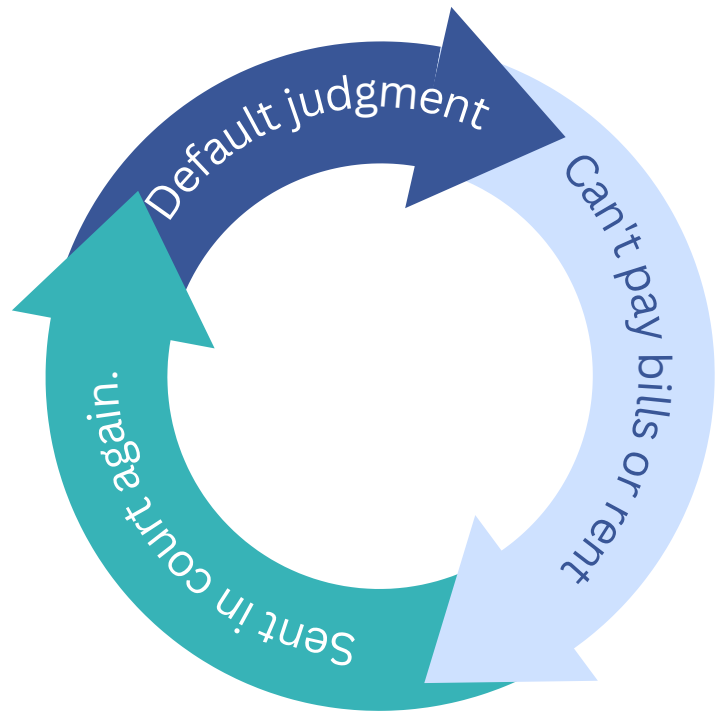
For example, the default judgment can decrease a person's credit score and make it much harder for them to obtain credit in the future. Even a small debt claim on a person's credit report can prevent them from obtaining future funding in a variety of areas, including selling or refinancing a home, taking out a loan, or making payments on other bills, and these consequences can last for years.⁷

Once the judgment is entered, the collector can enact serious financial consequences including wage garnishments, bank account levies, and liens on property. Even though Pennsylvania has a prohibition on garnishments from a person's paycheck, there are no protections on asset levies, including bank accounts.⁶

PERPETUATING THE CYCLE OF DEBT AND LOSS

For the 51% of Americans living paycheck to paycheck and the two thirds of Americans living with no savings, these garnishments could place them in a precarious financial situation.⁸ This instability could affect an individual's ability to pay for housing, utilities, childcare, food, and other basic needs.⁸

In fact, in a survey conducted by The Pew Charitable Trusts, defendants in a consumer debt case were asked about their experiences after their case was resolved.⁶ Of the respondents to this survey, 22% said they fell behind on bills or had utilities disconnected for nonpayment and 16% reported that they went without food, transportation, or other basic needs in order to pay their debt.⁶ Ten percent of respondents reported that they had been denied a mortgage or loan.⁶



People with a judgment against them may be prevented from selling their home if there is a lien placed on their property. If they need to sell personal items in order to pay their debts, such as a car or other form of transportation, this can have a cascading effect that may lead to other financial and legal issues. Something like the loss of a car can quickly place a family on a downward course that could lead to job loss, unpaid utility bills, unpaid rent, deferred medical care, and even homelessness.⁹

REDUCING DEFAULT JUDGMENTS

THE ROLE OF THE COURT

Courts are responsible for promoting public confidence in the justice system by demonstrating their commitment to upholding the rule of law, providing timely and efficient resolution of legal disputes, and ensuring that all parties are treated with dignity and respect.



There are also practical reasons why courts should care about this issue. Ensuring equal access to justice can help to reduce court backlogs, increase efficiency, and improve the overall functioning of the justice system.

In the pages that follow, we provide practical solutions that are relatively easy to implement and can help reduce default judgments in consumer debt cases.

Their relative simplicity can allow courts to experiment with different methodologies to see what could work for their jurisdiction.



EASY TO IMPLEMENT SOLUTIONS

As we have seen, failures to appear have a variety of causes, and can result in long-lasting impacts on defendants. Courts looking to address the high default judgment rate in consumer debt cases will have the greatest success through the implementation of a variety of solutions.

The remainder of this report will describe initiatives that would reduce failure to appear and default judgment rates in consumer debt cases. These solutions are simple, cost-effective strategies that courts can and should implement to reduce default judgments. They are not meant to solve all of the problems related to consumer debt, but they would all promote access to justice for affected individuals.

We encourage courts to experiment with different interventions to identify the most effective strategies for their jurisdiction.

INTERVENTIONS

- **Text message reminders for hearing dates**
- **Simplified court summons forms**
- **Community hearing locations**
- **Virtual hearings**
- **Legal kiosks**
- **Claim validation checklists**

TEXT MESSAGE REMINDERS



A study conducted by ideas42 in New York City found that text message reminders reduced failure to appear rates by 26%

Text message reminders are a simple, cost-effective, automated way for courts to help people make it to their upcoming hearing. Minor errors in mixing up dates and times can result in devastating consequences for a defendant.

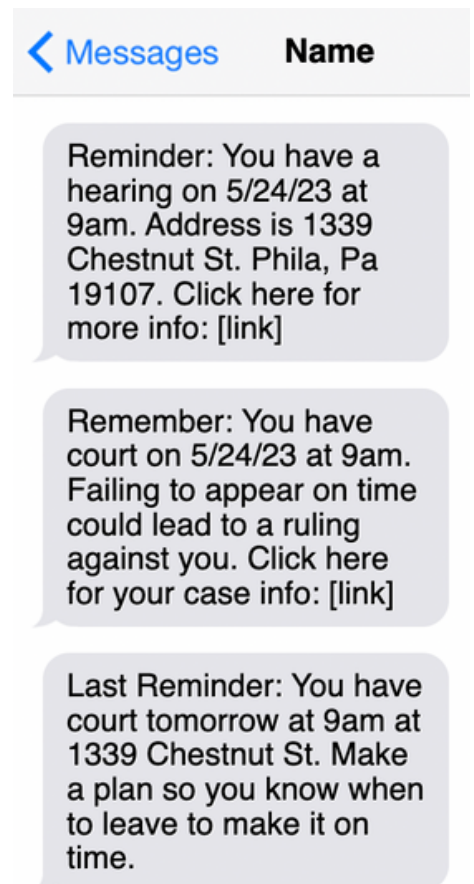
Behavioral science has shown that sending a simple reminder can mitigate mental processes that can interfere with a person's ability to remember or plan for their upcoming hearing.¹⁰

MESSAGE CONTENT

There are various behavioral strategies courts can use in their messaging content. These include "loss aversion" and "plan-making" (or a combination of both).¹⁰

Loss aversion focuses on what the person can lose if they fail to appear to their hearing.¹⁰ People tend to feel a loss more than a gain (for example, missing your train vs. getting to your destination an hour early).

Plan-making encourages people to plan for their court date to help them feel confident about their ability to make it to their hearing ("track how long it takes to get to court so you know when to leave-make a plan.") Effective messages contain **both** strategies, as shown in our example.¹¹



HOW TO IMPLEMENT TEXT REMINDERS

The most effective way to implement a text message reminder program would be to automatically enroll all parties to a suit to receive reminder text messages. A court could easily do this if they already use a "skip tracing" software, which is software some courts use that searches available databases for up-to-date contact information, to help locate individuals.¹²

NYC OPT-IN TEXT REMINDER

If it is difficult for a court to obtain parties' cellphone numbers, the process could be "opt-in." For an opt-in program, the court summons could include easy to understand instructions for people to follow so that they can sign up to receive text message reminders about their upcoming hearing date.¹³ An example of such a message could be: "Text 'Go' to 74788 to sign up for text reminders for your hearing."

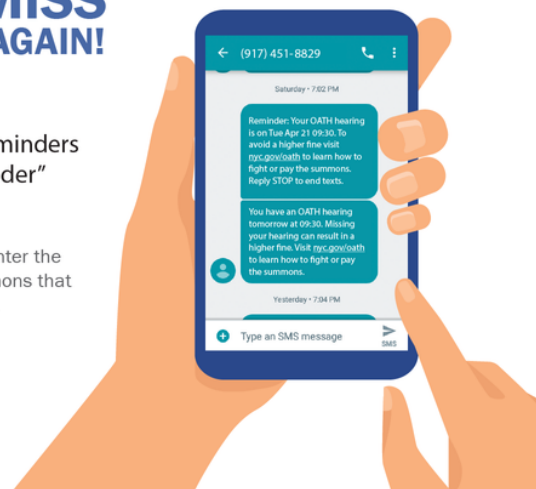


**NEVER MISS
A HEARING AGAIN!**

Opt-in for text message reminders
by texting "OATHReminder"
to (917) 451-8829

You will then be prompted to enter the
summons number for the summons that
you want reminders for.

Message and data rates may apply.



QR CODE SIGN UP

Yet another way for people to opt in could be to include a QR code on the court summons for individuals to scan with their cell phone cameras and be directed to a website where they can sign up for text message reminders.



RESOURCES FOR TEXT REMINDERS

The cost of a text message is less than that of a postage stamp. Courts will need to develop a script for the messages, and for those unsure about building out this kind of infrastructure, Stanford Legal Design Lab has created a text-messaging platform designed specially for courts and legal professionals, called Wise Messenger.¹⁴



Wise Messenger has template scripts for a variety of hearing types, such as preliminary hearings, divorce proceedings, and more.¹⁴ This program has variables coded so the script can automatically grab the end receiver's personal information based on the court docket. Examples include #Name, #Date, #Courtroom, #Building, and #EventName.¹⁴

OTHER OPTIONS

Many other companies that provide automated text messaging services can provide similar services for building out your text message scripts and automating them, to make the process easier. Generally, you provide them with the information you would like sent, and they help connect the information to real data so that people can get personalized messages. Below are two examples of such providers:



COMPREHENSIBLE FORMS

Our analysis of the Philadelphia Municipal Court's records found that procedural confusion is frequently cited as a reason for failure to appear. Requests to open due to confusion were typically granted. Simpler and clearer court forms would reduce the likelihood of this confusion, promoting fairness and efficiency.

The "statement of claim" form contains a lot of information, some of which is in small text, often making heavy use of legal jargon. Given the high rate of self-representation in this field, forms should be comprehensible to individuals other than lawyers.

Complaints should:

- Be written in plain language.
- Clearly state the rights of the affected parties.
- Include instructions on how to request a continuance scheduled at convenient time
- Direct parties to potential resources for free or affordable legal assistance



Simplified complaints reduce the likelihood that parties will receive a default judgment from their lack of understanding of court procedures. Complex complaints are procedural hurdles that delay defendants in the exercise of their rights, and prevent courts from deciding cases on their merits.

FAQ FORM

Consumer debt defendants in Philadelphia sometimes do receive a document titled "Frequently Asked Questions About Small Claims Court." This form attempts to explain what a statement of claim is in plain language, provides phone numbers for legal aid services, and addresses other frequently asked questions.¹⁵

Instead of being presented in a separate document, this information should be incorporated into the initial statement of claim form. Doing so would more effectively ensure that defendants are notified of their rights, and would reduce the overall amount of paperwork involved in the process.

SIMPLIFYING THE NOTICE OF DEFAULT JUDGMENT

Relatedly, notices of default judgments should state that recipients have the right to petition to open the judgment, and provide instructions for how to do so. We noticed in our docket analysis that this is not currently the case in Philadelphia. This likely contributes to the high number of default judgments that go unchallenged.

Court form simplification would promote the efficient operation of the court, and work towards the level of procedural fairness necessary for the perceived legitimacy of the consumer debt system.

ACCESSIBLE HEARINGS

The city of Philadelphia has 1.6 million residents spread over 135 square miles.¹⁶ Any Philadelphia resident involved in a consumer debt collection case needs to travel to the one civil courthouse available for hearing these cases, located in the traffic-heavy, parking-limited center of the city.

Without personal transportation, residents in Philadelphia face travel times of up to 1.5 hours to travel to the one available courthouse that will hear their case. This does not take into consideration any unplanned detours due to construction, road closures, traffic accidents, or other ad hoc incidents.

Even with a personal vehicle, which can cut down travel time, the ability to find street parking in this centralized location is nearly impossible at 8:30 or 9:00am, and paying for a lot can be extremely cost-prohibitive, particularly for individuals who may already be in a financially precarious situation. These logistical issues can make it nearly impossible for even the most conscientious litigant to actually get to court on time.

SO WHAT CAN WE DO?

No. 1 – Increase Hearing Locations



Make available one or two additional hearing locations, such as buildings owned or leased by the city, to enhance accessibility and promote relations with the community as a whole.

No. 2 – Make Virtual Hearings More Readily Available



Virtual hearings became a necessity during the COVID-19 pandemic. They provided individuals the ability to attend their court hearings without needing to travel, find childcare, or take time off of work.

No. 3 – Provide Legal Kiosks for Internet Access



Set up "court hubs" in various locations for people to attend court and find legal resources in an area with a secure internet connection.

INCREASE HEARING LOCATIONS

The Department of Justice's Bureau of Justice Assistance has recognized the value of providing more accessible community-based spaces for resolving legal matters.¹⁷ In support of this mission, the Bureau is collaborating with The Center for Justice Innovation to administer assistance to interested jurisdictions, which can apply for free assistance to launch a community court.¹⁷



The Center for Justice Innovation can assist with:

- Training and Technical Assistance
- Community Court Grants
- Responses to Practitioner questions
- Peer-to-peer site visits

SPOKANE, WASHINGTON

In 2013, Spokane began operating a Community Court out of their downtown public library, serving residents in a community-friendly setting.¹⁸ This proved so successful in improving appearance rates and minimizing standard of living issues that in 2017, Spokane opened another Community Court in a more residential area in a local community center.¹⁸

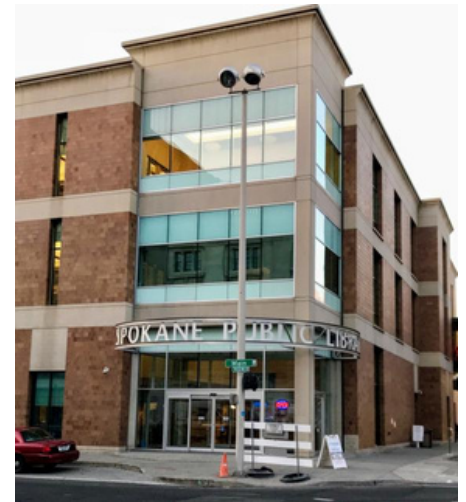


Image Courtesy of InnovativeJustice.org

Court officials state that the Community Courts help residents more easily access their hearings and be able to connect with needed services all in one place instead of needing to travel to a variety of locations. Moreover, the Court says the community centers provide a more neutral setting that sends the message that courts are willing to go where the community resides.¹⁸ Presiding Judge Mary Logan stated, "I feel fortunate to be involved with work that contributes to bringing humanity to a system that is not recognized as humane, to lower barriers to assist people gain some trust in a system..."¹⁹

VICTORIA, TEXAS

Another example of community hearings is the "outreach docket" in Victoria, Texas. Here, Judge Vanessa Heinold holds hearings in community settings across her jurisdiction to resolve cases and clear her docket.¹² Though these particular hearings are for low-level criminal offenses, they are worth mentioning in this report to illustrate the possibilities for making hearings more accessible.

During the sessions, individuals are able to speak with the DA or the judge, depending on their situation, and have credits applied to their case or find helpful resolutions for community members who attend. According to Court Administrator Tiffany Totah, the resolution of these cases has helped improve the livelihoods of people in the community. "We are lifting burdens from their lives and trying to facilitate resolutions."¹²

The Outreach Docket Team Brings Practical items:

- Laptops, Tables, WiFi Hotspots
- Financial Affidavits
- Any other necessary court paperwork

The court officials involved:

- The Municipal Court Judge
- The District Attorney
- A Court Administrator or Clerk



Image Courtesy of VictoriaTx.gov

The hearing process includes:

- Looking up the person's case and determining whether they need to speak with the DA or the Judge.
- Outcomes include: case dismissals, waivers, credits, community service, and payment plans.

VIRTUAL HEARINGS

The deployment of virtual hearings accelerated during the COVID-19 pandemic, giving us a lot of data and anecdotal experience to learn from regarding how virtual hearings improve access to justice. Overall, virtual hearings can help mitigate many of the issues that cause failure to appear, such as travel problems or confusion. Even if people are confused about whether or not they need to attend, the virtual hearing offers them a way to play it safe and show up, instead of having to take a day off work or account for other logistical issues to travel to the courthouse.

VIRTUAL HEARINGS IMPROVE APPEARANCE RATES

People with hourly jobs or non-flexible work schedules can join remotely more easily from their job, particularly when the demands of the job do not allow for people to take time off for a hearing. For example, one judge on an International Legal Technology Association (ILTA) panel reported that during a virtual child custody hearing, the mother joined from an empty church, which was adjacent to her retail store.²⁰



Judges also found that defendants and plaintiffs are far more likely to attend because the familiarity of using video on their phones. Appearing by phone was less intimidating than being physically present in court.²⁰ In some jurisdictions, remote practice allows litigants, including those who are self-represented, to schedule hearings at specific times (or within short time windows). This practice provides court users greater precision and flexibility in scheduling a court appearance.²⁰

According to former Michigan Chief Justice Bridget Mary McCormack, the rate of participation has "literally flipped. The number of people who now show up is as high as the number of people who didn't show up in physical courtrooms."²¹

VIRTUAL HEARINGS IMPROVE EFFICIENCY

Judges interviewed in a Texas report written by the National Center for State Courts (NCSC) noted that remote hearings provide benefits to the court as well. They reported that virtual hearings led to more efficient use of resources, such as the management of limited courtroom space, the reduced need to travel allowing for more hearing time, and improved access to court reporters, interpreters, and pro bono legal representatives, all of which can be hard to coordinate in person.²²



VIRTUAL DEBT COLLECTION HEARINGS

According to the National Conference of State Legislatures, "the type of hearing is more important than the type of case. Remote technology works best for hearings that are short in duration, limited in scope or affect people's ability to get on with their lives."²³ This lends support for hosting debt collection hearings virtually, at least in situations where both parties are comfortable with online arrangements, and where evidence and arguments can fairly be presented.

INTERNET ACCESS ISSUES

According to the NCSC's report on virtual hearings in Texas state courts, challenges remain even with virtual hearings.²⁴ For example, virtual hearings do not help bridge any accessibility gap when parties lack access to broadband internet.²⁴ This lends support for our legal kiosk intervention described in the next section.

LEGAL KIOSKS

Legal kiosks present an opportunity for courts to address the digital divide and provide access to online services to users to access online dispute resolution options, e-filing, and virtual hearings.²⁵ Having kiosks strategically placed in community centers throughout the jurisdiction also helps users experiencing travel and transportation issues access their hearings and other legal resources.

THE MINNESOTA LEGAL KIOSK PROJECT

In 2020, Reach Justice Minnesota realized how the COVID-19 pandemic drastically impacted people's ability to access legal aid services, so it placed over 250 legal kiosks in community locations across the state. Locations include public libraries, health centers, housing shelters, and other non-profit locations.²⁶

According to Dori Streit, Executive Director of Legal Aid Service of Northeastern Minnesota, “[the kiosks] are helping us to connect with client communities in new ways to deliver on the promise of equal justice for all.”²⁶

What are Legal Kiosks?

- They are internet connected computers that are set up to help people navigate the online legal system.

How to Implement Legal Kiosks

- Bring technology to community locations where people already go
- Create a user-friendly experience with desktop shortcuts to court websites and other online legal resources.



COMPLIANCE CHECKLIST

A recent Pew report noted that subject matter experts attribute Philadelphia's high rate of default judgments stemming from lack of notice to "questionable service methods and practices."²⁷ This reflects national practices. In addition, a 2010 Federal Trade Commission (FTC) report noted that debt collectors sometimes engage in unfair practices when filing suits and collecting on judgments.

The FTC reported practices such as "(1) filing suits based on insufficient evidence; (2) failing to properly notify consumers of suits; (3) the high prevalence of default judgments; (4) improperly garnishing exempt funds from bank accounts; and (5) suing or threatening to sue on time-barred suits."²⁸ Some of these problems have also been noted in debt cases in Philadelphia Municipal Court.²⁹

A compliance checklist confirming that a contract between the parties exists, that the plaintiff has incurred damages (in the form of unpaid debt), and (if the plaintiff has purchased the debt from the original owner) proof of ownership of the debt, would help ensure that default judgments are only entered in legally permitted circumstances. Our clinic has previously proposed such a checklist, much of it based on existing Municipal Court Rules.³⁰

WISCONSIN CHECKLIST FOR DEFAULT JUDGMENT

A recent Pew issue brief noted that a court in Wisconsin has developed a checklist for clerks to verify the sufficiency of consumer credit complaints.³¹ The Wisconsin model has been cited by a court-led initiative in Michigan seeking to improve public trust in its consumer courts.³² Some of the checkboxes in Wisconsin include:

- Identify the Transaction
- Facts Constituting Default
- Amount of Estimated Recovery

While legal requirements (and therefore the elements necessary for compliance) vary depending on jurisdiction, the Wisconsin example demonstrates that compliance checklists are a feasible intervention.

SERVICE CHECKLIST

A similar checklist should be implemented to review affidavits of service. The most frequently cited reason for a party's missing their hearing in 2022 was lack of service, which often corresponded with defective affidavits of service. A service checklist requirement would reduce these occurrences.

CONCLUSION

This report has provided several solutions for courts looking to reduce default judgment rates. Our solutions are relatively easy to implement, allowing courts to experiment and determine which solutions work best for the populations they serve. Some of these solutions will be more effective in one jurisdiction over others, and over time other aspects of the consumer debt system may change, necessitating creative strategies for maintaining fairness.

With this report, we are contributing to the ongoing conversation about fairness in consumer court. We aim to move the discussion of ideas towards their actual implementation. Some of our recommendations are reminders of recommendations that this clinic has made in the past. Advocates will continue to remind courts of the necessity for these and related initiatives, and we look forward to working on their implementation with courts interested in access to justice.

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29. While it is generally conceded that unfair practices may have been an issue in the past, our research suggests that this is likely an ongoing issue. In our docket analysis of cases from 2022, we saw many petitions to open default judgments granted in cases where defendants alleged lack of substantiation of the debt, no relationship with the plaintiff, lack of service, and other legal deficiencies.

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31. The Pew Charitable Trusts, “Why Civil courts Should Improve Defendant Notification” (2023), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2023/03/why-civil-courts-should-improve-defendant-notification>; State of Wisconsin Circuit Court, La Crosse County, “Sufficiency of Consumer Credit Complaint Checklist,” https://lacrossecounty.org/docs/default-source/clerk-of-courts/consumercreditcomplaintchecklist.pdf?sfvrsn=c6fb101d_2.

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