

REPORT & RECOMMENDATIONS

# Advancing Justice for All in Debt Collection Lawsuits



Michigan Justice for All Commission

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# Overview

Since January 2021, the Michigan Justice for All Commission has been working toward creating a path to a better civil justice system – one that is welcoming, understandable, collaborative, adaptive, and trusted.<sup>1</sup> To help achieve the goals set forth in its strategic plan, the Commission created the Debt Collection Work Group, which has developed data-driven recommendations to simplify and streamline processes, rules, and laws so that people can more effectively navigate court processes and, when appropriate, address their debt collection cases without the assistance of an attorney. In addition, the Work Group recommends modernizing long outdated laws to help ensure that courts are adaptable to an ever-changing world and are seen as a trusted place where both creditors and consumers can resolve their problems.

With the help of The Pew Charitable Trusts and January Advisors, the Work Group sought to understand the consumer debt collection landscape in Michigan – the vast majority of which are filed in Michigan’s district courts.

- Debt collection cases are dominating Michigan’s District Court, second in filing rate only to traffic cases in 2019. Ten plaintiffs file almost three-quarters of debt collection cases.
- Third-party debt collectors are filing more cases in Michigan’s district courts, increasing 40% over the last decade and constituting 60% of all debt collection cases in 2019. The three plaintiffs with the highest filing rates are all third-party debt collectors.
- While debt collection cases are filed across the state, more cases are filed against low- and moderate-income Michiganders.
- Default judgments are entered in almost 70% of debt collection cases after service is recorded as complete.
- Racial disparities exist with debt collection litigation.
  - The filing rate against people living in majority Black communities is two to three times higher than case filings against people living in majority non-Hispanic White communities. While the filing rate decreases with increasing income for people living in majority White communities, the filing rate remains fairly consistent across incomes for people living in majority Black communities.
  - People living in majority Black communities are also more likely to have cases filed against them dismissed for failure to serve. Once service was recorded as completed, however, people living in majority Black communities were more likely to have a default judgment in their case.
- Once a judgment is entered, the judgment creditors seek garnishments in 78% of cases.
- Creditors are almost always represented in debt collection cases, but consumers are rarely represented. Legal aid providers lack the resources to offer full representation in the vast majority of cases. When a consumer is represented by counsel, their case is 10 times more likely to be dismissed with prejudice and twice as likely to reach a settlement.

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In addition, the Work Group reviewed the procedures for service of process and rules related to garnishments in Michigan and found both failed to adapt with technology and our modern financial world.

Based on these findings, the Work Group recommends: <sup>i</sup>

1. Modernizing serving of process rules to help ensure that consumers receive notice of the lawsuit filed against them
2. Increasing the amount of information to be included in the complaint to help ensure that the plaintiff has provided sufficient evidence to support a default judgment
3. Creating court documents and forms that consumers can easily understand and use
4. Improving our understanding of debt collection in Michigan through a more optimized use of court records
5. Engaging with consumers who have faced debt collection litigation to understand the barriers they encounter in court processes
6. Developing pilot projects to find alternatives to litigation that help creditors, consumers, and courts

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<sup>i</sup> The JFA Debt Collection Work Group discussed and agreed upon several recommendations related to garnishment protections, which were later determined to be outside the scope of reforms to be addressed by the Justice For All Commission. These proposed changes, which would modernize and update garnishment protections to protect assets consumers need, included:

- a. Protecting at least 40 hours per week at the state minimum wage from paycheck/periodic garnishments;
- b. Protecting a minimum amount (40 hours of the state minimum wage) in a bank account from garnishment;
- c. Better protecting public benefits (specifically all federal and state public benefits, including unemployment insurance, veterans, and public assistance benefits; and the Earned Income Tax Credit) from garnishment;
- d. Protecting the value of an operable vehicle up to \$15,000;
- e. Protecting the family home at a value of \$33,000 (with future adjustments for inflation);
- f. Increasing protections for tools of the trade to \$10,000 (with future adjustments for inflation);
- g. Increasing protection of personal property to \$10,000 (with future adjustments for inflation); and
- h. Revising garnishment forms to provide consumers with the information they need in an understandable manner.

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# Work Group Members

The Michigan Justice for All Commission Executive Team invited a broad range of practitioners and judges with diverse perspectives to participate in the Debt Collection Work Group. The Work Group was composed of District Court judges, attorneys with experience representing both low- and moderate-income consumers, attorneys with experience representing creditors, members from the Attorney General's office, and a consumer law academic.

- **Hon. Timothy Kelly**  
74th District Court, JFA Commission Member, Work Group Co-Chair
- **Kathryn Hennessey**  
Former SBM General Counsel, Work Group Co-Chair
- **Prof. Mathew Andres**  
Clinical Assistant Professor of Law, University of Michigan
- **Lorray Brown**  
Co-Managing Attorney, Michigan Poverty Law Program
- **Hon. Michael Carpenter**  
75th District Court
- **Lori Frank**  
Attorney, Markoff Law PLLC
- **Elisa Gomez**  
Staff Attorney, Lakeshore Legal Aid
- **Nicole Huddleston**  
Attorney, Detroit Justice Center
- **Tera Jackson-Davis**  
Civil Division Director, 36th District Court
- **Joseph Jammal**  
Stenger & Stenger, PC
- **Kate Klaus**  
Shareholder, Maddin Hauser
- **Aaron Levin**  
Assistant Attorney General, Corporate Oversight Division, Michigan Dept of Attorney General
- **Michael Nelson**  
Attorney, Michael Nelson Law
- **Robert Phillips**  
Attorney, Phillips & Phillips, PC
- **Scott Teter**  
Division Chief, Financial Crimes Division, Michigan Dept of Attorney General

Special assistance was provided by Natasha Khwaja, Christopher Blythe, and Samantha Bigelow.

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# Introduction

Debt collection cases are flooding state civil courts across the country,<sup>2</sup> and household consumer debt is on the rise.<sup>3</sup> Michigan is no exception to these trends. An estimated 26% of all Michiganders with a credit report have at least one debt in collections, as do 53% of people living in communities of color.<sup>4</sup> Many of these debts – which can originate as past due credit card balances, medical bills, or auto loans – will make their way to Michigan District Courts where, in 2019 alone, over 200,000 debt collection cases were filed, representing a staggering 37% of all civil cases filed in District Court.

Debt collection cases stem from delinquent non-mortgage consumer debts. While the specific causes of delinquent consumer debt varies by the individual, national data on household expenditures suggests that much of it can be attributed to the “plastic safety net,” or the use of credit to cover basic living expenses.<sup>5</sup> In 2019, 37% of Americans reported that they would be unable to completely cover an unexpected expense of \$400 and would need to resort to other measures such as putting that amount on a credit card or borrowing from a bank, payday lender, or friend or family member.<sup>6</sup> This phenomenon is particularly pronounced for communities of color, who have fewer assets, less access to low-interest credit,<sup>7</sup> and less of an ability to borrow from friends or family.<sup>8</sup>

Consumer debts and the costs added by collection and litigation also damage credit scores, making it more difficult to obtain housing, employment, or small business loans, all of which negatively affect family wealth building and economic mobility.<sup>9</sup> Credit cards account for around 15% of the value of all non-mortgage consumer debts in the country; however, due to the high compound interest rates often applied, credit cards account for the largest share of outstanding interest consumers owe on non-mortgage debts.<sup>10</sup> This means that the amount of credit card debt recovery sought in debt collection litigation is often far more than the amount that the consumer actually spent on goods due to the interest and fees set forth in the user agreement.<sup>11</sup> Auto debt, which represents almost 11% of the debt collection cases filed in Michigan, can be particularly

damaging to credit scores and often has a long-term effect on consumers' ability to obtain a car for basic transportation needs.<sup>12</sup> Further, medical debt, which represents 9% of Michigan's debt collection cases, can impact people's ability to afford basic needs; a recent national survey on medical debt found that 63% of Americans with medical debt reported cutting spending on food, clothing, and other basic living expenses, and 28% delayed buying a home or seeking further education to pay off medical debts.<sup>13</sup>

While many of the policies and circumstances that have led to more debt collection lawsuits fall outside the purview of the judiciary,<sup>14</sup> courts play an important role in influencing and managing debt collection lawsuits. First, courts are a key source for data and information. When creditors and debt collectors are unable to collect on a debt through informal means, they turn to the courts, which in Michigan is primarily its state District Courts. Therefore, the data and information District Courts have on these cases can help policymakers understand debt collection litigation and its impact on consumers, creditors, and debt collectors. This data can further help policy makers identify problems that occur before litigation is initiated surrounding areas such as lending practices, access to credit, and pre-litigation collection efforts. Second, the policies that states adopt through legislation and court rules directly impact both creditors and consumers. For example, some states have policies that further financially burden consumers by imposing additional costs in the form of court fees, attorney's fees, and post-judgment interest. In some cases, these costs are so great that taxpayers are forced to bear the burden when a consumer is unable to secure housing, employment, and transportation due to their inability to pay off the debts they owe.

All too often these cases are a lose-lose-lose situation for courts, creditors, and consumers. While courts receive considerable revenue from these cases in the form of filing fees and court costs,<sup>15</sup> these cases can overwhelm state courts. In Michigan, debt collection cases are second only to traffic cases in volume of civil or criminal case type filed in District Courts, and they take time and resources from court staff who

are already stretched too thin. While some national third-party debt buyers have profited by using courts to collect debts they have purchased for pennies on the dollar,<sup>16</sup> when pursuing litigation, creditors incur attorney and court fees with no guarantee of collecting from the consumer and would often prefer to reach a voluntary payment agreement with the consumer prior to commencing suit. For consumers, these cases can be financially devastating, resulting in garnishments of wages, bank accounts, and state tax returns, and thus jeopardizing their ability to pay other basic expenses, including rent, utilities, and groceries.<sup>17</sup>

Debt collection cases primarily impact low- and modest-income households. 50% of debt collection cases filed in Michigan were filed in neighborhoods where the median income was \$50,000 or less.

Debt collection lawsuits disparately impact Black communities.<sup>18</sup> Michiganders living in communities that are majority Black are 2.4 times as likely to have a debt in collection compared to people living in White-majority communities. This disparity plays out in Michigan's District Courts as well. At all levels of neighborhood income, people living in neighborhoods that are majority Black in Michigan see close to double the debt collection case filing rate compared to people living in White-majority neighborhoods.

For the past year, the Michigan Justice for All Commission Debt Collection Work Group has partnered with The Pew Charitable Trusts and January Advisors to find data-driven solutions to the problems surrounding debt collection litigation in Michigan's District Courts. The Work Group is composed of individuals with a diverse range of experiences in debt collection litigation, including district judges, creditor attorneys, consumer attorneys, and academics.

## Data Dashboard



The Work Group reviewed data from the Judicial Data Warehouse (JDW) and the Judicial Information System (JIS) from January 2010 to September 2021 to examine rates and trends in case filings, dispositions, and various other data points. We have released an [interactive dashboard](#) of debt collection lawsuits filed in Michigan's District Courts from 2010-2021 alongside this report. The dashboard can be filtered by court or county, year, and plaintiff type. It shows case filing totals and rates, along with case outcomes and defendant representation.

# Debt Collection 101: How a Delinquent Debt Becomes a Garnishment



## Findings: Case Filing Policy and Trends

*Nationally, debt collection case filings are inundating state civil court dockets, and third-party debt buyers represent an increasing share of these cases. Findings show that Michigan reflects these national trends, but with some key differences.*

### AT A GLANCE

1. Debt collection cases are dominating Michigan's District Courts.
2. Ten plaintiffs file almost three quarters of debt collection lawsuits in Michigan, a substantially larger share than other states.
3. Filings by debt buyers have significantly increased in Michigan.
4. Debt collection cases have relatively low amounts in controversy.
5. Debt collection lawsuits impact consumers across the state.
6. Low-income communities in Michigan have high debt collection case filing rates
7. Black communities in Michigan have high debt collection filings rates across income levels.
8. Michigan trails other Great Lakes states in debt collection policy reform.

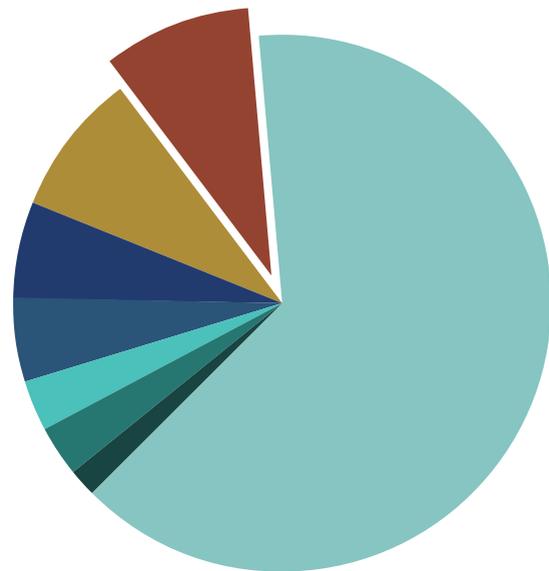
## 1 Debt Collection Cases Are Dominating Michigan’s District Courts

From January 2010 to September 2021, over 1.94 million debt collection cases were filed in Michigan District Courts, representing an estimated \$3.1 billion in controversy.<sup>ii</sup> In 2019, debt collection cases were second only to traffic cases in the volume of cases filed, representing 9% of all District Court cases and 37% of all civil District Court cases. Debt collection cases have surpassed summary proceedings as the most common civil or criminal, non-traffic case type in Michigan.

The vast majority of cases are filed in civil district court, rather than small claims court. While the median amount in controversy for these claims is well below the \$6,500 jurisdictional limit for small claims court,<sup>19</sup> as will be discussed in more detail below, creditors are almost always represented by counsel, which disqualifies them from small claims court because Michigan’s small claims court does not allow parties to be represented by counsel.<sup>20</sup> Credit unions, however, are one type of creditor that use small claims court to collect debts, and they are represented by their staff rather than attorneys. The Work Group did not focus on these small claims cases for this first set of findings and recommendations.

<sup>ii</sup> This number is based on the median amount in controversy for debt collection cases in Michigan, which is approximately \$1,600, with most cases ranging from \$800 to \$4,000.

Debt Collection Cases Are Second in Volume Only to Traffic Cases Filed in Michigan District Courts



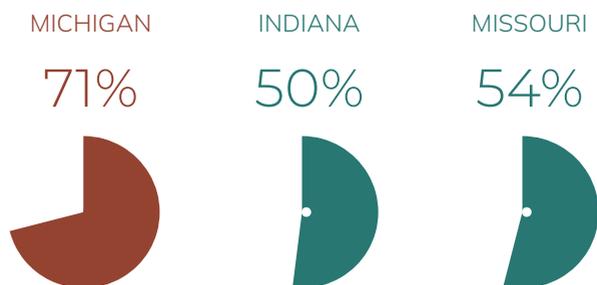
See Appendix A for full methodology on how debt collection cases were classified.

Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2017-2019.

## 2 Ten Plaintiffs File Almost Three Quarters of Debt Collection Lawsuits in Michigan, A Substantially Larger Share Than Other States

Michigan’s high case filing rates are driven primarily by a small number of high-volume plaintiffs, which file a substantially larger percentage of cases in Michigan compared to other states. In Michigan, debt collection lawsuits filed by the 10 highest volume plaintiffs made up a substantial majority (71%) of these cases filed from 2020-2021. While there is limited court record data available on debt collection lawsuits across the country, Michigan is comparable to two states that do have such data available: Missouri and Indiana. The top filer burden for debt collection lawsuits in Indiana and Missouri is approximately 20% lower than Michigan, even though all three states have comparable lawsuit and pre-litigation in collection rates. In fact, the top five plaintiffs in Michigan file a greater proportion of cases (55%) than the top 10 plaintiffs in Indiana (50%) and Missouri (54%).

### Top Filer Burden from 2020 - 2021



Source: January Advisors

### Highest Volume Debt Collection Filers in Michigan

Plaintiff	% of Cases
1. Midland Funding	20%
2. Portfolio Recovery Assoc	12%
3. Jefferson Capital Systems	8.8%
4. Capital One Bank	7.8%
5. LVNV Funding	7.6%
6. Credit Acceptance Corp	6.3%
7. Cavalry SPV 1	3.2%
8. Discover Bank	2.6%
9. Razor Capital	1.8%
10. Bronson Healthcare	1.5%

Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2017-2019.

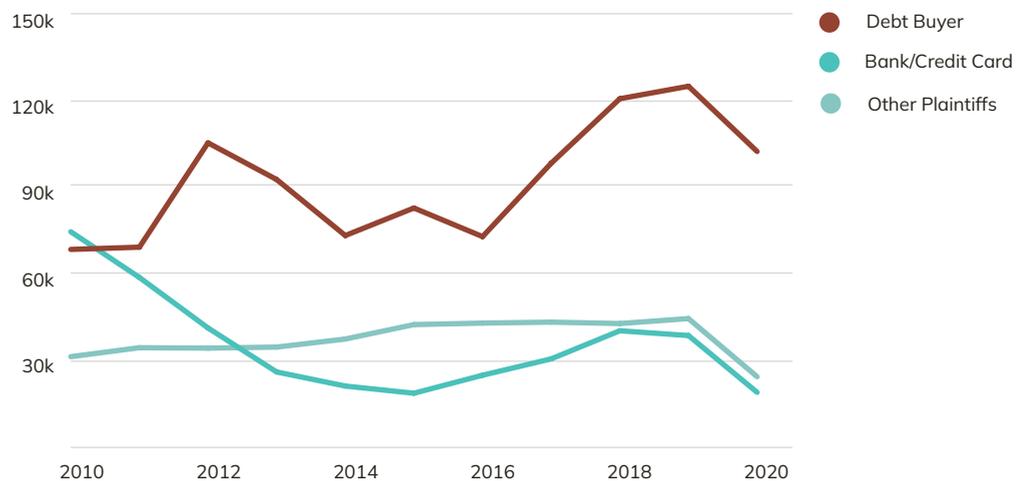
### 3 Filings by Debt Buyers Have Significantly Increased in Michigan

Debt buyers purchase portfolios of delinquent or charged-off debts from creditors, such as credit card or utility companies, at highly discounted rates when a creditor ceases its own collection efforts on particular debts.<sup>21</sup> 60% of the debt collection cases filed in Michigan are debt buyers, with the top three filers by volume all being debt buyers. The remaining 40% of debt collection cases are brought by original creditors, including banks, credit card companies, auto loan companies, hospitals, and retailers.

The rise in total debt collection cases in the second half of the decade was driven almost entirely by debt buyer companies. Between 2016 and 2019, the number of cases filed by debt buyers increased from 73,000 to 125,000 annually. By 2019, cases filed by debt buyers represented 60% of all debt collection cases filed in Michigan, up from 40% in 2010.

Debt buyer cases present unique concerns because their business is based on purchasing high volumes of debts, and the consumers do not have any relationship with debt buyers until the debt buyers initiate their collection efforts. The consumer may not recognize the debt buyer’s name and think communications from them are a scam and ignore collection efforts and court documents, raising more barriers to consumers participating in court processes.<sup>22</sup> Debt buyer cases also present hurdles in understanding the types of debts for which consumers are sued. While it is possible to make some assessment as to the origin of the underlying debt claim based on the plaintiff’s name (e.g., a debt claim brought by a hospital is likely a medical debt), this cannot be done with debt buyers because they purchase portfolios from a variety of original creditors.

Cases Filed by Debt Buyers Are Increasing as Cases Filed by Banks and Credit Card Companies Are Decreasing



Number of debt collection cases by type of plaintiff, 2010-2021. Plaintiff type is based on classification of 100 plaintiffs who filed the most general civil cases in Michigan District Courts.

Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2010 - 2021.

Debt Buyers Filed Almost 60% of Debt Collection Cases in Michigan from 2017-2019.

Plaintff Type	Total Cases	% of Cases
Debt Buyer	343,356	58.8%
Bank/Credit Card	110,049	18.8%
Auto	62,402	10.7%
Medical	52,397	9%
Student	7,677	1.3%
Payday Loan	2,920	0.5%
Retail	2,828	0.5%
Municipal	2,691	0.5%

Based on classification of the top 100 plaintiffs who filed general civil cases in Michigan’s District Courts from 2017-2019.

Note: “Retail” includes stores acting as original creditors, making direct loans to consumers for the purchase of products they directly sell such as furniture, appliances, and jewelry. Store credit cards would be included in the bank/credit card or debt buyer category. All plaintiffs, except Debt Buyers, are original creditors.

Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2017-2019.

## 4 Debt Collection Cases Have Relatively Low Amounts in Controversy

While debt collection cases represent a large volume of District Court cases, most of these claims are for relatively small sums of money. The median amount in controversy was \$1,600 among courts where data was available in 2018-2019, which is slightly higher than the median pre-filing amount of debt collection in Michigan of \$1,375 based on 2022 credit panel data.<sup>23</sup> The middle 50% of cases were for amounts between \$850 and \$3,700, meaning that the amount of controversy for 75% cases is under \$3,700.

This data aligns with national data that indicates consumers do not have an adequate financial safety net to cover unexpected expenses; in 2019, 37% of Americans reported that they would be unable to completely cover an unexpected expense of \$400 and would need to resort to other measures such as putting that amount on a credit card or borrowing from a bank, payday lender, or friend or family member.<sup>24</sup>

## 5 Debt Collection Lawsuits Impact Consumers Across the State

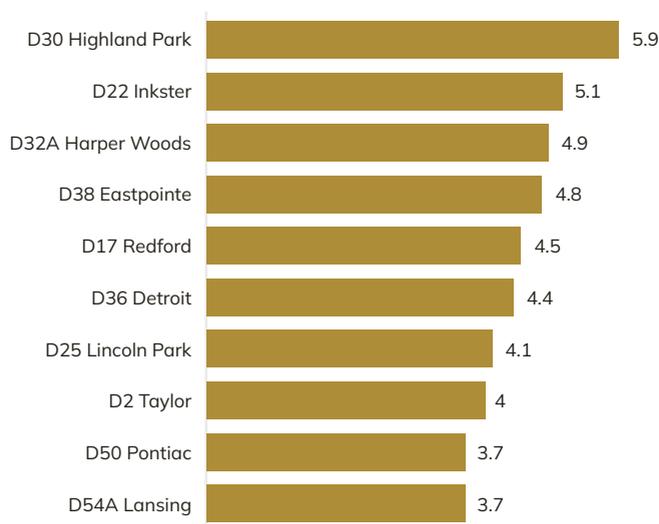
The vast majority of debt claims are filed in District Courts that cover the population-dense urban and suburban areas such as Detroit, Grand Rapids, Kalamazoo, and Lansing. Indeed, Detroit’s 36<sup>th</sup> District Court alone averaged almost 30,000 debt collection filings between 2017-2019, which represents 15% of all debt collection filings in Michigan.

The number of filings, however, is impacted by the size of population in each District Court’s jurisdiction. Detroit’s 36<sup>th</sup> District Court has the most populous jurisdiction of all of Michigan’s District Courts. Looking at case filing from a per capita perspective – the number of case filings per 100 residents – other District Courts have higher debt collection filing rates. Between 2017-2019, Highland Park (D-30), Taylor (D-23), Inkster (D-22), and Romulus (D-34) District

Courts had higher average annual filings rates than Detroit’s 36<sup>th</sup> District Court’s average annual filing rate of 5.1 cases per 100 residents. Highland Park – an enclave city surrounded by Detroit with a 46% poverty rate and average household income of \$20,666<sup>25</sup> – had the highest per capita filing rate during this time period with an annual average rate of 13 cases filed per 100 residents.

With the exception of Van Buren County (D-7), the ten District Courts with the highest per capita debt collection filing rates are all located in the Detroit metro area, representing over 62% of all debt collection cases filed between 2017 and 2019. Debt collection litigation, however, affects consumers across the state. District Courts across Michigan saw above average debt collection case filings rates – over 3 per 100 residents – between 2017-2019. This includes more urbanized areas like Lansing (D-54A), Flint (D67-5), and Muskegon (D-60) and less urbanized areas like the 7<sup>th</sup> District (Van Buren County), the 80<sup>th</sup> District (Clare and Gladwin counties), the 84<sup>th</sup> District (Missaukee and Wexford counties), and the 88<sup>th</sup> District (Alpena and Montmorency counties).

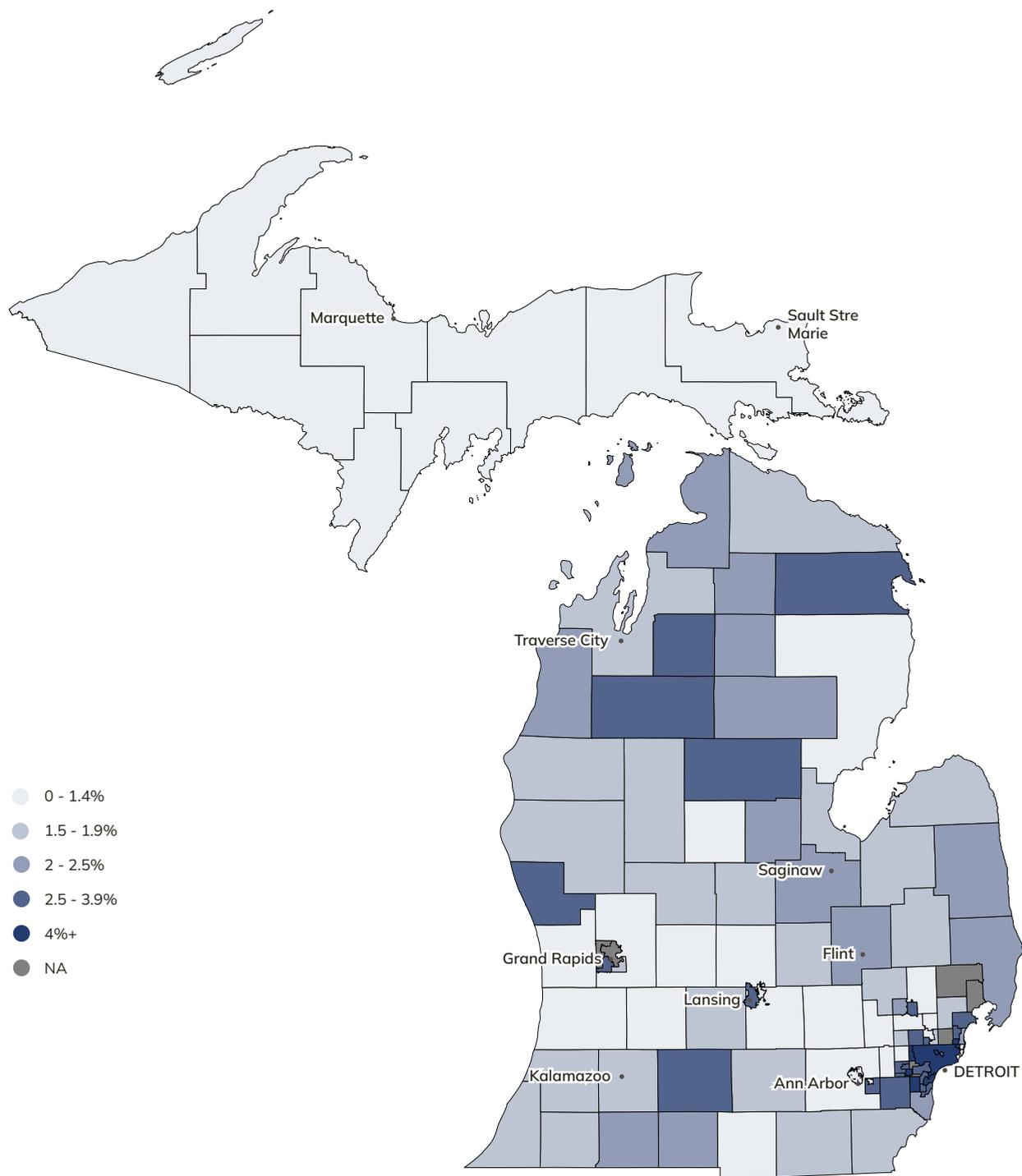
### District Courts in the Detroit Metro Area Have the Highest Case Filing Rates



Average cases filed per 100 residents from 2017-2019.

Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2017-2019.

### High Case Filing Rates Found in Northern Rural Areas (Clare, Gladwin, Missaukee, Wexford, Alpena, and Montmorency Counties)



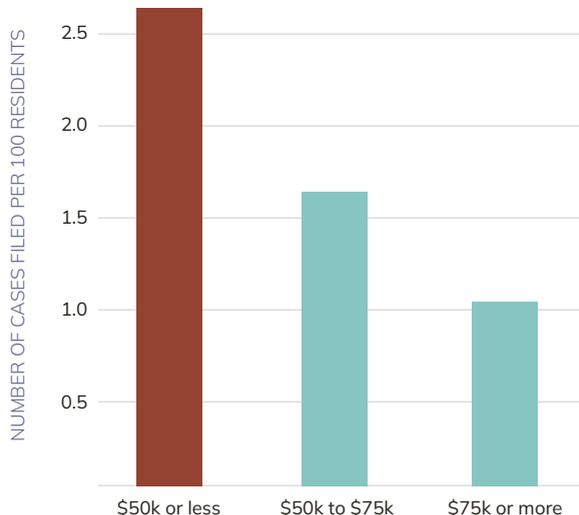
Michigan district courts by number of debt collection cases filed annually, 2017-2019.

Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2017-2019.

## 6 Low-Income Communities in Michigan Have High Debt Collection Case Filing Rates

While debt collection cases are filed against consumers across the state of all income levels, the highest case filing rates are against low-income consumers. Half of all debt collection case filings in Michigan are filed against consumers living in neighborhoods with median household incomes of \$50,000 or less. Debt collection cases are disproportionately filed against residents of neighborhoods with the lowest incomes – four times as many cases were filed in the poorest 10% of neighborhoods (3.3 filed per 100 residents) compared to the richest 10% of neighborhoods (0.8 per 100 residents).

### Low-Income Neighborhoods Bear the Brunt of Debt Collection Filings



Number of debt collection cases filed per 100 residents by neighborhood median household income quintile from 2017-2019.

Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2017-2019. American Community Survey 2015-2019.

Middle- and high-income neighborhoods in Michigan see far fewer debt collection case filings. On average, neighborhoods where median income is \$50,000 or lower see 2.6 lawsuits per 100 residents. By contrast, middle-income neighborhoods (\$50,000-\$75,000 median income) see 1.6 lawsuits per 100 residents, and high-income neighborhoods (\$75,000-\$220,000 median income) see 1.0 lawsuits per 100 residents.

These numbers align with national data on borrowing, which show that while the amount owed on credit cards increases with increasing income, this amount becomes a decreasing percentage of monthly income and liquid assets. For example, for the bottom 20<sup>th</sup> percentile of income, the median amount owed in credit card debt was \$1,100, which represents 81% of median monthly income and 136% of liquid assets in bank accounts. If we take the median claim amount in Michigan of \$1,600, this constitutes 118% of median monthly income and 198% of liquid assets in bank accounts among these consumers. This suggests that a substantial number of consumers being sued for debt collection in Michigan could not afford to pay off their debt with their existing wages and assets.<sup>26</sup>

By contrast, those in the top 10% of income had a median amount of \$12,600 owed in unpaid credit card debt, yet this represented only 25% of median monthly income and 9% of liquid assets in bank accounts, making it financially much more feasible to make monthly payments.<sup>27</sup>

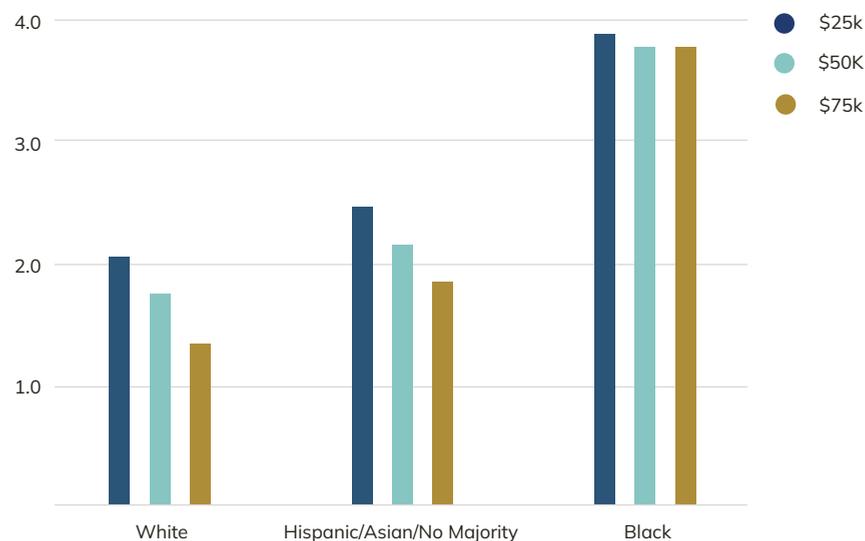
## 7 Black Communities in Michigan Have High Debt Collection Filings Rates Across Income Levels

Black Communities in Michigan Have High Debt Collection Filings Rates Across Income Levels. Data analysis from other cities – Chicago, St. Louis, and Newark – reveal that the rate of default judgments entered against consumers living in neighborhoods that are majority Black is twice as high as the rate in White-majority neighborhoods.<sup>28</sup>

Michigan experiences similar disparities. Michiganders living in communities that are majority Black are more than twice as likely to have a debt in collection compared to people living in communities that are majority White.<sup>29</sup> These disparities make

their way to Michigan’s District Court – 23% of all debt collection lawsuits filed from 2015-2019 were against consumers living in neighborhoods that are majority Black, despite only 9% of Michigan’s total population living in those neighborhoods. Based on court data, significantly more debt collection lawsuits are filed against consumers in neighborhoods that are majority Black compared to those living in neighborhoods that are majority White at all income levels. In neighborhoods that are majority Black, as income levels rise, debt collection lawsuits remain high. This goes against the trend in White and other demographic majority neighborhoods, where higher income neighborhoods see fewer debt lawsuits. For low-income neighborhoods, the filing rate against consumers in neighborhoods that are majority Black is 1.9 times higher compared to majority White neighborhoods; for higher-income neighborhoods, the filing rate against consumers in neighborhoods that are majority Black is 2.8 times higher compared to

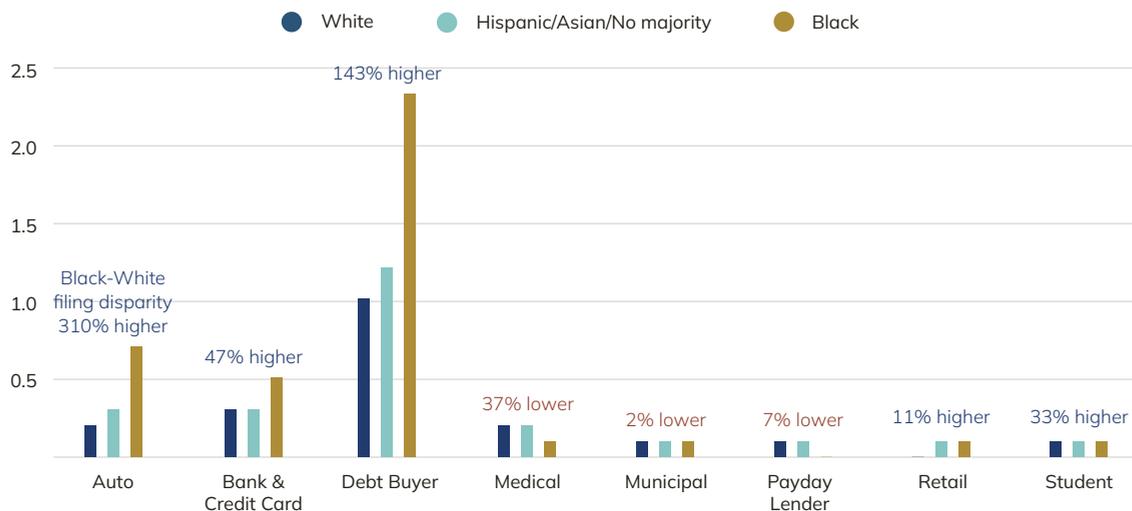
More Debt Collection Cases Are Filed Against Consumers Living in Predominantly Black Neighborhoods



Predicted annual average number of debt collection cases filed per 100 residents by census tract median household income and race-ethnic majority group. Predicted values calculated from linear regression model that includes median household income, race-ethnic majority group, their interaction, and controls for population size.

Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2015-2019. American Community Survey 2015-2019.

### Sharpest Filing Disparities for Predominantly Black Neighborhoods Found in Auto, Debt Buyer, and Credit Card Cases



Predicted annual average number of debt collection cases filed per 100 residents by plaintiff type and race-ethnic majority group among middle-income neighborhoods only (\$50,000 median household income). Patterns are similar in low- and high-income neighborhoods

Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2015-2019. American Community Survey 2015-2019.

neighborhoods that are majority White.

At all levels of neighborhood income, neighborhoods that are majority Black in Michigan see approximately 2-3 times as many case filings for debt collection as Non-Hispanic White-majority neighborhoods.

The highest disparities are seen in cases filed by debt buyers, auto financing, banks, and credit card companies, with Credit Acceptance Corporation (an auto financing company), Jefferson Capital Systems (a debt buying company), and RaZor Capital, LLC (a debt buying company) as the top plaintiffs filing more cases in majority Black neighborhoods compared to their filings in majority White neighborhoods.

More information is needed to understand the reasons for these disparate filing rates. Debt buyers, for example, have the second highest case filing disparities in case filings; however, they buy portfolios of debt from other creditors and typically have no previous relationship with the consumer. Therefore, to understand the reasons for this racial disparity, one

must understand what debts they are purchasing, from whom, and at what discount rate.

Data on racial disparities in credit scores may point to problems that occur much earlier in the lending process, such as racial disparities in access to low-cost credit. A study on credit scores conducted by the Urban Institute showed that in 50 of the 60 cities it reviewed had communities of color with below-prime median credit scores (660 or lower), and the majority were subprime median scores (600 or lower). By contrast, only four of the 60 cities in the study had majority White areas with below-prime median credit scores (660 or less).<sup>30</sup> People with lower credit scores have fewer options for credit and often obtain credit with less favorable terms, such as higher interest rates. In the context of auto loans, which have the highest case filing disparities, research from the Consumer Financial Protection Bureau shows that individuals with subprime credit scores (600 or less) may have less access to lower-cost loans from a bank or credit union but need to turn to different types of lenders. These lenders may charge higher

interest rates or, if the financing comes directly from the car dealership, may offer below-market interest rates for over-priced cars.<sup>31</sup> Indeed, some auto loan providers target individuals with bad or no credit. Credit Acceptance – the highest auto loan case filer in Michigan – explicitly advertises on its website that it can get car financing for people with bad or no credit through car dealers enrolled in its program.<sup>32</sup>

In addition, people living in communities of color are more likely to have a debt in collection compared to people living in predominantly white communities. Data from the Urban Institute shows that, in Michigan, 53% of people living in communities of color have a debt in collection compared to 22% of people living in white communities.<sup>33</sup>

These studies indicate that Black consumers face additional barriers to paying debt – such as higher interest rates, predatory lending terms, or the inability to borrow money from family or friends – due, at least in part, to “policies and practices such as race-based redlining, which prevented access to affordable real estate mortgages or fair property appraisals, undermined the ability of people of color to build wealth through homeownership and created unequal credit markets based on that lack of wealth.”<sup>34</sup>

While further research and investigation is needed to understand consumer, creditor, and debt buyer behavior, these findings are relevant to Michigan courts and its Justice for All efforts in that they illuminate which communities are being disproportionately brought into the court’s jurisdiction and for what types of claims.

## 8 Michigan Trails Other Great Lakes States in Debt Collection Policy Reform

In 2010, the Federal Trade Commission issued a report calling debt collection litigation across the country a “broken system.” Since that time, several states ranging from Arizona to Maryland to New York and Colorado have implemented policies to improve how debt collection lawsuits are handled. Many of these policies have focused on ensuring creditors and debt buyers have and disclose the necessary proof to substantiate their claims. The implementation of these policies has included updating court rules and state statutes to account for the particular documentation needed to prove consumer debt claims, which has three components: 1) proof that the defendant being sued incurred the alleged debt, 2) proof that the amount being claimed is accurate, and 3) proof that the plaintiff initiating the lawsuit actually owns the debt in question. Given the high default judgment rate in debt collection cases, these policies help ensure that judgments are entered for the creditor or debt buyer who actually owns the debt, against the correct consumer who actually owes the debt, and for the correct amount. Documentation can also aid the consumer in identifying the debt and allow them to more effectively seek legal or other assistance in resolving the lawsuit.

While Michigan has special pleading requirements for debt collection cases, they only require the plaintiff to include 1) the name of the creditor; 2) account number for the debt; and 3) the balance due. Michigan has no requirement that plaintiffs submit a breakdown of fees and interest and no requirement that a debt buyer establish their ownership of the debt, such as providing a chain of assignment.<sup>35</sup> With the exception of Ohio, Michigan has the most lenient pleading requirements among the Great Lake states prior to entry of a default judgment.

Michigan Has More Lenient Pleading Requirements than All Great Lakes States (Except Ohio)<sup>iii</sup>

	Proof of account	Proof of amount	Proof of ownership	Policy applies to?	When disclosed?
Michigan	account number	balance due to date	none	all consumer	on complaint
Illinois	account number and agreement or any monthly statement showing activity	charge-off balance and fees, last payment or default date	list chain of ownership	consumer credit and debt buyers	with the complaint
Indiana	account number and agreement or any monthly statement showing activity	balance due to date and fees	attach all assignments of claim AND chronological list of prior owners	all consumer	with the complaint
Minnesota	consumer's SSN, account number, and agreement or any monthly statement showing activity	charge-off balance and fees, last payment or default date	attach all assignments of claim	debt buyers & collectors only	to obtain default judgment
New York	account number and agreement or <b>most recent</b> monthly statement showing activity	charge-off balance and fees, last payment or default date	attach all assignments of claim AND chronological list of prior owners	consumer credit and debt buyers	to obtain default judgment
Ohio	general civil computation of damages	none	none	no specific policies	not specified
Wisconsin	agreement or any monthly statement showing activity	charge-off balance and fees, last payment or default date	none	consumer credit only	upon consumer request

Source: Based on an analysis of court rules and state statutes that apply to debt collection lawsuits in state civil courts.

<sup>iii</sup> Pennsylvania is not included because of extensive variation in local court rules that apply to debt collection lawsuits.

Other states in the region require documentation such as the original agreement or a monthly billing statement showing the defendant used the account in question, the balance due with fees and interest broken out, and documentation showing the chain of ownership of the debt if it was sold to a debt buyer. A new federal regulation by the Consumer Financial Protection Bureau enacted in November 2021 requires that debt collectors provide consumers with information to substantiate the amount of debt owed as part of collections efforts – including the amount of debt on the itemization date and all subsequent interest, fees, payments, and credits<sup>36</sup> – but whether these practices are integrated into litigation and the court process remains contingent on state policy and practice.

Additionally, courts in Illinois and Wisconsin have taken steps to better implement these policies in ways that empower litigants to meaningfully participate in their case by expanding their understanding of the court process, debt claim, and potential defenses, as well as ensuring an effective administration of justice. The Illinois Supreme Court, for example, mandated a [statewide affidavit](#) of debt that breaks down proof of debt components such that defendants can more easily identify the debt and understand the lawsuit being brought against them. LaCrosse County in Wisconsin has adopted a [standard checklist](#) for clerks to use when reviewing the documentation provided for sufficiency.

## Findings: Case Outcomes

*Debt collection cases are flooding civil dockets, yet these cases rarely see a courtroom. While some cases are dismissed because the plaintiff is unable to serve the consumer or the parties reach a settlement agreement, the vast majority of debt collection cases result in the entry of a default judgment against consumers because they failed to respond to the complaint or attend a hearing. Indeed, data in other states indicate that once service is accomplished, approximately 70% of debt collection cases result in default judgment.*

### AT A GLANCE

1. Cases dismissed for failure to serve are increasingly common.
2. Default judgments are entered in most debt collection cases in Michigan.
3. Dismissals with prejudice, non-default judgments, and setting aside default judgments rarely occur in debt collection cases.
4. The default judgment rate declined during the pandemic.
5. Racial disparities found in dismissal for failure to serve and default judgment rates.
6. Michigan District Courts have fairly similar case outcomes, but case outcomes have become less similar over time.
7. The amount awarded in judgments aligns with the amount in controversy sought by plaintiff.

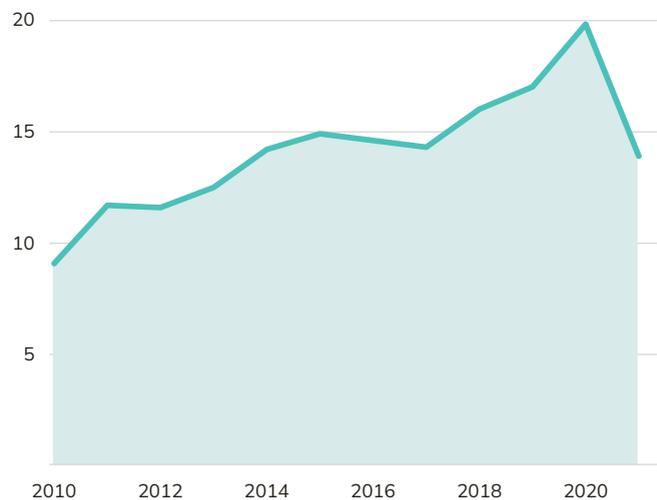
Debt collection cases in Michigan are typically resolved in one of the following ways:

1. **Dismissal or withdrawal.** The plaintiff withdraws the case or the court dismisses the case. The court may dismiss the case for a number of reasons, such as when the plaintiff is unable to properly serve the defendant or when the defendant raises meritorious defenses in a motion to dismiss. The plaintiff can also request that the court allow it to withdraw the case; this can occur when the plaintiff realizes it has made a mistake in the pleadings, such as naming the wrong defendant. Dismissals can be without prejudice, meaning that the plaintiff can bring the claim again; this occurs, for example, when the plaintiff is unable to properly serve the defendant. Dismissals can also be with prejudice, meaning that the plaintiff cannot bring the claim again; this occurs, for example, when the defendant brings a meritorious motion to dismiss.
2. **Default judgment.** The court enters a default judgment in the plaintiff's favor because the defendant failed to respond to the complaint or appear at court hearing.
3. **Settlement.** The court enters a stipulated judgment based on the parties reaching a settlement agreement, such as a payment plan.
4. **Judgment.** The court enters a judgment on the merits after a hearing.

## 1 Cases Dismissed for Failure to Serve Are Increasingly Common

After plaintiffs file lawsuits in District Court, they must properly serve defendants with court documents – including the summons and complaint – to notify them that they are being sued. Plaintiffs typically have 90 days to serve defendants.<sup>37</sup> If the plaintiff is able to serve the defendant, then the plaintiff files a proof of service with the court. If, however, the plaintiff is unable to serve the defendant before the summons expires, the court clerk will dismiss the case without prejudice.<sup>38</sup> Plaintiffs can have difficulty serving defendants for a number of reasons, including when the defendant is trying to avoid service or when they have an outdated address and are unable to locate the defendant using information such as information from the Secretary of State's office or a skip tracing service.

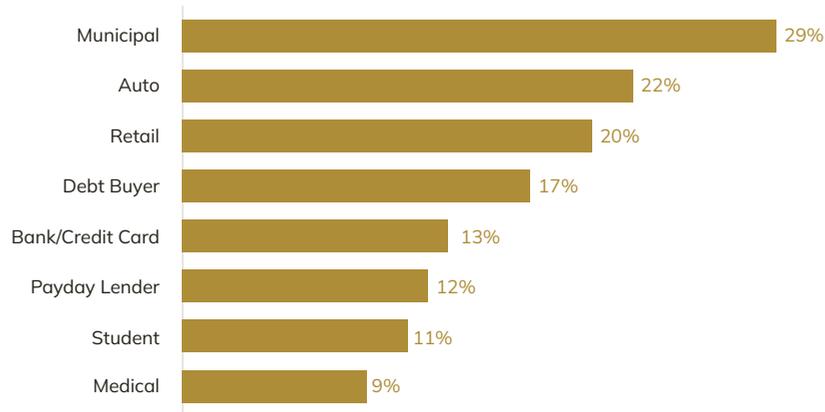
### Rate of Cases Dismissed for Non-Service Has Doubled Since 2010



Share of disposed cases dismissed for non-service filed 2010-September 2021 annually.

Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2010-2021

### Highest Rates for Dismissal for Non-Service Found in Municipal, Auto, Retail, and Debt Buyer Cases



Share of disposed cases dismissed for non-service from 2017-2019.

Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2017-2019.

Roughly 16% of debt collection cases – 1 in 6 cases – filed in 2017-2019 were dismissed for failure to serve. This represents an increase from earlier in the decade: Between 2010 and 2019, the share of cases dismissed for non-service nearly doubled, from 9% to 17%. During the height of the pandemic in 2020, nearly 1 in 5 cases were dismissed for non-service.

The rate of dismissal for failure to serve varies by plaintiff type. Cases filed by municipal, auto, retail, and debt buyer plaintiffs have higher dismissal rates for failure to serve compared to cases filed by bank and credit card companies, payday lenders, and student and medical creditors. Medical debt had the lowest rate, with only 9% of cases filed by medical-related plaintiffs dismissed for failure to serve.

## 2 Default Judgments Are Entered in Most Debt Collection Cases in Michigan

If the defendant fails to file a timely response after being served, the plaintiff may request a default judgment from the court based on the information provided in the complaint. Default judgments are entered in the majority of debt collection cases in Michigan. From 2017-2019, courts entered default judgments in 57% of all debt collection cases. This calculation, however, includes the 16% of cases that were dismissed because the plaintiff was not able to serve the defendant, meaning that the defendant had no opportunity or expectation to respond. Taking away the cases that were dismissed for failure to serve, the default rate for cases in which the court had an expectation for defendants to respond to contest the claims increases to 68%.

## Nearly 7 in 10 cases result in default judgment where service is recorded as completed.

To compare Michigan’s default judgment rate with other states, it is important to take out the cases dismissed for failure to serve because many states allow for pre-filing service where a case is not on record with the court until service is completed.

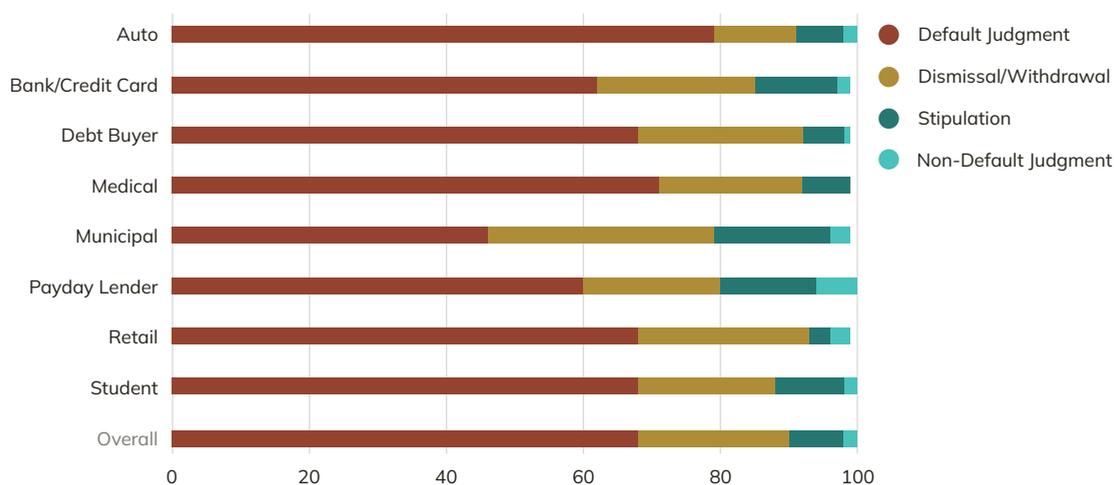
A review of studies of multiple jurisdictions between 2013 and 2018 revealed that at least 70% of debt collection lawsuits were resolved by default judgment.<sup>39</sup> At 68%, Michigan’s default judgment rate is comparable to this number.

Appendix A-3 has more information on how and why Michigan’s default judgment rate was calculated to make it more comparable to states with varying policies on when debt collection lawsuits can be filed, and service can take place.

The default judgment rate is generally high for all plaintiff types, except for municipal plaintiffs. Cases filed by auto creditors, in particular, have an above average default judgment rate of 79%, meaning that almost 4 out of 5 Michiganders notified about an auto loan lawsuit are not participating in their court case. This could be explained by the fact that cars can be repossessed quickly – even after just one or two missed payments<sup>40</sup> – before any attempt to collect the outstanding balance, and consumers may mistakenly believe that the repossession of the car fulfills their debt obligation.

A default judgment can be used as an indicator for a defendant’s lack of engagement with and access to the courts. Several theories exist as to why defendants do not participate in their debt collection lawsuits. Studies indicate that public confidence in the courts is low.<sup>41</sup> For debt collection cases, consumers may not respond because they cannot afford to pay the debt or they do not understand how to negotiate a settlement or even how to assess whether the debt is valid.<sup>42</sup> For invalid debts, the consumer may not have sufficient information to understand how to

Highest Default Judgment Rates Found in Auto and Medical Debt Cases



Share of disposed cases by disposition type & plaintiff type, 2017-2019. Does not include 16% of cases dismissed for non-service because in those instances it is clear that the defendant had no opportunity to respond.

Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2017-2019.

contest the debt.<sup>43</sup> Other practical barriers may exist for consumers, such as not being able to take time off of work, not being able to find childcare, or not having reliable transportation to attend a hearing.<sup>44</sup> As will be discussed in more detail below, some defendants do not respond because they never received notice of the lawsuit.<sup>45</sup>

### 3 Dismissals with Prejudice, Non-Default Judgments, and Setting Aside Default Judgments Rarely Occur in Debt Collection Cases

The second most common case outcome is a dismissal once service is recorded as complete. Dismissals can be with or without prejudice. If the dismissal is without prejudice, then the plaintiff may file the complaint again against the same consumer. If a dismissal is with prejudice, then the plaintiff cannot file the complaint again against that consumer. Dismissals without prejudice occur in 11% of cases, while dismissals with prejudice only occur in 3% of cases.

It is far rarer, however, for debt collection cases to have a formal hearing in front of a judge. Judgments entered after a hearing (i.e., non-default judgments) occur in only 2% of debt collection cases after service is recorded as complete.

While default judgments are entered in most debt collection cases, consumers have the opportunity to submit a motion requesting that the court set aside the default judgment upon a finding that the court lacks jurisdiction over the defendant or that the defendant has a meritorious defense.<sup>46</sup> This happens less than 1% of the time in Michigan District Courts where this data was available.<sup>iv</sup>

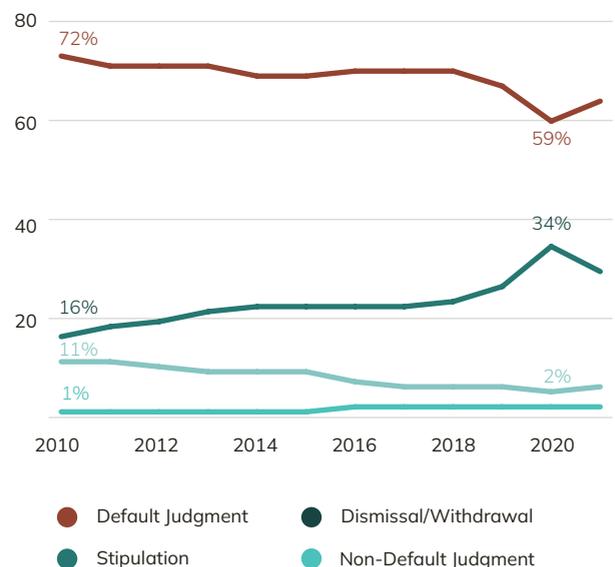
<sup>iv</sup> Based on an analysis of data from JIS Courts. See Appendix A for more details.

## 4 The Default Judgment Rate Declined During the Pandemic

Putting aside the cases that were dismissed for non-service, case outcomes have held steady through most of the decade. Between 2010 and 2019, the default judgment rate remained high at around 70%. The pandemic, however, saw a slight decline in the default rate. Between 2019 and 2020, the default judgment rate decreased from 67.8% to 59%.

More information is needed to understand the reasons for the decline in default judgment rates during the pandemic. One factor that may have contributed to this decline was the switch to virtual court options, like Zoom, that were in place

### Default Judgment Rate Held Steady in Michigan with Slight Decline During the Pandemic



Share of disposed cases by disposition type and plaintiff type annually. Does not include ~16% of cases dismissed for non-service.

Source: Michigan State Court Administrative Office Judicial Data Warehouse data, 2010-2021.

for much of 2020 across Michigan district courts. Consumers may have been more likely to respond to a complaint knowing that they could participate in the hearing virtually rather than physically attending at a courthouse, leading to a decline in the default judgment rate. As Michigan Supreme Court Chief Justice Bridget M. McCormack noted, the pandemic “is not the disruption courts wanted, but it is the disruption that courts needed.”<sup>47</sup> Remote court practices “provide [...] for efficient and effective access to the courts for most hearings.”<sup>48</sup>

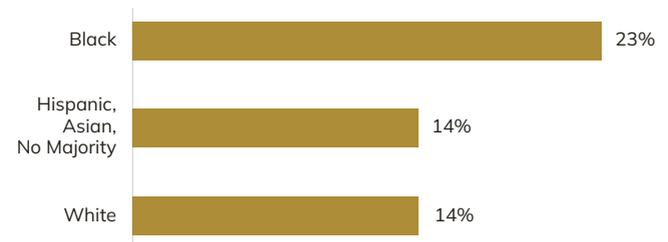
## 5 Racial Disparities Found in Dismissal for Failure to Serve and Default Judgment Rates

Consumers living in neighborhoods that are majority Black are more likely to have their cases dismissed for non-service compared to consumers living in White-majority neighborhoods. However, once service is recorded as completed, cases filed against defendants living in neighborhoods that are majority Black are more likely to have a default judgment entered.

Nearly 25% of cases filed in neighborhoods that are majority Black were dismissed for failure to serve in 2017-2019 compared with 14% in other neighborhoods.

Taking the subset of cases where service is recorded as complete, data also indicate racial disparities in the default judgment rate. Consumers living in neighborhoods that are majority Black were more likely to have a default judgment entered in their case compared to consumers living in other neighborhoods. Nearly 3 in 4 cases (74%) in neighborhoods that are majority Black (that were not dismissed for non-service) had a default judgment compared with 68% in White-majority neighborhoods and 64% in other neighborhoods. Consumers living in neighborhoods

### Consumers in Predominantly Black Neighborhoods Are More Likely to Have Their Cases Dismissed for Failure to Serve



Share of disposed cases dismissed for non-service filed 2010-September 2021 annually.

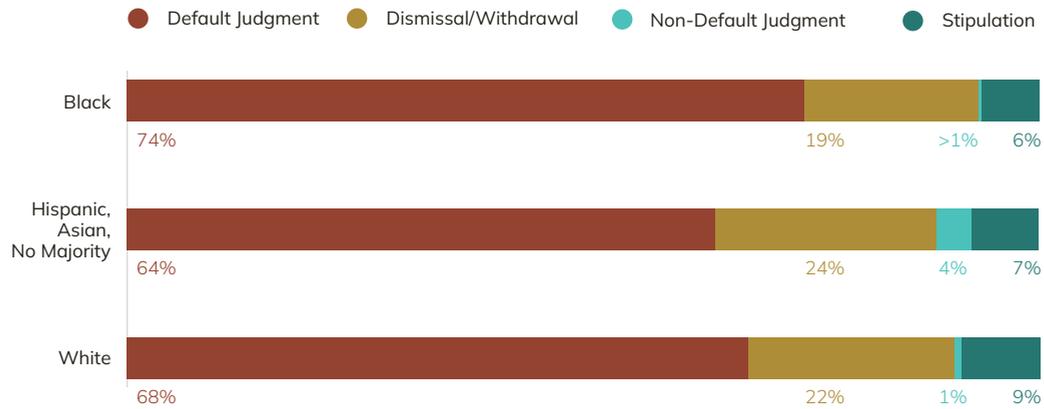
Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2017-2019.

that are majority Black also saw lower dismissal rates and stipulation rates for debt collection cases than consumers living in White-majority neighborhoods. Notably, Michigan rules and procedures related to dismissals for non-service appear to serve as a backstop against wider racial disparities in debt collection cases. When dismissals for non-service are taken into account, cases in Black-majority and White-majority neighborhoods have similar default judgment rates (~58%).

Although these racial disparities in default judgment rates are smaller than those observed in debt collection filing rates, they should still be of concern to Michigan court officials and stakeholders. High default judgment rates result from low levels of participation by defendants in the judicial process. To provide justice for all, courts must understand why some populations in their communities do not participate in the judicial process, whether it be due to barriers to participating in court processes or a lack of trust in the system.

The court system strives for equal justice with case outcomes based on the merits of the case and actions of the parties, independent of the specific court in which the case is filed. The data, however, indicate variations in case outcomes that could not be explained by other factors.

### Consumers in Predominantly Black Neighborhoods Are More Likely to Have a Default Judgment



Share of disposed cases by disposition type & plaintiff type annually. Does not include ~16% of cases dismissed for non-service.

Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2010 - 2021.

## 6 Michigan District Courts Have Fairly Similar Case Outcomes, But Case Outcomes Have Become Less Similar Over Time

Tracking the interquartile range (IQR) of the distribution of case outcomes is a method of measuring case outcome variation across courts.<sup>v</sup> A higher IQR value indicates that case outcomes vary more. Given that debt collection lawsuits are usually brought by the same bulk filing plaintiffs for similar causes of action, we would expect there to be almost no variation in case outcomes, especially when controlling for demographic and other confounding factors that could influence case outcomes. The IQR

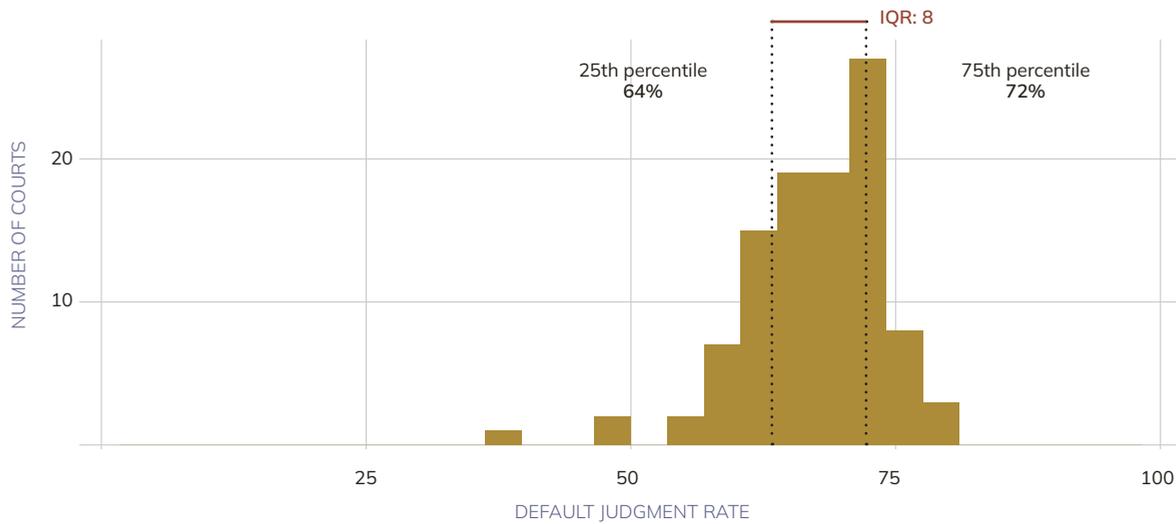
<sup>v</sup> When measuring default judgment rates, the interquartile range is the distance between the 25th percentile court and the 75th percentile court. A greater distance between the 25th percentile and the 75th percentile indicates a greater variation in default judgment rates across courts. By contrast, a smaller distance between the 25th and 75th percentile indicates more similarity among courts' default judgment rates.

for default judgment rates across courts in Michigan from 2018-2019 shows some variation in the type of outcome issued for similar claims in Michigan courts. The median court had a default judgment rate of 69% and the middle of the courts range from 64% to 72% with an IQR of 8.

The IQR can also be used to track how courts have become more or less similar in case outcomes over time. In 2010, courts had a relatively low IQR value of 5.4 in their rates of default judgment, which indicates that District Courts across the state had relatively similar rates of default judgment. The IQR increased from 2012 to 2019, peaking at 8.7 in 2019 and indicating an increase in variation in default judgment rates across District Court. The variation, however, dropped during the pandemic to 7.6, which indicates a decrease in variation among District Courts for the default judgment rate.

Default judgment rates may vary across courts for several reasons, many of which have little to do with how courts are handling cases. Potential factors

### Default Judgment Rates Vary Across Michigan District Courts



Number of courts by percentage of cases with a default judgment from 2018-2019. Does not include ~16% of cases dismissed for non-service.

Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2018-2019.

behind court variability include the following:

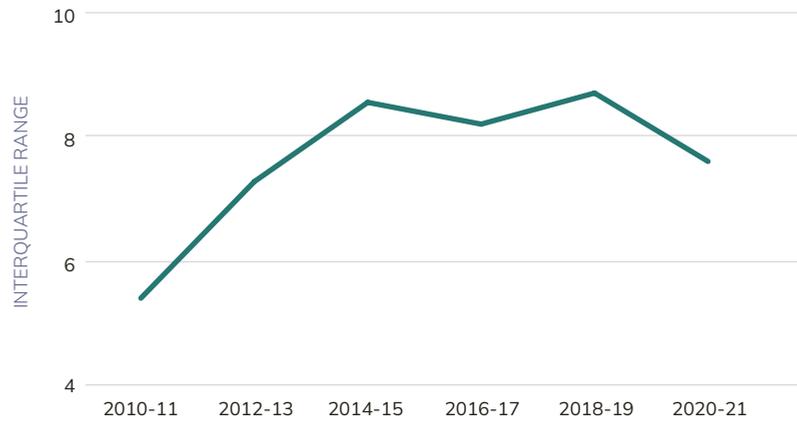
- Type of cases and plaintiffs
- Demographic and economic differences between communities
- Overall case volume
- Overall debt rates in the community
- Legal Aid and availability of attorneys
- Case management systems

To account for their impact on default judgment rates across courts, January Advisors estimated a linear regression model based on available data related to these factors.<sup>vi</sup> Based on this analysis, one of the strongest predictors of a court’s default judgment rate is median household income. District Courts that are home to residents with higher incomes tend to

have lower default judgment rates than lower-income communities, which would suggest that a defendant’s ability to afford a debt or to attend court could influence their level of participation and whether they engage with the court process.

<sup>vi</sup> To test how much variation in case outcomes across courts is explained by these factors, January Advisors estimated a linear regression model that predicted the default judgment rate based on court demographics (% of residents who are Black/African American and Hispanic Latino), economic conditions and resources (median household income, unemployment rate, and % households that rent), the county overall debt rate (collected by the Urban Institute), court case load (debt collection cases per 100 residents), plaintiff type (% cases filed by different plaintiffs), defendant legal representation rate, Legal Aid region, and CMS provider.

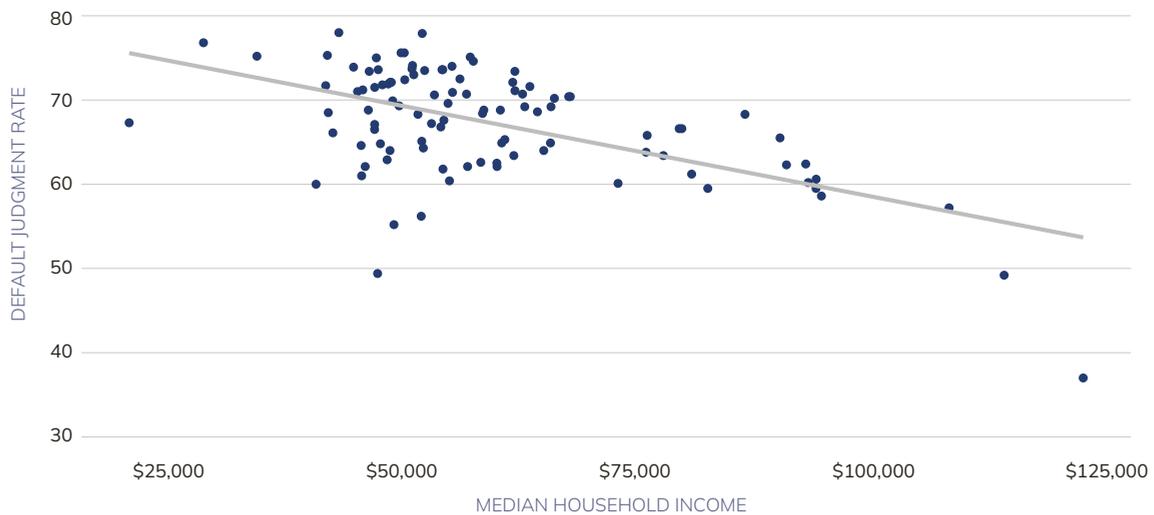
### Default Judgment Rates Have Become Less Similar Over Time Across Michigan District Courts



Interquartile range (75th percentile – 25th percentile) of default judgment rates in debt collection cases across District Courts by year.

Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2010-2021.

### Courts Serving Higher Income Residents Have Lower Default Judgment Rates



Scatter plot showing median household income vs default judgment rate at the District Court level, 2017-2019. Each dot represents a District Court.

Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2017-2019.

These factors, however, only explain a portion of the variation. After accounting for differences in community demographics and socioeconomic conditions, overall debt rate, caseloads, plaintiff type, defendant legal representation, Legal Aid region, and CMS provider, the linear regression model was only able to explain 42% of the variation in default judgment rates across courts – meaning that other factors, such as differences in local court practices and implementation of statewide policies, contribute to the remaining 58% of variation.

While a portion of the variation may be due to differences in court practices, this analysis does not indicate which specific practices might be behind the variation. Regardless, there are enough differences in case outcomes across courts to warrant further investigation, which could include creating inventories of local court practices and available legal resources. Variation in outcomes when controlling for demographic and other factors suggests that where someone lives, rather than the merits of the case or their level of engagement in the process, could influence the type of justice they receive from the court.

## 7 The Amount Awarded in Judgments Aligns with the Amount in Controversy Sought by Plaintiff

State policies on court fees and attorney fees can greatly impact the amounts awarded in judgments entered against consumers. A recent study in Utah found that the judgment amount was on average 30% higher than the original amount the plaintiff sought to recover for the debt due to costs and fees added to the judgment.<sup>49</sup> Indeed, other states have recently implemented reforms to help control these costs – both Nevada<sup>50</sup> and D.C.<sup>51</sup> have acted to cap debt collection attorney’s fees to the lesser of the

contract rate or 15% of the claim amount.

In Michigan, the amount of the judgment entered against defendants in debt collection cases only increases slightly to include statutory costs, fees, and pre-judgment interest.<sup>52</sup> On average, the judgment amount is only \$164 more than the initial claim amount, with the middle 50% of judgments ranging from \$117 to \$200 more than the claim amount. Based on the median claim amount of \$1,600, this means that average costs and fees added by the court process add up to approximately 10% of the initial claim amount.

## Findings: **Post-Judgment**

*Once a plaintiff receives a judgment against a defendant, the plaintiff is commonly referred to as a judgment creditor and the defendant is commonly referred to as a judgment debtor. In Michigan, a judgment on its own does not give the plaintiff authority to compel payment from the defendant. If the terms of the judgment are not complied with, the plaintiff can compel payment by requesting a garnishment in the post-judgment stage of a debt collection lawsuit.*

### AT A GLANCE

1. 78% of debt collection judgments have a garnishment issued.
2. Garnishment of state-income tax returns are the most common post-judgment action in Michigan.
3. 9 in 10 defendants living with debt collection judgments against them in majority Black neighborhoods are garnished.
4. Michigan fares poorly compared to other states on consumer protections in garnishment exemptions.

Garnishments are tools that courts provide to help creditors collect money toward satisfying their judgment and the underlying claim. A garnishment is a court order requiring employers, banks, or the Michigan Department of Treasury to withhold the judgment debtor’s funds to pay the judgment creditor. Without procedural checks in place to automatically exempt assets from seizure, these court-ordered garnishments have the potential to impoverish consumers, jeopardizing their ability to pay rent, maintain employment, or pay for basic daily needs. Garnishments can often lead consumers to file for bankruptcy, which not only hurts the consumer’s financial future but also hurts the creditor if the debt is discharged by the bankruptcy court.

Without procedural checks in place, garnishments can also jeopardize the public’s trust in the court system and create additional barriers to people participating in court processes. Consumers are less likely to trust a system that severely financially burdens themselves or a person they know, and creditors are less likely to utilize a court system that renders consumers “judgment proof,” making them unable to fully satisfy the amount they are owed in the judgment.

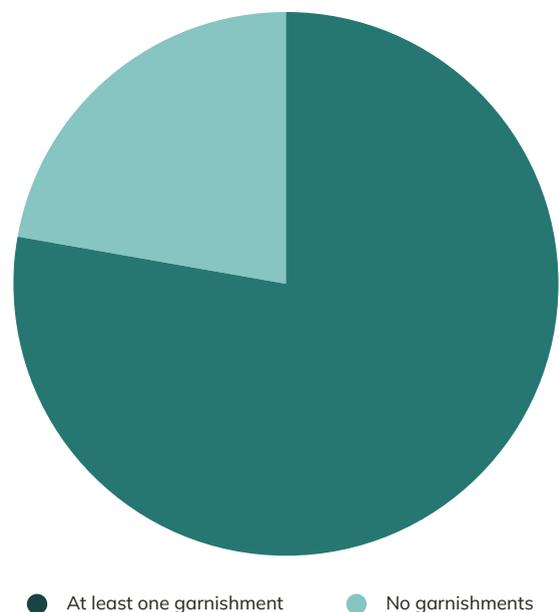
Little is known nationally about the pervasiveness and impact of post-judgment collection actions, including wage garnishments, bank account and personal property seizures, and property liens. The last national study on wage garnishments found that 7% of the American workforce had their wages garnished in 2016, and no recent national data exists on other types of garnishments.<sup>53</sup> A 2016 investigation into wage and bank account garnishments in Missouri and Nebraska found that over \$500 million was garnished from residents of both states from 2009- 2013.<sup>54</sup>

## 1 78% of Debt Collection Judgments Have a Garnishment Issued

In Michigan, more than 3 in 4 debt collection cases that are not dismissed – 78% – have garnishments issued post-judgment.

These data on garnishments were obtained from the Judicial Information Services (JIS) register of actions database, which is maintained by Michigan’s Supreme Court Administrative Office and reflect cases filed between 2018-2021. See Appendix A: Methodology for more details on how this data was identified and analyzed.

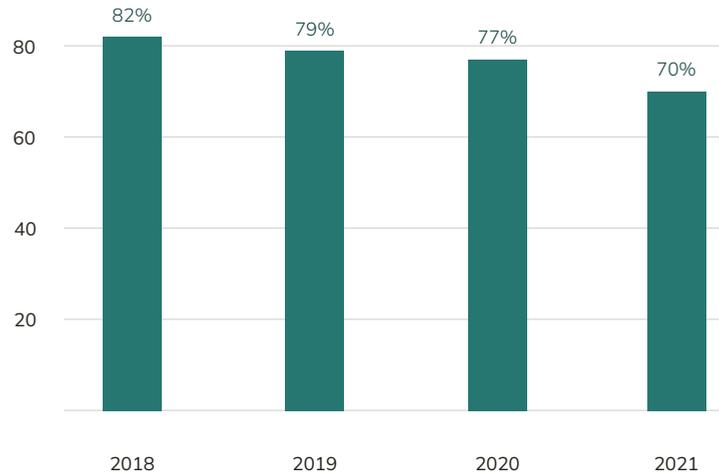
### 3-in-4 Debt Collection Cases with Judgment Have Garnishments



% of debt collection cases with a judgment (disposed, not dismissed) by presence of garnishment, 2018-2021.

Source: Michigan State Court Administrative Office Judicial Information Services (JIS) register of actions, 2018-2021.

### Slight Decrease in Garnishment Rate During the Pandemic



% of debt collection cases (disposed, not dismissed) by presence of garnishment in JIS courts and year, 2018-2021.

Source: Michigan State Court Administrative Office Judicial Information Services (JIS) register of actions, 2018-2021.

The share of debt collection cases with garnishments has held steady in recent years, with a slight decline during the pandemic. Among cases filed in 2018 in which a judgment was entered, 82% received a garnishment. For cases filed in 2021, 70% received a garnishment.

If a garnishment is issued post-judgment, high numbers of garnishments per case are rare. Most cases receive between one to three garnishments, with half of cases receiving two or fewer garnishments. Only 6% of cases with garnishments received more than five garnishments.

The median garnishment issued is for \$1,787, which is slightly higher the median claim amount in debt collection cases of \$1,600. Filing a writ of garnishment adds a \$15 filing fee to the debt along with any attorney’s fees and debt collection costs awarded in the judgment.

## 2 Garnishment of State-Income Tax Returns Are the Most Common Post-Judgment Action in Michigan

The most common method of garnishment in Michigan is through the Michigan Department of Treasury, which allows judgment creditors to intercept state tax refunds, as well as lottery winnings and other money the state may owe the judgment debtor. These garnishments are typically submitted as bulk filings once a year by judgment creditors to intercept judgment debtors’ state tax refunds through the Michigan Department of Treasury.

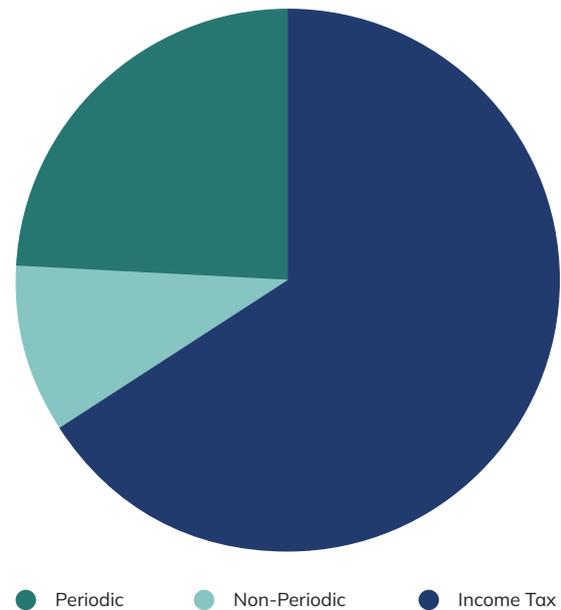
Between 2018-2021, 66% of all garnishments were collected through state income tax returns.<sup>vii</sup> 24% were periodic garnishments collected through wages, and another 10% were one-time non-periodic garnishment, which could, for example, be collected from a bank account.<sup>viii</sup>

Not all plaintiffs use state income tax garnishments to the same extent. This method of collection is much more common among debt buyers and municipal authorities. Periodic garnishments, by contrast, are more common among student loan plaintiffs, medical-related plaintiffs, and retail plaintiffs, which may indicate that these types of creditors have access to more timely and accurate information about the consumer to enable them to obtain a periodic garnishment.

vii Work Group members reported that state-tax return garnishments for consumer debts were a practice unique to Michigan. While it is difficult to ascertain which other states allow for this based on studying policies and court rules, preliminary multi-state research confirms that this is an infrequent method across the country. South Carolina is one other state known to use this garnishment method.

viii 22% of all garnishments were not classified by collection method in the data and were removed from the analysis of collection method. See Appendix A: Methodology for more details.

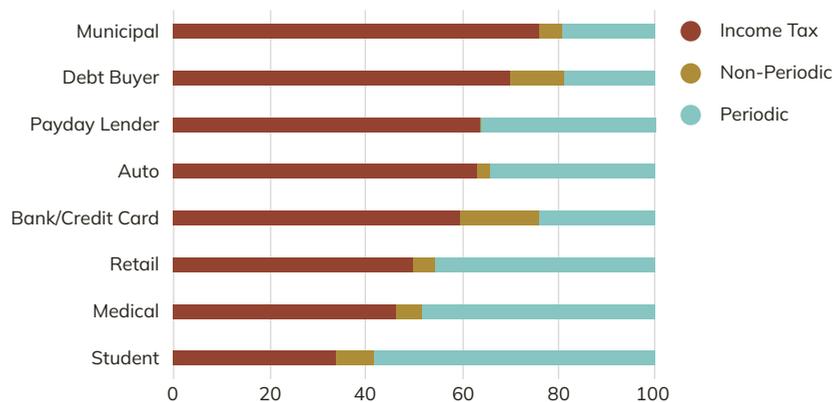
### Two-thirds of Garnishments Are Directed at State Tax Returns



Share of all garnishments by collection methods from JIS register of actions data, 2018-2021. 'Unknown' collection garnishments removed.

Source: Michigan State Court Administrative Office Judicial Information Services (JIS) register of actions, 2018-2021.

### State Income Tax Garnishments Are More Common Among Debt Buyers and Municipal Authorities



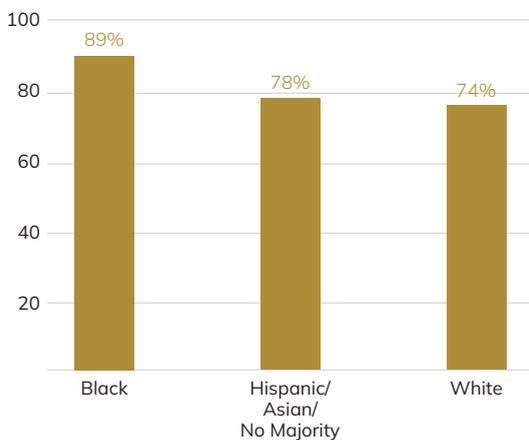
Share of all garnishments collection methods and plaintiff type.

Source: Michigan State Court Administrative Office Judicial Information Services (JIS) register of actions, 2018-2021.

### 3 9 in 10 Defendants Living with Debt Collection Judgments Against Them in Majority Black Neighborhoods Are Garnished

As with filings and outcomes, racial disparities in debt collections carry through to the garnishment stage. In majority Black neighborhoods, a garnishment is issued on an eligible judgment 15% more frequently than in judgments issued in majority White neighborhoods.

**Consumers Living in Black Majority Neighborhoods Are 1.2x More Likely to be Garnished for Debt Collection than Those Living in White Majority Neighborhoods**



% of debt collection cases (disposed, not dismissed) by presence of garnishment in JIS courts and year, 2018-2021.

Source: Michigan State Court Administrative Office Judicial Information Services (JIS) register of actions, 2018-2021.

### 4 Michigan Fares Poorly Compared to Other States on Consumer Protections in Garnishment Exemptions

The federal government sets the floor for what value and type of assets are exempt from garnishment, but states, through legislative reforms, may raise that floor and increase the breadth and value of these exemptions.<sup>55</sup> According to a 50-state policy scan conducted in 2021 by the National Consumer Law Center, Michigan, along with four other states (Georgia, Kentucky, New Jersey, and Utah), received an “F” grade based on how well their state garnishment exemption laws protect consumers’ ability to stay afloat while paying off debts. The rating was based on criteria such as how well laws protect living wages, preserve the ability to work, and provide consumers with enough funds to meet basic living expenses and Michigan was the only state to receive an F in every category, meaning the state has “extremely weak protections.”<sup>56</sup> Wisconsin receives the highest grade in the Great Lakes region for wage garnishment exemptions by protecting enough wages so that paychecks do not drop below the poverty level, and it has the highest grade for bank account garnishments by protecting at least \$5000 in a consumer account. While other Great Lakes states rank poorly overall, Indiana, Minnesota, and Ohio all adjust their exemptions every 2-6 years for inflation.

While all federal public assistance (such as social security of veteran’s benefits) is exempt, state public assistance exemptions vary. Michigan law does not specify any state exemptions for public assistance payments, such as worker’s compensation, state earned income tax credits, or unemployment benefits, which could be placed in a consumer’s bank account or garnished as part of a state tax refund. Most states, including all others in the Great Lakes region, specify some state public assistance benefits, and Illinois, Indiana, Minnesota, and Ohio provide for an exemption from the state earned income tax credit.

Michigan Has the Weakest Wage, Asset, and Public Benefits Exemption Laws in the Great Lakes Region and Country

	Overall NCLC Ranking	Wages (weekly)	Bank Account	Home Value	Car	Household Goods	State Earned Income Credit
Michigan	F	\$217.50	no protection	\$3,500	\$1,000	\$1,000	not specified
Illinois	D	\$495	\$1,000	\$15,000	\$5,400	no protection	exempt as public assistance
Indiana	D	\$217.50	\$450***	\$19,300***	\$9,250	\$1,000	exempt
Minnesota	C	\$403.20*	traceable deposited wages exempt	\$450,000*	\$5,000*	\$11,250*	exempt as public assistance
Ohio	C	\$217.50**	\$500**	\$145,425**	\$4,000**	\$13,400**	exempt as "wildcard"
Wisconsin	C	\$503.85	\$5,000	\$75,000	\$4,000	\$12,000	not specified

\*Specifies adjusting every two years for inflation  
 \*\*Specifies adjusting every three years for inflation  
 \*\*\* Specifies adjusting every six years for inflation

Source: National Consumer Law Center's "No Fresh Start," 2021.

Other benefits exempted by these states include workers compensation, unemployment, and veteran's benefits.

## Findings: Representation

*There is no constitutional right to counsel for defendants in civil cases such as debt collection. National studies conducted from 2010 to 2019 suggest that debt collection defendants have representation less 10% of the time, with some states reporting 0% defendant representation rates.<sup>57</sup> Meanwhile, plaintiffs are almost always represented by attorneys.<sup>58</sup> Legal aid has traditionally deployed their limited resources in this space to focus primarily on groups such as elders or veterans. Many consumers, however, do not qualify for legal aid and hiring an attorney may be unaffordable; the Legal Services Corporation's 2022 Justice Gap report found that 1 in 2 Americans do not seek legal help due to cost and that consumer issues are the most common unmet civil legal need across the country.<sup>59</sup>*

*Studies have shown that both sides having full representation leads to better outcomes for defendants, as they are better able to understand their rights and potential defenses, such as a debt being time-barred or requesting additionally proof of debt.<sup>60</sup> However, given the high volume of debt collection cases, it is important to couple efforts to expand legal representation with simplifying court procedures and forms to make them more understandable to self-represented litigants.*

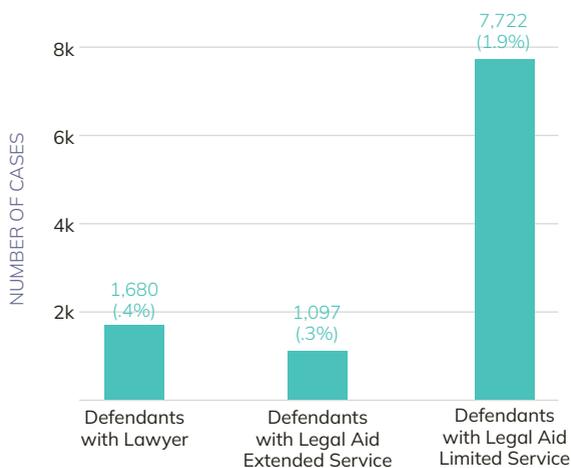
### AT A GLANCE

1. Most creditors are represented and most consumers are not.
2. Michigan consumer representation rates are lower compared to other jurisdictions
3. Case outcomes are different when consumers are represented by counsel.

## 1 Most Creditors Are Represented and Most Consumers Are Not

96% of plaintiffs in debt collection cases are represented by counsel, making these cases ineligible for small claims court.<sup>61</sup> The vast majority of defendants – over 97% – however, are not represented by counsel and do not receive any assistance from legal aid, forcing these self-represented litigants to navigate unfamiliar court processes and rules themselves.

### Fewer than 0.5% of Defendants in Debt Collection Cases Have Full Legal Representation



Number and share of cases where defendant had legal representation listed in SCAO data, received extended service from Legal Aid, and received limited service from Legal Aid, 2018-2019. Legal Aid data is provided by the Michigan State Bar Foundation and includes cases classified as “02- Collections” under the Legal Services Corporation’s Case Service Reporting Guidelines.<sup>62</sup>

Source: Michigan State Court Administrative Office Judicial Data Warehouse and Michigan State Bar Foundation legal aid case counts, 2018-2019.

While legal aid was able to provide some type of assistance in 2.2% of debt collection cases, for most cases, they were only able to provide limited service, which was often insufficient in meeting clients’ needs for full representation.

While low-income consumers are more likely to be sued for a debt,<sup>63</sup> even consumers who can afford an attorney may find that it does not make financial sense to hire one given that the amount in controversy for these cases is relatively low, typically ranging from \$800 to \$4,000. This “negative-value defense” problem is not only a concern for individual consumers but for the civil justice system as a whole.<sup>64</sup> Because consumer debt collection actions tend to be low value, even if a consumer has a clear defense, the consumer is not financially incentivized to find and pay an attorney because the fees charged for legal defense may be greater than the amount in controversy.<sup>65</sup> This, in turn, could incentivize high-volume plaintiffs to bring weak claims, knowing that most consumers will not have the resources to hire a lawyer or, even if they can afford a lawyer, the cost-benefit analysis weighs against hiring a lawyer and thus they will settle the case or ignore it.<sup>66</sup>

This lack of consumer legal representation emphasizes the need for courts to make their procedures and forms clearer and more consistent to make them more navigable and understandable for self-represented litigants to defend their cases.

## 2 Michigan Consumer Representation Rates Are Lower Compared to Other Jurisdictions

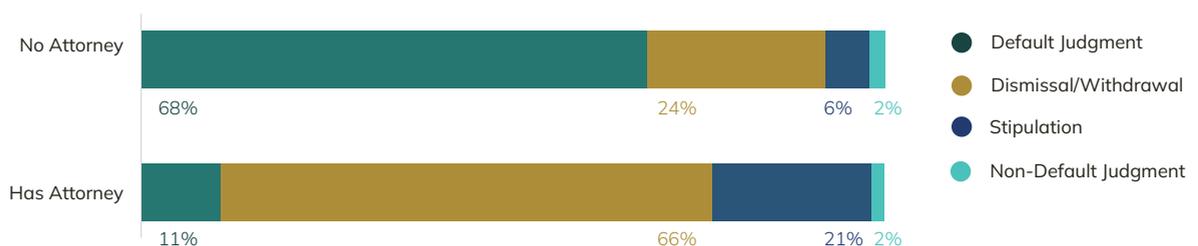
Legal representation for defendants in debt collection cases is low across the country. Nevertheless, Michigan's legal representation rate (0.4%) – excluding limited-service legal aid cases – is low by comparison to states and jurisdictions where this data is available. Other states had higher reported representation rates in 2019, including Utah (3.7%),<sup>67</sup> North Dakota (2.4%), and Connecticut (0.8%).<sup>68</sup> Some specific counties also have higher representation rates, including Harris County, Texas (8% rate from January 2018 to June 2020)<sup>69</sup> and Philadelphia County, Pennsylvania (12% rate from 2013 to 2018).<sup>70</sup>

## 3 Case Outcomes Are Different When Consumers Are Represented by Counsel

Representation makes a difference in debt collection cases. Cases where defendants are represented by counsel are more than 10 times as likely to receive a dismissal with prejudice, meaning the plaintiff cannot refile the same claim. They are also twice as likely to result in a stipulation where a stipulated judgment is entered. Attorney representation does not, however, significantly increase the proportion of non-default judgments where the case is argued in front of a judge and one party wins, although available data does not specify which party wins for this outcome.

While the data does not tell us whether consumers get better results with attorney representation, the higher dismissal with prejudice rate may indicate that consumers are bringing more meritorious defenses with the help of an attorney. The higher stipulation rate indicates that consumers with attorneys are able to reach a negotiated agreement more often, saving them from having a judgment entered against them and be subjected to post-judgment garnishments.

**Cases Where the Consumer is Represented by Counsel Are More than 10 Times as Likely to Receive a Dismissal with Prejudice and Over Twice as Likely to Result in a Stipulation**



Share of disposed cases by disposition type and legal representation state where defendant had an attorney on record from 2017-2019 (does not include limited service legal aid cases).

Source: Michigan State Court Administrative Office Judicial Data Warehouse, 20117-2019.

## Findings: Court Record Data

*There have been documented challenges surrounding the quality of state civil court data. These challenges are particularly pronounced with debt collection lawsuits, causing them to fly under the radar of policymakers and not receive due public scrutiny. In 2018, only 12 states publicly reported data on debt collection lawsuits that was disaggregated from other general civil or small claims case types.<sup>71</sup> Civil court data is collected based on information entered into court case management systems or included on forms, so improving these processes is imperative to generating better data on high volume and impact civil cases.*

### AT A GLANCE

1. Debt collection cases do not have their own case code.
2. Plaintiff names are not standardized in District Court case management systems.
3. Even among JIS Courts, Register of Actions data is incomplete and non-standard.

## 1 Debt Collection Cases Do Not Have Their Own Case Code

Identifying consumer debt collection cases in the Judicial Data Warehouse of Michigan's State Court Administrative Office is not straightforward or easy because, unlike landlord-tenant eviction cases, debt collection cases do not have a separate case code. Instead, most are classified as "General Civil" cases, which include civil cases that are unrelated to consumer debt collection.

Appendix A details January Advisors' approach to identifying and categorizing debt collection cases among the more than 3 million general civil cases filed between 2010-2021. Still, this approach was only able to identify debt collection cases filed by the plaintiffs who filed the most cases.

Given the large number of debt collection cases filed in Michigan courts each year, giving consumer debt collection cases a unique case code in the data would improve the identification of these cases moving forward and allow Michigan and its district courts to understand the full extent to which these cases fill their dockets.

## 2 Plaintiff Names Are Not Standardized in District Court Case Management Systems

In the absence of electronic filing, there is a significant amount of manually entered data that goes into Michigan's case management systems and eventually SCAO's Judicial Data Warehouse (JDW), which was used for this analysis. As discussed above, in the absence of a case code for debt collection lawsuits, a classification of plaintiffs must be used to identify debt collection lawsuits in Michigan. This, however,

presents its own challenges because of typos and other errors in the entry of plaintiff names into court case management systems. For example, Portfolio Recovery Associates, LLC, which was the second highest filer (filing almost 200,000 cases) from January 2010 to September 2021, had 424 variations of its name in court record data. Such variations in the data can prohibit efficient identification and analysis of trends in debt collection lawsuits because of the time and effort necessary to clean the data.

## 3 Even Among JIS Courts, Register of Actions Data Is Incomplete and Non-Standard

It is currently not possible for courts or researchers to compute a statewide garnishment rate for debt collection lawsuits in Michigan. Even among the 75% of courts that use the Judicial Information Services (JIS) case management system that is integrated with SCAO, only 65% recorded any garnishment data. Additionally, only 21 courts had high coverage data on amounts in controversy for debt collection cases, and 40% of these courts did not record judgment amounts in a standard field. Additionally, it was not possible to generate findings for processes such as the number of hearings or whether the defendant filed an answer due to the lack of uniformity in how these fields are recorded in JIS data.

As justice for all policy and program reforms are implemented, it is also important to improve case management systems and court record data collection for civil case types to make it easier to conduct future research and evaluate the impact of reforms.

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# Policy Recommendations

For over a year, the JFA Debt Collection Process Improvement Work Group has been reviewing the data provided by January Advisors, conducting research, sharing their experiences, and engaging in intense policy discussions about the problems faced by courts, consumers, creditors, and debt collectors regarding debt collection litigation and the solutions to best address those problems. The Work Group used the data to identify problems at each critical stage of litigation: service of process, notification of claims to the defendant, response by the defendant, case resolution, and post-judgment garnishment or payment plans.

The high default judgment rate raised concerns across the litigation process. While some defendants may simply refuse to participate in the litigation process, the fact that default judgments were entered in the vast majority of cases raised questions about whether consumers actually received service of process, whether the complaint and summons provided meaningful and understandable notice to consumers of the claims against them, and whether consumers understood a) their options to defend themselves and b) the consequences for not responding to the allegations set forth in the complaint. The disparities in filing rates and default judgment rates for people living in majority Black neighborhoods also raised concerns about the additional barriers these communities face participating in their cases and accessing Michigan courts.

The large number of debt collection case filings coupled with the disparity in representation (creditor/debt collector are almost always represented by counsel while the consumer is almost never represented) raised questions about the barriers self-represented litigants face when trying to understand complex legal forms and navigate court processes, which are likely unfamiliar to most consumers. Therefore, the Work Group focused on ways to make the court process more understandable and navigable to self-represented litigants, including plain language forms and notices.

The large number of garnishments in debt collection cases raised concerns about judicially enforced garnishments used in cases in which default judgments were entered and the facts were not tested (or even considered) by a court. Not only did this raise due process concerns of ensuring that consumers are aware that they can raise lack of service defenses at any stage in the lawsuit (even post-judgment), but it also raised concerns about whether the garnishment protections currently provided by Michigan law diminish the trustworthiness of the courts for consumers across the state, particularly in the eyes of those living in majority Black neighborhoods, who experience both higher filing rates and higher default judgment rates.

The Work Group focused on the following data points on the state of debt collection litigation in Michigan to underscore the need for and point to specific reforms:

- Debt collection cases dominate Michigan's district court, second in filing rate only to traffic cases in 2019. Ten plaintiffs file almost three-quarters of debt collection cases.
- Third-party debt collectors are filing more cases in Michigan's district courts, increasing 40% over the last decade, constituting 60% of all debt collection cases in 2019. The four plaintiffs with the highest filing rates are all third-party debt collectors.
- While debt collection cases are filed across the state, more cases are filed against low- and moderate-income Michiganders.

- Default judgments are entered in almost 70% of debt collection cases after service is recorded as complete.
- Racial disparities exist with debt collection litigation.
  - The filing rate against people living in majority Black communities see two to three times as many case filings as people living in majority non-Hispanic White communities. While the filing rate decreases with increasing income for people living in majority White communities, the filing rate remains fairly consistent across incomes for people living in majority Black communities.
  - People living in majority Black communities were also more likely to have cases filed against them dismissed for failure to serve. Once service was recorded as completed, however, people living in majority Black communities were more likely to have a default judgment in their case. They are also more likely to receive a garnishment against them.
- Once a judgment is entered, the judgment creditors seek garnishments in 78% of cases.
- Creditors are almost always represented in debt collection cases, but consumers are rarely represented. Legal aid lacks the resources to offer full representation in the vast majority of cases. When a consumer is represented by counsel, their case is 10 times more likely to be dismissed with prejudice and twice as likely to reach a settlement.

To act on these findings, the Work Group recommends that policy and rules be amended to: <sup>ix</sup>

1. Modernize Service of Process Rules to Help Ensure Consumers Receive Notice of Lawsuit.
2. Increase Complaint Requirements to Help Ensure that Plaintiff Has Provided Sufficient Evidence to Support Default Judgment.
3. Create Court Documents and Forms that Consumers Can Easily Understand and Use.
4. Improve Our Understanding of Debt Collection in Michigan through More Optimized Use of Court Records.
5. Engage with Consumers Who Have Faced Debt Collection Litigation.
6. Develop Pilot Projects to Find Alternatives to Litigation that Help Creditors, Consumers, and Courts.

<sup>ix</sup> The JFA Debt Collection Work Group discussed and agreed upon several recommendations related to garnishment protections, which were later determined to be outside the scope of reforms to be addressed by the Justice For All Commission. These proposed changes, which would modernize and update garnishment protections to protect assets consumers need, included:

- a. Protecting at least 40 hours per week at the state minimum wage from paycheck/periodic garnishments;
- b. Protecting a minimum amount (40 hours of the state minimum wage) in a bank account from garnishment;
- c. Better protecting public benefits (specifically all federal and state public benefits, including unemployment insurance, veterans, and public assistance benefits; and the Earned Income Tax Credit) from garnishment;
- d. Protecting the value of an operable vehicle up to \$15,000;
- e. Protecting the family home at a value of \$33,000 (with future adjustments for inflation);
- f. Increasing protections for tools of the trade to \$10,000 (with future adjustments for inflation);
- g. Increasing protection of personal property to \$10,000 (with future adjustments for inflation); and
- h. Revising garnishment forms to provide consumers with the information they need in an understandable manner.

# Recommendations: Modernize Service of Process Rules

## AT A GLANCE

1. Increase requirements for professional private process servers.
2. Give plaintiffs adequate time to properly serve defendants.
3. Expand options for mail services.
4. Amend the default judgment rules and garnishment forms to clarify that a defendant may raise an objection for lack of service at any time.
5. Modernize alternate service rules.

Adequate notice that a lawsuit has been filed against a defendant is a “basic tenant of due process” under the Fourteenth Amendment.<sup>72</sup> Despite this, experiences in Michigan and beyond demonstrate that the current service of process procedures often fail to provide individual defendants with adequate and meaningful notice that a lawsuit has been filed against them. The National Center for State Courts found that the “[t]raditional procedures for serving notice in civil lawsuits are functionally obsolete, especially in suits against individuals” and that the “[t]ypical methods of serving process are riddled with inaccuracies and inadequacies.”<sup>73</sup>

In Michigan, three attorneys – officers of the court and bound by the Rules of Professional Conduct – were recently charged with conducting a criminal enterprise, 30 counts of forgery, and one count of obstruction of justice for forging documents claiming that consumers had been served in debt collection cases when they had not.<sup>74</sup> Even if this behavior is limited to a few bad actors, the amount of damage they can wreak on the justice system is profound. For example, in 2010, American Legal Process pled

guilty to criminal fraud for systematically failing to serve defendants, resulting in an estimated 100,000 wrongful default judgments.<sup>75</sup> Another class action case brought by consumers under the Fair Debt Collections Practices Act alleged widespread fraudulent service practices, including filing false affidavits of service and hundreds of instances in which a process server claimed to be in multiple places at the same time.<sup>76</sup> The case, which settled for \$59 million, involved an estimated 75,000 default judgments in which money had been collected post-judgment and another 117,000 default judgments in which post-judgment collection efforts were unsuccessful.<sup>77</sup> Similarly, in California, the Attorney General brought charges against JPMorgan Chase alleging widespread robo-signing and sewer service, explaining that when dealing with debt collection cases, JPMorgan created a “debt collection mill” that abused the judicial process, affecting tens of thousands of Californians, including military service members.<sup>78</sup> The case was settled for \$100 million in restitution and damages.<sup>79</sup>

Without proper service of process, many consumers

do not know that a lawsuit has been filed against them until their wages, bank accounts, or state tax returns are garnished. Indeed, in the American Legal Process case, prosecutors alleged that the creditor seized, on average, \$5,474 per consumer.<sup>80</sup>

Instances of improper service are not limited to headline-making government investigations and class action suits but also come up in informal investigations and audits. At a Federal Trade Commission roundtable, officials discussed uncovering serious problems with service when conducting investigations and audits. For example, a New York City investigation uncovered that many process servers are not performing service or adequately checking addresses.<sup>81</sup> Similarly, a spot audit in Chicago revealed that one process server claimed to be in two Chicago-land areas 30 miles apart within minutes.<sup>82</sup> A review of a 451-case data set from individuals who called a legal hotline revealed that at least 71% of people sued in a debt collection case were either not served or served improperly.<sup>83</sup> In addition, a recent review of a 1,000 case dockets from debt buyer lawsuits revealed that in approximately 33% of cases there were problems with service, including repeated efforts to serve the same person or a summons that was returned due to a bad address.<sup>84</sup> In 6 cases, courts entered default judgments in cases that had no evidence on the docket that the plaintiff even attempted to serve the defendant.<sup>85</sup>

These problematic practices coupled with the high default judgment rate in debt collection cases demonstrate the need to reform service of process across Michigan's civil legal system to protect defendant's due process rights.<sup>86</sup> The Michigan forgery case led to calls to reform the service of process procedures by state lawmakers, including the passage of a bill which sought to increase the reliability of lawsuit notification by replacing the affidavit stating the facts of the service with a more detailed verification of service under penalty of perjury.<sup>87</sup> While this law is an incremental step forward, more needs to be done to reform and modernize service of process procedures for civil cases in Michigan.

## 1 Increased Requirements for Professional Private Process Servers

Michigan Court Rule 2.104 allows any “legal competent adult who is not a party or an officer of a corporate party” to serve process, which is consistent with the rules in 28 other states.<sup>88</sup> The Work Group recognizes the importance of continuing to allow plaintiffs who infrequently file cases in Michigan's courts – particularly low- and moderate-income individuals and small businesses – to be able to ask a friend or family member to serve papers in a lawsuit and not be forced to bear the expense of hiring a professional process server. Given the devastating impact that a single professional process server can have on the justice system, however, the Work Group recommends that the following additional requirements to verify that proper service has been completed should be included in the proof of service for individuals who repeatedly serve process in cases filed in Michigan state courts.

**i. Utilize technology.** Amend MCR 2.104 to require professional process servers to include location tracking software, such as GPS, and photographic verification of the location of service. The photograph should be of the building or place and should not include a picture of the person being served for safety concerns. This is already standard practice for professional process servers.<sup>89</sup>

**ii. Document service attempts.** Require professional process servers to keep a log of successful and unsuccessful service attempts, including case number, location of attempted service, time, date, and whether service was successful. These records should be kept for at least three years.

**iii. Include a physical description of the person served.** Amend MCR 2.104 to require a description of the person being served and provide examples of what to include in the

description, similar to New York City's law "including, but not limited to, sex, color of skin, hair color, approximate age, height and weight and other identifying features."<sup>90</sup>

These additional requirements will help ensure that professional process servers are properly serving court papers and providing defendants with notice that a lawsuit is pending against them. In addition, if a defendant later challenges the validity of service, this documentation can be used as evidence by the plaintiff to establish proper service. If the plaintiff used a professional process server and lacks this documentation when a plaintiff challenges service, this could alert the court of potential issues with a particular process server. In addition, these additional requirements could assist courts in conducting audits on the quality of service of process in Michigan and identify potential bad actors.

Short of creating an entire licensing system for process servers, the Work Group could not come to a consensus on how to define a professional process server. The Work Group agreed that the above additional requirements should only apply to private process servers but not to sheriffs, deputy sheriffs, or other officers of court, as they are bound by their own oaths and ethical standards. Some members thought that all private process servers who serve court documents more than five times a year should be held to these heightened requirements, but others questioned how this would apply in practice, given Michigan's non-unified court system. Other members suggested that private process servers who are paid to serve court papers should be held to these heightened requirements. The Work Group, therefore, recommends that the Justice for All Commission create a Work Group of stakeholders to recommend how to define a professional process server to whom these additional requirements will apply. Stakeholders should include representatives from Michigan's district and circuit courts, the Michigan Creditors Bar Association, and the Michigan Court Officers, Deputy Sheriffs, and Process Servers Association, and Michigan Association for Justice.

## 2 Give Plaintiffs Adequate Time to Properly Serve Defendants

When a plaintiff files a lawsuit, the court issues a summons that expires after 91 days.<sup>91</sup> While plaintiffs tend to be financially motivated to serve defendants as quickly as possible, it takes time to locate some defendants. To give plaintiffs and process servers sufficient time to locate and properly serve defendants, the Work Group recommends extending the expiration of the summons from 91 days to 121 days.

## 3 Expand Options for Mail Service

The pandemic highlighted problems with relying on United States Postal Service-restricted delivery mail for service; plaintiffs repeatedly reported problems of not receiving the green card receipt of delivery signed by the intended recipient. Due to these problems, the Work Group recommends expanding the mail carriers that plaintiffs may use to serve process as long as an alternate mail carrier is able to send the court papers by restricted delivery and obtain the signature of the intended recipient, as provided in MCR 2.105(A)(2).

## 4 Amend the Default Judgment Rules and Garnishment Forms to Clarify that a Defendant May Raise an Objection for Lack of Service at Any Time

To help protect defendants' due process rights, the Work Group recommends amending the default judgment rules to explicitly state that a judgment can be set aside for failure to serve the complaint at any time. A defendant challenging the entry of a default judgment based on a lack of service would be required to make a *prima facie* showing in their motion or at the hearing that they were not served; this could be through showing a lease, time card, or affidavit. The burden then would shift to the plaintiff to demonstrate that service was properly completed.

In addition, to help clarify that a challenge to the court's jurisdiction based on a lack of service can be raised at any time, the Work Group recommends amending the objection to garnishment form<sup>92</sup> to add a checkbox similar to the motion to set aside default judgment form<sup>93</sup>, in which defendants can object on the basis that they were not served with the underlying case summons and complaint.

The additional requirements for professional process servers set forth in Recommendation 1(a) above could be used to assist plaintiffs in establishing proper service if challenged by the defendant.

Work group members raised a minority viewpoint that the forms in which the defendant raises an objection based on lack of service should be amended to so that defendants are aware they are under penalty of perjury so that the form would mirror the requirements for process servers and prevent defendants from making false or bad faith arguments. The majority of Work Group members, however, believed that the certification set forth in Michigan Court Rule 1.109(E)(5) provided sufficient protection

because the defendant's signature certifies, among other things, that "to the best of his or her knowledge, information, and belief formed after a reasonable inquiry, the document is well grounded in fact" and "not interposed for any improper purposes, such as to harass or to cause unnecessary delay."

## 5 Modernize Alternate Service Rules

Alternate service rules are antiquated. The two methods explicitly set forth in the rules – posting in a courthouse and publishing in a newspaper – are not "reasonably calculated to give defendant actual notice of the proceedings and an opportunity to be heard."<sup>94</sup> In addition, publication is an incredibly expensive means of alternate service.

When determining whether alternate service is warranted, it is important for courts to consider not only the number of service attempts but also the accuracy of the address at which service is being attempted. Therefore, in order for the court to grant a motion for alternate service, the plaintiff should be required to show at least two indicia of the accuracy of defendant's address to establish "that service of process cannot reasonably be made as provided by this rule."<sup>95</sup> These indicia of accuracy should be recent evidence of defendant's address, receipt of mail from the defendant with the return address listed, confirmation by defendant that the address is correct, certified mail receipt signed by the defendant, voter registration information, vehicle registration information, or information from a skip tracing service. Further, the rules should be amended to eliminate the outdated alternate service methods of posting in the courthouse and publishing in a newspaper as reliable means of providing actual notice to defendants. Instead, the rules should provide that "nail and mail" (*i.e.*, posting at the premises and mailing via USPS, as is used in landlord/tenant proceedings) is a reliable form of alternate service. Judges may use discretion to allow other forms of service – such as email, text, messaging apps, or social media – based on the unique circumstances of the case.

## Recommendations: Increase Complaint Requirements

### AT A GLANCE

1. To establish proof of the account, the plaintiff must include the written contract or at least one discernible monthly statement showing activity.
2. The complaint should set forth proof of the amount of the debt and include the charge-off statement.
3. Identify the original creditor and store sponsor, when applicable.
4. List chain of ownership in the complaint.
5. Create a work group of stakeholders to develop procedures for courts to review the sufficiency of debt collection complaints prior to entry of default judgment.

When a defendant fails to respond to a complaint, a plaintiff may seek a default judgment. In many cases, default judgments are entered by clerks with no review by a judge.<sup>96</sup> If the plaintiff seeks the same relief set forth in the complaint, the defendant is often not notified of the default judgment until after the judgment has been entered.<sup>97</sup>

In its 2010 Report characterizing debt collection litigation as a “broken system,” the Federal Trade Commission raised concerns that complaints in notice pleading states like Michigan do not provide consumers with adequate information to admit or deny the allegations in the complaint or to raise defenses and do not provide judges with adequate information to enter a default judgment.<sup>98</sup>

Michigan’s high default judgment rate raises concerns not only about low defendant participation but also

about the perverse incentives that court policy may create for plaintiffs, particularly for high volume debt collectors.

When a court enters a default judgment in a debt collection case, it “turn[s] unsecured debt into court judgments, fully secured and fully collectable through garnishment and other enforcement proceedings.”<sup>99</sup> High volume debt collectors are aware that, once service is accomplished, the vast majority of consumers will not engage in their case and, with the automatic nature of the default judgment rules, their claims will not be challenged by either the defendant or the court, creating a perverse incentive for debt collectors to not invest resources in investigating the validity of their claims prior to filing a complaint.<sup>100</sup> This is particularly concerning given the problems with service of process discussed above and the debt buying transactions that lead to many of these lawsuits. As law professor Dalié Jiménez has

found through an examination debt-purchasing agreements, these agreements – which can contain disclaimers about ownership of accounts and/or the accuracy of account information – often lack basic information about the debts contained in the purchased portfolio, such as the contracts, account statements, and the date that the debt became delinquent.<sup>101</sup> Indeed, banks and debt buyers have been penalized by government agencies for engaging in widespread robo-signings and filing false affidavits in connection with debt collection litigation,<sup>102</sup> and investigations have found instances of a single debt buyer employee signing affidavits at a rate of hundreds or even thousands per day.<sup>103</sup>

The public's trust in the judicial system is premised on the accuracy of its judgment, entered only after the plaintiff has presented sufficient evidence to establish the elements of their cause of action based on the appropriate burden of proof.<sup>104</sup> Indeed, since the 2010 FTC Report, several states have implemented policies to improve the debt collection litigation process by requiring that plaintiffs identify debt details early in the case to ensure the plaintiff has an evidentiary basis to support a default judgment and to allow consumers to better understand the claims asserted against them.

Michigan currently has special pleading requirements for several types of claims, including debt collection actions. Pursuant to MCR 2.112(N), debt collection complaints must include the name of the creditor, the account number, and the balance due to date. These requirements, however, do not sufficiently establish a plaintiff's claim. The Work Group recommends that Michigan follow the lead of other states and establish policies that help ensure that creditors have established the elements of their claims.

## 1 To Establish Proof of the Account, the Plaintiff Must Include the Written Contract or At Least One Discernible Monthly Statement Showing Activity

Currently, Michigan only requires the plaintiff to provide the account number to establish proof of the account. At least 14 states, including all Great Lakes states except Ohio, require plaintiffs to provide the written contract or an account statement to establish proof of the account.<sup>105</sup>

To establish proof of the account, the Work Group recommends that MCR 2.112(N) be amended to require the plaintiff to include the written contract or at least one account statement showing activity. In the context of credit card debt, activity could include a purchase, payment, or balance transfer. Allowing plaintiffs the flexibility to include either the written contract or the account statement is particularly important for credit card debt, where often there is no formal contract between the consumer and the credit card company with the consumer's signature, but rather the consumer accepts the terms of the contract by applying for the credit card and voluntarily using the credit.<sup>106</sup> Plaintiffs are already required to have most of this documentation either by industry standards<sup>107</sup> or by new federal regulations under Regulation F of the Fair Debt Collection Practices Act.<sup>108</sup>

A minority viewpoint raised within the Work Group was that this information could more effectively be contained in an affidavit and that including an account statement could be confusing to consumers because it would have a different account balance than the amount the plaintiff is seeking in the lawsuit. Other Work Group members, however, raised concerns about bad actors robo-signing and filing false affidavits. The majority of Work Group members,

including a diverse cross-section of stakeholders, favored requiring an actual statement for credit card accounts over an affidavit because a statement provides the consumer with additional information related to the debt, such as the name of the original creditor, the name of the store sponsor, and how the credit card was used.

## 2 The Complaint Should Set Forth Proof of the Amount of the Debt and Include the Charge-Off Statement

Michigan currently only requires the complaint to include the balance due to date for the debt. Other states – including Illinois,<sup>109</sup> Minnesota,<sup>110</sup> and Wisconsin<sup>111</sup> – however, require plaintiffs to include more detailed information about the debt, including the charge-off balance, fees, and last payment date or default date. The new Consumer Financial Protection Bureau (CFPB) regulations also require creditors to provide the amount due at the itemization date, detailing any interest, fees, payments, or credits applied after the itemization date.<sup>112</sup>

To establish proof of the amount of debt similar to the new CFPB regulations, the Work Group recommends that MCR 2.112(N) be amended to require the plaintiff in a debt collection action to include the charge-off statement,<sup>113</sup> the last payment date, the current amount due, and all interest, fees, and payments made since the date of the charge-off statement. While the charge-off statement informs the court and the consumer of the principal, interest, and fees applied to the debt on the charge off date, the proposed additional information would notify the court and parties of any additional activity that took place since the charge-off date.

## 3 Identify the Original Creditor and Store Sponsor, When Applicable

Cases brought by debt buyers are on the rise and make up the majority of debt collection cases filed in Michigan, accounting for 60% of cases filed in 2019. These cases present unique challenges because the consumers have no relationship with the plaintiff prior to debt collection efforts. In addition, in the context of store credit cards, many consumers may not recognize the name of the credit card company that owns and services the account. Therefore, to help defendants better understand the basis for alleged debts, the Work Group recommends that MCR 2.112(N) be amended to require plaintiffs to identify the name of the original creditor and store sponsor when applicable.

## 4 List Chain of Ownership in the Complaint

Currently, Michigan does not have any explicit requirements for plaintiffs to list a chain of ownership for a debt. Illinois,<sup>114</sup> Indiana,<sup>115</sup> and Minnesota<sup>116</sup> have enacted requirements that the plaintiff either list the chain of ownership or include documentation establishing the chain of ownership with the complaint.

Given the rise in debt buyer cases in Michigan, the Work Group recommends that MCR 2.112(N) be amended to require the plaintiff to list the chain of ownership of the debt in the complaint and the dates the debt was assigned. This amendment will help the consumer better understand how the plaintiff alleges it came to own the debt, giving the consumers information they need to understand the validity of the debt. This information will also serve as the basis for a plaintiff establishing to the court that it does indeed own the debt prior to the court entering a default judgment.

## 5 Create a Work Group of Stakeholders to Develop Procedures for Courts to Review the Sufficiency of Debt Collection Complaints Prior to Entry of Default Judgment

For consumer debt litigation, where the creditor/debt collector is almost always represented by counsel and the consumer is rarely represented by counsel, “it is essential that courts ultimately be responsible for ensuring just outcomes.”<sup>117</sup> As the Conference for Chief Justices Civil Justices’ Improvements Committee stated in its 2016 Call to Action, courts must tailor their resources to the needs of the case, including rules, procedure, staffing, and technology. As part of approach tailored to promote justice for all, the Work Group agrees with the Federal Trade Commission that court systems should develop checklists “to promote the application of proper and uniform requirements for determining whether to grant a default judgment.”<sup>118</sup>

While Work Group members noted that these additional complaint requirements may translate into additional work for already over-worked District Court staff, the Work Group did not have sufficient expertise to develop a process for courts to review these additional complaint requirements prior to entering default judgment; thus, they recommend that the JFA form a separate group of stakeholders – including district court clerks, administrators, and judges – to develop uniform procedures that all courts can implement to review complaint materials prior to entry of a default judgement. The Work Group also recommends that the State Court Administrative Office (SCAO) utilize technology when designing e-filing for district courts to automate and streamline the review of these complaint requirements to allow courts to more efficiently and effectively review these complaint requirements, reducing the burden on court staff.

# Recommendations: Create Easy to Use Documents & Forms

## AT A GLANCE

1. Amend the Form Summons.
2. Require plain language complaints and develop model complaint language.
3. Create a SCAO Advice of Rights Document for defendants to be included with the complaint.
4. Simplify the filing deadline rules to reduce confusion.
5. Non-Lawyer court navigators should be available to assist consumers navigating their debt collection cases.

Given the staggering number of consumers who are not represented by counsel in debt collection actions, it is essential that court documents and forms are easily understandable and useable by self-represented litigants. The Work Group recommends that it partner with the State Court Administrative Office (SCAO) and the Justice for All Commission (JFAC) Forms Committee to redesign court guidance, documents, and forms to be in plain language and easily useable by self-represented litigants, in addition to the following specific recommendations.

### 1 Amend the Form Summons

The Work Group recommends that the SCAO Form Summons be revised to give defendants the information they need in plain language.<sup>119</sup> Work Group members found the current form was difficult

to read and understand. They also found that the current form summons contained unnecessary information for consumers in debt collection cases and that some of the most vital information for consumers was at the bottom of the page. In addition, the summons did not include any indicia of reliability (e.g., governmental seal) that the form was an official court document. The Work Group recommends that the summons be a priority form for revision and suggests the following revisions be made:

Provide a clear and credible notice to the defendant that they are being sued.

- Clearly set out deadline for defendant to act.
- Clearly set out pathway for defendant to act (e.g., how to file a written answer; a directive not to wait for the court to set a hearing date).
- Clearly set out consequence for a defendant not taking action (e.g., “a judgment will be entered against you”).

Appendix B contains a draft revised summons

created by Work Group members to help illustrate changes to the summons to make it more readable and understandable and could be used as a starting point for its collaborative work with SCAO and the JFAC Forms Committee. The Stanford Legal Design Lab has also created a form summons for eviction cases and some of the principles in their user-focused design could be implemented in reimagining Michigan's form summons.<sup>120</sup>

## 2 Require Plain Language Complaints and Develop Model Complaint Language

Work Group members agreed that the complaint should be required to be written in plain English so that unrepresented consumers can understand the allegations raised against them; however, given the differences in causes of actions that debt collectors may file, the Work Group does not recommend a form complaint. The majority of Work Group members agreed that a model complaint should be developed to help creditors and debt collectors understand the plain language requirement but also to give them flexibility to amend the model complaint for specific causes of actions. A dissenting viewpoint argued that any model complaint would be insufficient because it would not encompass the full array of causes of actions that arise in debt collection lawsuits.

## 3 Create a SCAO Advice of Rights Document for Defendants to be Included with the Complaint

The large number of self-represented litigants poses not only a problem for self-represented consumers but also for judges and court staff, who are all too often forced to walk a narrow line between helping to ensure that defendants have access to the legal information they need but not crossing the line of impartiality by providing legal advice, such as consumer rights or substantive defenses.<sup>121</sup> This, in turn, can impact creditors' perceptions of justice, fairness, and trust in the legal system if a judge is seen as helping an unrepresented party.

To protect the legitimacy of the courts and help ensure defendants have the information they need to make an informed decision on how to proceed with their debt collection case, the Work Group recommends creating an Advice of Rights document that should be included alongside the summons and complaint to advise defendants of their basic rights regarding the lawsuit. The Advice of Rights should make clear that it is coming from SCAO, not plaintiff's counsel, and does not constitute legal advice from plaintiff's counsel. The Advice of Rights should be designed to be easily noticeable to defendants, since they will be getting it with other legal papers.

Appendix C contains a draft Advice of Rights created by Work Group members that could be used as a starting point for its collaborative work with SCAO and the JFAC Forms Committee and includes information on:

- How to file an answer with the court and opposing party, including link to a form answer.
- Consequences for a defendant not responding to the complaint (e.g., default judgment, garnishment of wages, bank accounts, and tax refunds).

- Information on legal resources to help with responding to the complaint (e.g., Michigan Legal Help).
- Information on how to obtain legal help (e.g., legal aid, State Bar of Michigan lawyer referral service).

#### 4 Create a Form Answer to be Included with the Complaint Materials

The Work Group recommends amending the pleading standards set forth in MCR 2.111 for an answer so that it does not require consumers in debt collection actions to respond paragraph by paragraph to the complaint, but instead allows consumers – who are rarely represented by counsel – to complete a simple form answer to contest owing the debt and to raise any affirmative defense. The Work Group recommends that it collaborate with SCAO and the JFAC Forms Committee to create the form.

#### 5 Simplify the Filing Deadline Rules to Reduce Confusion

To reduce confusion, the Work Group recommends simplifying the deadline for defendants to respond to a complaint. Currently, Michigan Court Rule 2.108 requires defendants personally served in Michigan to respond within 21 days and defendants who are served outside of Michigan or through registered mail to respond within 28 days. The Work Group recommends amending the rule to create a 28-day deadline to respond to the complaint, regardless of where service occurred.

#### 6 Non-Lawyer Court Navigators Should Be Available to Assist Consumers Navigating Their Debt Collection Cases

The Work Group recognizes that user-friendly, plain language forms may only go so far and court navigators may play an essential role in helping consumers competently navigate court processes. The Work Group recommends that non-lawyer navigators be utilized to provide information to consumers, such as appropriate forms and answers to general questions they may have about their debt collection case. Given the barriers to travel in many of Michigan's urban, suburban, and rural areas, the Work Group recommends that these navigators be located within the community and not just at courthouse. Therefore, the Work Group recommends that it partner with the JFA Regulatory and Practice Reform Committee, which is focused on filling gaps in the legal marketplace, to further identify the role non-lawyer court navigators should play in the debt collection sphere. At this time, the Work Group does not recommend that non-lawyers be utilized to provide legal advice in debt collection cases; to the extent that any group is considering such a recommendation, the Work Group would like its key stakeholders to be invited to participate in these discussions.

# Recommendations:

## Optimize Use of Court Records & Data

### AT A GLANCE

1. Improve civil case data collection and reporting across courts.
2. Develop a standardized District Court e-filing system to help track data and assist courts with case management.
3. Track data and publish regularly.

The court data used in this study was essential in allowing us to better understand the debt collection process. The data contained in court records, however, could be improved to allow us to better track trends and the effects of policy reforms in Michigan.

### 1 Improve Civil Case Data Collection and Reporting Across Courts

The Work Group recommends that SCAO work with January Advisors and/or other data collection experts to improve the data currently being collected and to make the data collection consistent across courts. This includes structured data that some jurisdictions already report to SCAO, as well as other “event” data that may be unclassifiable or free-form text. SCAO can develop best practices for data collection and reporting and incentivize courts to comply through a statewide report card and/or performance awards. Ultimately, this extended data collection will go beyond clearance rates to help court stakeholders

understand trends and key points in the debt collection process, including default judgments and other types of case dispositions, service of process, and garnishment.

Court data is essential to identifying barriers to justice for all and understanding whether policy reforms are moving the needle toward 100% civil justice for all Michiganders. While Michigan currently collects a considerable amount of court data, the Work Group recommends the following targeted data improvements to streamline future analyses of debt collection lawsuits:

- i. Create a Debt Collection Case Code.** The Work Group recommends that SCAO create a separate case code for debt collection cases, rather than categorizing them as general civil or small claims. This will help courts and other stakeholders more easily identify debt collection cases to track trends in the future.
- ii. Standardize Plaintiff Names.** The fact that court records contain 424 iterations of Portfolio Recovery Associates’ name over the last decade not only raises data concerns but also access to justice concerns. This lack of consistent name usage is particularly troubling in the debt buyer situation, where the consumer typically does not

have a prior relationship with a debt buyer like Portfolio Recovery, making it more difficult for the consumer to identify the appropriate plaintiff and assess the legitimacy of its claims. Therefore, the Work Group recommends that SCAO create a system for standardizing plaintiff names. This could be done by creating a plaintiff registration number, similar to the attorney licensing number for plaintiffs.

## 2 Develop a Standardized District Court E-Filing System to Help Track Data and Assist Courts with Case Management

When developing an e-filing system for district court, the system should be customized to the needs of the court and court staff. For example, a system could be developed to help court clerks track whether a debt collection plaintiff has submitted all the documentation and information required with the additional pleading requirements, assisting the court with the assessment of whether to enter a default judgment. Similarly, the e-filing system should be developed with the assistance of court staff and judges, other stakeholders, and data experts to design the system in a way that will allow court staff to both efficiently process cases and track meaningful data.

## 3 Track Data and Publish Regularly

Given the devastating impact debt collection can have on the financial security of consumers, trends in debt collection litigation, including racial disparities, must stay at the forefront of the minds of the Court, justice advocates, and the public. Therefore, SCAO should track and analyze data on debt collection, including all key points across civil lawsuit stages, and regularly publish this data. This involves requiring statewide collection and submission of “events” data for debt collection lawsuits that includes information on when an answer is filed, hearing held, and garnishment issued.

# Recommendations:

## Engage with Consumers who Have Faced Debt Collection Litigation

### AT A GLANCE

1. Develop a qualitative study focused on consumer experience in debt collection.

While court records are essential to our understanding of debt collection litigation in Michigan, they can only tell part of the story. Given the large default judgment rate, most consumers are not engaging in their debt collection cases. Therefore, to better understand the barriers that consumers face in the debt collection process, the Commission must engage with consumers directly.

### 1 Develop Qualitative Study Focused on Consumer Experience in Debt Collection

The Work Group recommends that the Commission work with an academic institution to develop a qualitative study to understand the barriers that consumers face at all stages of the debt process – pre-litigation collection efforts, litigation, and post-judgment garnishment. Such a study would allow the Commission to better understand how these cases wind up in district court, why consumers are not engaging in their cases, the financial impact of debt on consumers, and potentially the underlying causes of racial disparities throughout the process.

# Recommendations:

## Develop Pilot Projects to Find Alternatives to Litigation

### AT A GLANCE

1. Develop pilot project for cases in which consumers do not dispute that they owe the debt.

Debt collection litigation is often a lose-lose-lose for courts, creditors, and consumers. For cases in which the defendant owes the debt, defendants would often be better off working out an affordable payment plan customized to their specific budget, rather than having wages, bank accounts, and tax returns garnished.

### 1 Develop Pilot Project for Cases in which Consumers Do Not Dispute that They Owe the Debt

Other jurisdictions have developed Alternative Dispute Resolutions pilot projects to help consumers and creditors reach more workable solutions to debt than they would receive through the courts. For example, Hamilton County, Tennessee has implemented an online dispute resolution project focused on medical debt that has the assistance of a trained neutral mediator.<sup>122</sup>

The Work Group recommends collaboration with legal services to develop alternative dispute resolution pilot projects in providers with the following features:

1. The pilot project should only be used in cases in which the defendant admits to owing the debt and does not have a defense that is likely to be meritorious.
2. The pilot project should focus on a specific type of debt, such as medical debt. This would allow data to be tracked going forward to help us understand the impact of the pilot project.
3. Given the asymmetry in representation in debt collection cases, any alternative dispute resolution pilot project should be mediated by a neutral mediator trained in debt collection law.
4. Affordability guidance should be developed to help both the consumer and the creditor understand how much a consumer can afford to pay toward the debt.
5. The alternative dispute resolution process should proceed after the plaintiff has filed a complaint – or the statute of limitations should be tolled in some other way – so that the plaintiff is not penalized for participating in the pilot project.
6. When designing a pilot project, the potential role of court navigators should be explored.

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# Acknowledgments

The Work Group would like to thank the Michigan Supreme Court and the Justice for All Commission for its continued support for this work. This report would not have been possible without the invaluable assistance and support of The Pew Charitable Trusts and January Advisors, along with the dedication, expertise, intellect, curiosity, and humor from each Work Group member.

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# Appendix A: Methodology

## 1 Data Sources

Data for this analysis comes primarily from Michigan's Judicial Data Warehouse (JDW), which was accessed in October 2021. The JDW compiles, cleans, and harmonizes court records and fields from several different court management systems across Michigan.

The JDW data includes district courts that cover 95% of the population. Not all district courts reported their data to the JDW during the time period this report covers (January 2010-September 2021). Six courts, including District 61-Grand Rapids, had either no or low representation (relative to their population) in the JDW data. According to recent Census estimates, roughly 5% of Michigan's population (~481,000 residents) live in the boundaries of these district courts.

The data used in this report cover January 2010 through September 2021. When examining trends over time, we will typically use the full time period to see how filings, case outcomes, and other data points varied over the past twelve years.

Given the substantial social, economic, and structural changes that have occurred over the last decade, from the aftermath of the Great Recession to the recent Covid-19 pandemic, our benchmark years for most analyses in this report focus on the years 2017 to 2019. This benchmark provides the most recent snapshot of debt collection cases that were not affected by the recent unprecedented changes to court operations and case filings that occurred during the pandemic.

Analyses of neighborhood demographics (e.g., race-ethnicity and income) draw on data from the 2015-2019 American Community Survey. For these analyses, we look at cases filed during this five-year period.

Currently, not all courts are required to report information related to claim amounts, judgment amounts, garnishments, or other details typically found in a case's register of actions. These fields provide key data points for understanding debt collection cases. These data, however, are available for roughly 75% of district courts that use the Judicial Information System (JIS) court management software. The State Court Administrator's Office (SCAO) provided data on these register of actions for cases filed between 2018-2021.

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## 2 Identifying Debt Collection Cases

The State of Michigan does not define a separate case type for consumer debt collection cases, which makes it difficult to identify debt collection cases in the JDW data.

We applied several filters to the data to identify potential debt collection cases:

- District Courts only
- General Civil and Small Claims case types only
- Top 100 plaintiffs with the highest number of cases filed

There are three types of trial courts in Michigan: Circuit, District, and Probate. District courts in Michigan handle all civil cases with claims up to \$25,000, as well as other common case types like landlord-tenant.

We initially looked at a broader range of case types in the JDW data. These included General Civil, Small Claims, Contracts, Housing and Real Estate, Land Contract Summary Proceedings, Miscellaneous Civil, and Civil Appeals. The vast majority of these cases, however, fall under General Civil and Small Claims. Moreover, our analysis of plaintiffs (see below) revealed that the bulk of debt collection filers were filing claims under these case types.

Our final criteria for identifying debt collection claims was to restrict the data to the top 100 plaintiffs with the most cases filed. This was a challenging step in the data cleaning process that involved harmonizing hundreds of different spellings of the same plaintiff names across thousands of case filings. For instance, one of the top Debt Buyer plaintiffs in Michigan, Portfolio Recovery Associates, spelled their name 424 different ways in case filings.

We began by harmonizing cases for the initial list of the 200 top filers. There were too many unique filers (over 35,000) to harmonize the entire dataset. We then reviewed the cleaned list of plaintiff names and classified them according to the type of plaintiff (and debt). We removed any plaintiffs that were unlikely to involve consumer debt collection.

We restricted our analysis to cases filed by the top 100 filers of debt collection, which represent 57% of all General Civil and Small Claims filings in District Courts.

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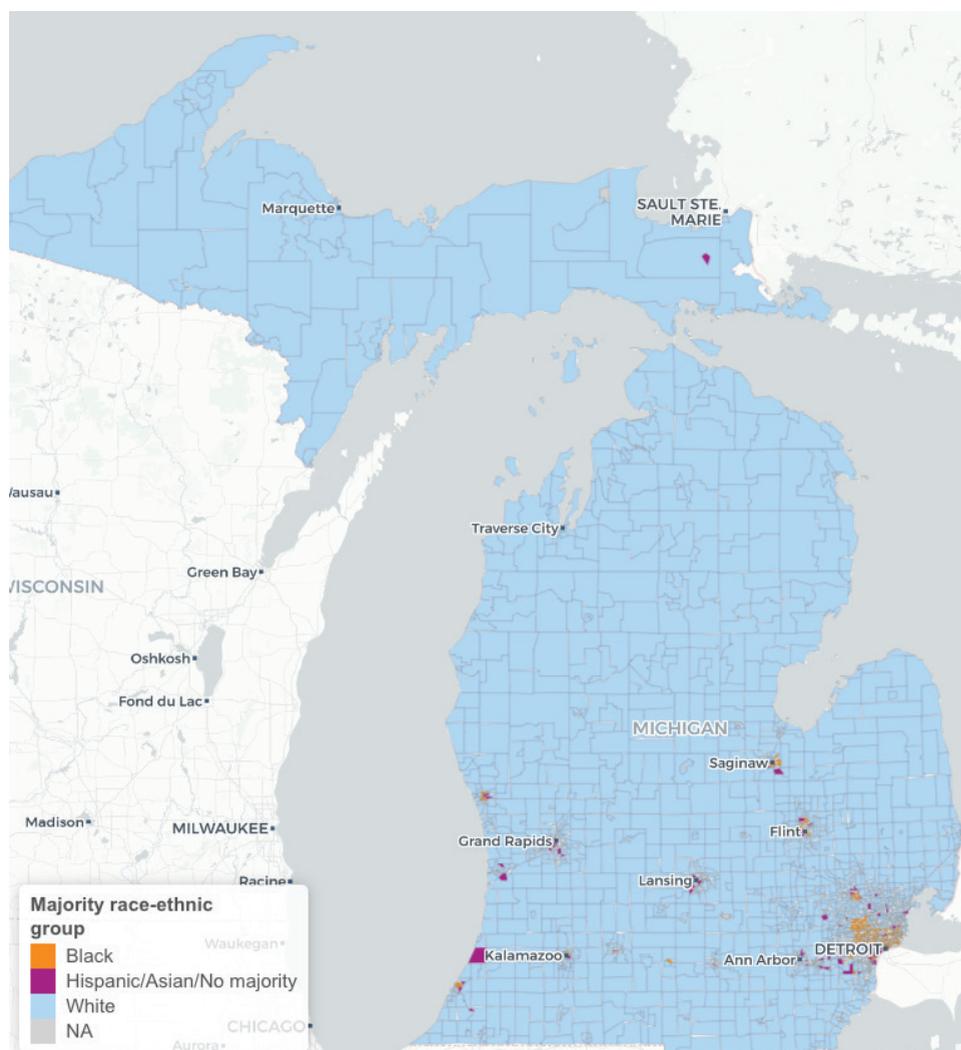
### 3 Defining Neighborhoods by Race-Ethnicity

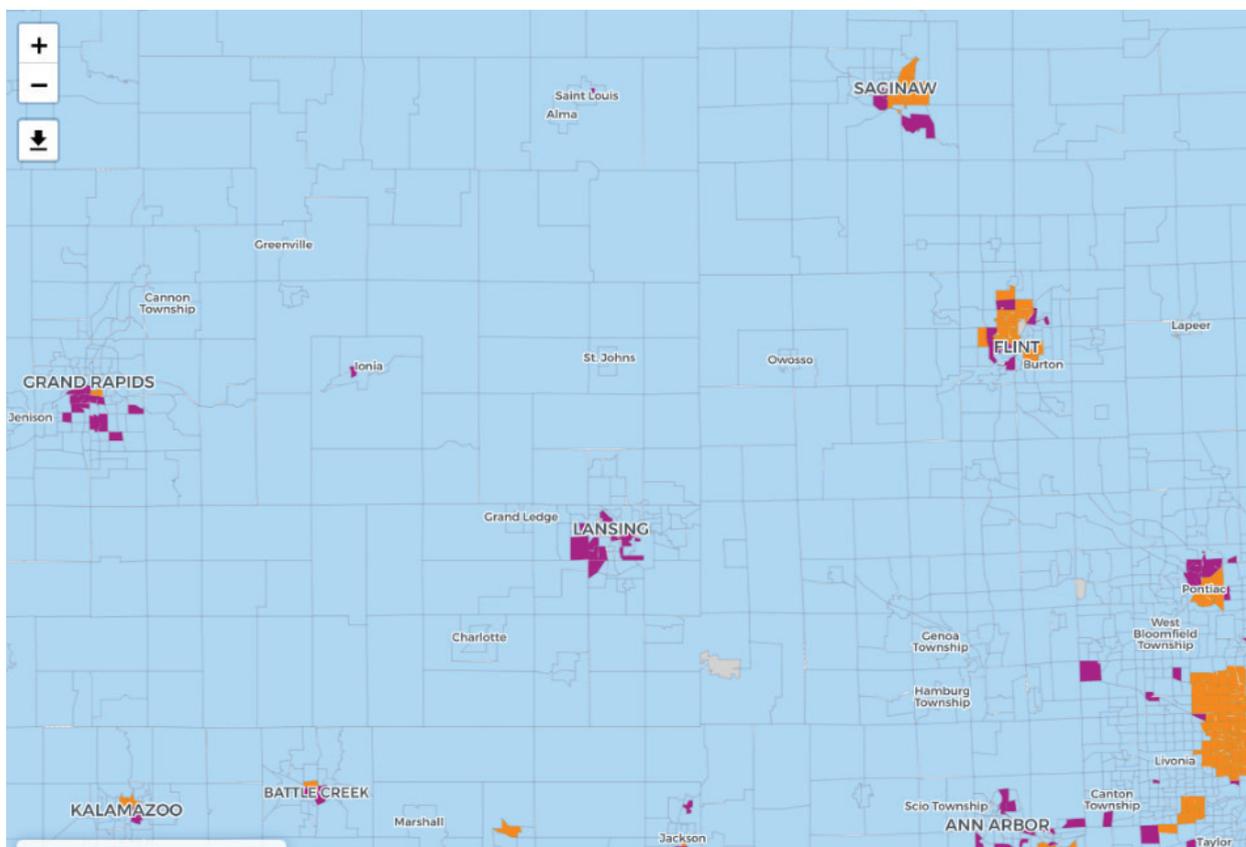
Several analyses in this report use demographic characteristics of a defendant's neighborhood to try to identify disparities in case filings and outcomes by race-ethnicity and household income. Although neighborhood characteristics are informative, they are not the same as having accurate data on a defendant's race or income, which are not generally collected by Michigan courts and are not available in the JDW dataset. Still, given historical patterns of residential segregation along lines of race and income, these crude markers shed light on important inequalities in access to justice.

This report uses census tracts to represent neighborhood boundaries. The maps below show all 2,700 census tracts in Michigan by the race-ethnic majority of residents: white, Black/African American, and Hispanic/Asian/Other/No majority. A neighborhood is defined as being majority one race-ethnic group if census data shows that more than 50% of residents are of that race-ethnic group.

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Map Of Michigan By Census Tract Majority Race-Ethnic Group





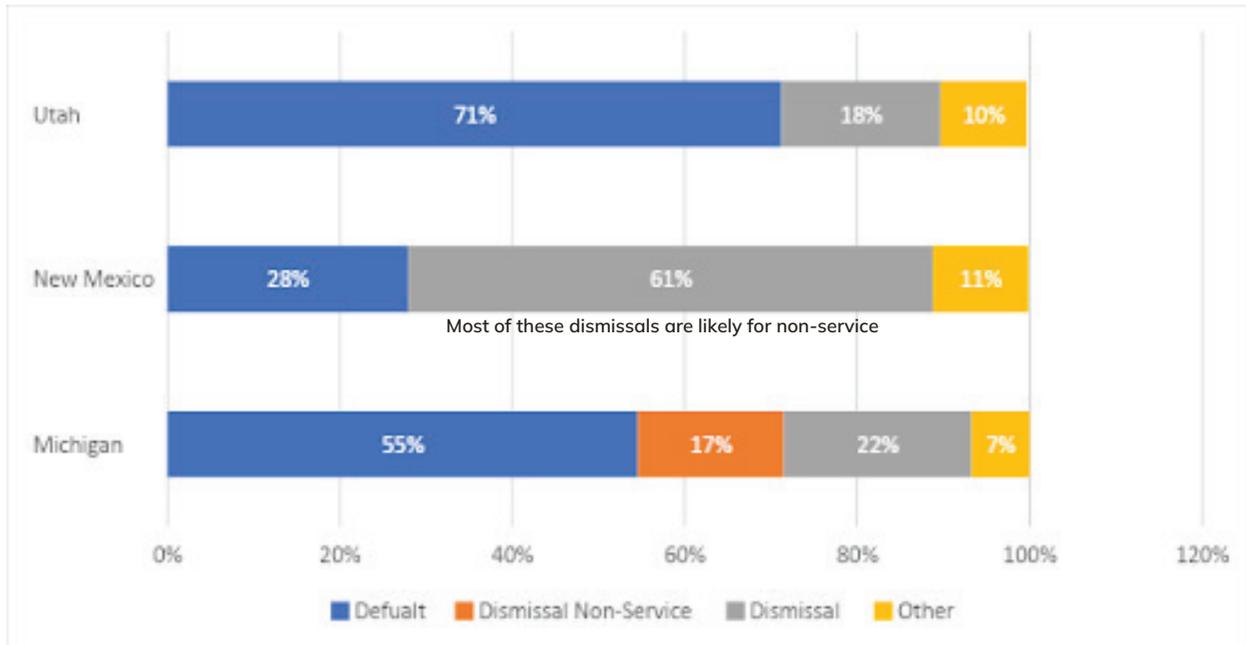
## 4 Calculating a Default Judgment Rate

Variation in policies across 50 states and local jurisdictions makes it challenging to compute a default judgment rate that is both locally informative and nationally comparable.<sup>123</sup> In some states, such as Utah, plaintiffs can serve defendants before filing their debt claim with the court, so only cases where a proof of service was obtained are entered into the court record. In Michigan, debt collection cases are filed with the court before service can be completed, and the plaintiff has 90 days to obtain and file proof of service with the court before the case is dismissed for non-service. New Mexico operates similarly in that they do not allow for pre-filing notice of the lawsuit but differ in that they do not report a disaggregated dismissal outcome to show dismissals for a failure to serve.<sup>124</sup>

In comparing default judgment rates across Michigan, Utah,<sup>125</sup> and New Mexico,<sup>126</sup> we see that Utah has the highest default judgment rate at 71%, which because of their pre-filing summons policy, would not include cases where service was not recorded as complete. In Michigan, cases where service is not recorded as complete are marked as dismissed for non-service, while in New Mexico they are included as general dismissals, so both states have lower overall default judgment rates. However, when using default judgment as a measure of defendant participation in the lawsuit, it is useful to remove cases in states like Michigan and New Mexico, where we can definitively say that the defendant was not served in order to compare their default judgment rates to states like Utah. While New Mexico does not separate this type of dismissal, Michigan does, so we can more accurately compare Utah's default judgment rate (71%) to Michigan's rate when dismissals for non-service are excluded (68%).

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Default Judgment Rates Can Vary Across States Based on Whether Or Not The State Allows For Pre-Filing Service



# Appendix B: Example of Summons

## Debt Collection Claim Court Summons

from \_\_\_\_\_ District Court

<b>Defendant</b> Defendant's name, address, telephone no., email   
---

District Court name, address, telephone number
--

Case Number
- [CC]

<b>Case Caption:</b> Plaintiff  V  Defendant
---

<b>Plaintiff</b> Plaintiff's name, address, telephone no., email   
---

<b>Plaintiff's Attorney:</b> Plaintiff's attorney, bar no., address, telephone no., email   
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**NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued. Plaintiff brings this lawsuit against you seeking to collect a debt.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party or take other lawful action with the court (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date	Expiration date*
Court clerk	

\*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

[image]

If you need help understanding your rights and obligations in this case, contact Michigan Legal Help at [www.michiganlegalhelp.org](http://www.michiganlegalhelp.org)

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## Appendix C: Example of Advice of Rights

### YOU ARE BEING SUED FOR A DEBT. HERE'S WHAT YOU SHOULD KNOW:

- You are the defendant in this case. The person or company suing you is the plaintiff.
- Unlike criminal or landlord/tenant law, there is no automatic hearing for this type of civil lawsuit. You will only get a hearing date if you file an answer with the court within 21 days of being personally served. If you do not file an answer within 21 days, a default judgment will enter against you, which may include additional costs.
- If a judgment does enter against you, the plaintiff could seize your wages, bank accounts, and state tax refund. Liens could also be executed against your property, without further hearing. You also may lose your ability to dispute this debt if you do not file an answer within 21 days.

### HERE ARE YOUR OPTIONS ON WHAT YOU CAN DO:

- **CONTACT A LAWYER.** Defendants with lawyers do far better in court cases than those without lawyers. If you cannot afford to hire a lawyer, you might be able to get a lawyer through a legal services program. You can contact legal services by calling: XXX.
- **FILE AN ANSWER.** If you would like to have your day in court regarding this matter, you must file an answer within 21 days of receiving this document. You may use the attached sample Answer form to explain why you disagree with the debt or state how you would like to resolve the matter. Additional information regarding your Answer may be found at: [www. XXX](http://www.XXX).
- Take or mail your answer to the court address on the complaint and send a copy of that answer to the plaintiff's lawyer by mail or e-mail.
- For more instructions on representing yourself in a lawsuit go to: [\[LINK TO MICHIGAN LEGAL HELP\]](#)
- **DO NOTHING.** If you do not respond, a default judgment will be entered against you, and you will not get a hearing date to go to court.

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## Endnotes

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CT: Agreement or most recently monthly statement showing activity AND any additional monthly statements showing activity

Some states also require:

Account Number (full/truncated) (CA, CO, CT, IL, MA, MD, MN, NJ, NY, TX, WA, CFPB Reg F)

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