

**ADMINISTRATIVE DIRECTIVE
OF THE
CHIEF JUDGE OF THE COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

NO. 2011-1

CONSUMER DEBT COLLECTION ACTIONS

This 16th day of March, 2011,

WHEREAS, pursuant to *10 Del. C. §1302(d)*, the authority being vested in the Chief Judge as the administrative head of the Court during the term of his appointment; and

WHEREAS, Court of Common Pleas Civil Rule 8, “General Rules of Pleading,” sets forth the basic requirements of pleading required by Delaware law; and

WHEREAS, Court of Common Pleas Civil Rule 11, “Signing of Pleadings, Motions, and other Papers: Representations to Court, Sanctions,” requires certification by counsel that every pleading, motion or other paper filed meets the standards set by the Court; and

WHEREAS, consumer debt collection actions filed with the Court continue to grow at an exponential rate, straining the court system and imposing an increased burden upon judicial resources; and

WHEREAS, the Court seeks to better manage consumer debt collection litigation to improve efficiency and fairness to litigants; and

WHEREAS, the Court finds it prudent and consistent with sound public policy and due process to adopt and implement standardized procedural guidelines in consumer debt collection actions to ensure fairness to all litigants and improve efficiency in the administration of justice.

NOW, THEREFORE, IT IS DIRECTED that:

1. **Pleading Requirements For Complaints In Consumer Loan or Credit Card Debt Collection Actions:** In any cause of action initiated in a consumer loan or credit card debt collection action, the following information shall be set forth with specificity by the plaintiff/creditor:

- a. the caption shall name both the original creditor and the current assignee;
- b. the name of the original creditor and the last four digits of the original account number of the debt;

- c. the name of the current owner of the debt;
- d. the full chain of the assignment of the debt, if the action is not filed by the original creditor; and
- e. the amount claimed as currently owed, broken down by principal due at the time of default, interest, fees and other charges.

2. **Complaint in Consumer Loan or Credit Card Debt Collection Litigation Shall Be Accompanied by Certain Documents:** In any cause of action initiated by a plaintiff/creditor in a consumer or credit card debt collection action, the following materials shall be attached to the complaint by the plaintiff/creditor:

- a. a copy of the original contract or other documentary evidence of the original debt; and
- b. a copy of the assignment or other documentary evidence establishing that the plaintiff/creditor is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain at least the last four digits of the original account number of the debt purchased and must clearly show the debtor's name associated with that account number.

3. **Motions to Compel Discovery:** In any motion filed pursuant to Court of Common Pleas Civil Rule 37(a), the moving party must certify pursuant to Rule 37(e)(1) regarding efforts to reach an agreement before applying to the Court for relief. All parties are expected to consult with one another in good faith to resolve any discovery dispute prior to filing discovery-related motions.

4. **Judgment.** If it appears that a plaintiff has failed to comply with this Administrative Directive, the Court may, on motion or *sua sponte*, deny the entry of judgment, or withdraw entry thereof.

5. **Trial:** The Court will be guided by the following considerations:

- a. If the plaintiff/creditor is not prepared for trial on the assigned trial date, but the defendant/debtor appears and is prepared for trial to proceed, the Court may:
 - i. dismiss the action with or without prejudice;
 - ii. take other action such as continuing the matter, or enter such order(s) as justice requires, including awarding costs to defendant/debtor.
- b. If the defendant/debtor either fails to appear or is not ready to proceed to trial on the assigned trial date, but the plaintiff/creditor does appear and is prepared to proceed to trial, the Court may:

- i. grant judgment by default pursuant to the Court's procedure outlined herein; or
- ii. take other action such as continuing the matter, or enter such order(s) as justice requires, including awarding costs to the plaintiff/creditor.
- c. If no party appears on the assigned trial date or both parties appear and neither is prepared for trial, the Court may:
 - i. dismiss the action with or without prejudice; or
 - ii. take other action such as continuing the matter, or enter such order(s) as justice requires.

6. **Attorneys' Fees:** Pursuant to Rule 1.5(a) of the Delaware Lawyers' Rules of Professional Conduct, attorneys' fees must be reasonable.

7. This Administrative Directive shall apply to all civil consumer debt actions within its scope filed on or after July 1, 2011.

BY THE CHIEF JUDGE:

S//Alex J. Smalls

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Chief Judge

Court of Common Pleas

cc: Judge John K. Welch
Judge Rosemary B. Beauregard
Judge Kenneth S. Clark, Jr.
Judge Charles W. Welch, III
Judge Joseph F. Flickinger, III
Judge Andrea L. Rocanelli
Judge Anne H. Reigle
Judge Eric M. Davis
Commissioner Joseph W. Maybee
Commissioner Mary M. McDonough
Carole B. Kirshner – Court Administrator
Deborah Mowbray – Clerk of Court
Teresa Lindale – Clerk of Court, Kent County
Wanda Smith – Clerk of Court, Sussex County

