

**ADMINISTRATIVE DIRECTIVE  
OF THE  
CHIEF JUDGE OF THE COURT OF COMMON PLEAS**

**NO. 2016-8**

**DIRECTING IN ALL CONSUMER DEBT ACTIONS THE  
ATTACHED NOTICE BE PROVIDED TO DEFENDANTS**

This 21<sup>st</sup> day of October, 2016, pursuant to *10 Del.C. § 1302(d)* the authority being vested in the Chief Judge as the administrative head of the Court during the term of his or her appointment; and pursuant to *10 Del.C. § 1307* which vests the Court with the authority to publish general rules regulating the practice and procedure therein; and the Court having considered and approved the attached notice; and


WHEREAS, in order to insure equal access to Justice, the Court believes it to be appropriate to provide guidance to unrepresented litigants in Consumer Debt Collection Actions governed by Administrative Directive 2012-2 regarding the legal process and how to participate in it; and

WHEREAS, a Committee was appointed by the Court for the purpose of developing a brochure designed to provide *pro se* litigants in Consumer Debt Collection Actions the information necessary to effectively participate in the proceedings (the “Brochure”); and

WHEREAS, the Court has decided the Brochure should be served upon defendants in Consumer Debt Collection Actions with the Summons and Complaint documents; and

NOW, THEREFORE, IT IS ORDERED that:

1. Attached hereto is the Court approved form of Brochure, which the Court may modify from time to time, on Notice to the Bar, and post upon the Court website.
2. Plaintiffs in Consumer Debt Collection Actions shall provide a copy of the Brochure in the attached form, printed onto color paper, positioned immediately after the Summons and before the Complaint documents upon the defendant.
3. This Administrative Directive shall apply to all Consumer Debt Collection Actions filed on or after November 30<sup>th</sup>, 2016.

  
\_\_\_\_\_  
Alex J. Smalls  
Chief Judge



## NOTICE FROM THE COURT OF COMMON PLEAS

**YOU HAVE BEEN SUED** according to the enclosed Complaint. The Court would like to give you some information. It is best if you consult an attorney. Read the section titled "Legal Resources".

**THE COURT OF COMMON PLEAS WEBSITE HAS A LOT OF INFORMATION FOR YOU.**

### COMMON TERMS

“Plaintiff” – the company filing suit.

“Plaintiff’s Attorney” – the law firm representing the company seeking payment.

“Defendant” – the person being sued. This is you in this lawsuit.

“Creditor” – the company seeking repayment on the extension of credit (e.g., loan or credit card)

“Debtor” – the person(s) who is responsible for payment of the loan or credit card

### TIME DEADLINES

You must comply with all court deadlines, unless the Court grants a request for more time. Your first deadline is to file an answer within 20 days of service upon you of the Complaint. If you need more time to gather information or retain an attorney, first call the attorney for the Plaintiff to request more time for your Answer. If you reach an agreement, confirm it in a letter or email. If you cannot agree, you may file a motion with the Court, giving your reasons why you need more time and how much time you need. The Court will schedule your motion.

If you do not file a timely answer, you may lose your right to present any defenses and a default judgment may be entered against you. Judgments by default are usually entered by the Clerk of the Court, without any review by a judge. The judgment may entitle plaintiff to pursue remedies such as garnishment of wages or sale of your property to collect the amount of the judgment.

### FREQUENT QUESTIONS REGARDING LAWSUITS

#### WHO IS THE CREDITOR?

Financial accounts may be sold from one creditor to another. Read the Complaint to determine who the original creditor was and the original account number. Do you recognize that as your account? If so, then there may be a separate issue, as to whether the account was properly transferred to the company which is now suing you. You can ask the Plaintiff’s attorney informally for that information, but see the “Getting Information” section regarding the formal method to request and obtain documents and information.

#### WHO IS THE DEBTOR?

Read the Complaint to see the name of the original creditor and the original account number. Is it your account? If you don’t recall it, you may want to contact the Plaintiff’s attorney. (S)he may ask you questions to see if it is your account. You can also ask him/her questions about the account.

### AMOUNT OF THE LAWSUIT

If you dispute the amount of the lawsuit, first consider whether interest and fees (e.g., late payments; over limit; attorney's fees) have increased the amount. You may ask Plaintiff's attorney for records showing the charges and monthly statements.

### ACCOUNT TOO OLD?

The creditor has a limited time to file suit (called "statute of limitations"). You can ask Plaintiff's attorney for records on the last charge and last payment and when Plaintiff believes the account went into default. If the claim is legally too old, you may ask the Court to dismiss the lawsuit.

### **SETTLEMENT/MEDIATION**

If you agree that the account is yours, and that the amount is correct, it is not a defense to the lawsuit that you are in poor financial condition. If you wish to negotiate a suitable payment arrangement, Contact Plaintiff's Attorney. If your financial circumstances are very bad, you may consult with a bankruptcy attorney.

Many of these disputes are settled by compromise. A judge will not become involved with negotiations, but the Court has a very helpful mediation process. You and the creditor can meet a neutral person at the courthouse to try to settle the dispute. Mediation should be seriously considered.

### **GETTING INFORMATION**

There is a lot of information on civil lawsuits on the Court's website. Type <http://courts.state.de.us/help/proceedings/ccpcivil.stm>

It is frequently helpful to talk to Plaintiff's attorney to get information or discuss payment schedule. To avoid misunderstandings, confirm requests for information in writing or by email. Once you file an answer, the court website shows formal methods to obtain information from one another.

### **LEGAL RESOURCES**

It is best if you are represented by an attorney familiar with consumer debt cases. If your attorney does not handle consumer debt lawsuits, there are several sources of legal counsel.

LEGAL SERVICES CORPORATION of DELAWARE represents low income individuals.  
(302) 575-0408 (Wilmington) (302) 734-8820 (Dover)

### DELAWARE BAR ASSOCIATION LAWYERS REFERRAL SERVICE

The DSBA LRS (302) 478-8850 - refers people to attorneys with experience in particular fields. It charges \$35 for the initial attorney meeting. To retain the attorney, you negotiate legal fees with him/her.

COURT OF COMMON PLEAS WEBSITE. If you don't yet have an attorney, the Court provides a lot of information. On the internet, type: [courts.delaware.gov/commonpleas](http://courts.delaware.gov/commonpleas). A section called, "Representing Yourself in a Civil Lawsuit." has a video reviewing the process to represent yourself. It also provides valuable information, answers to frequently asked questions, sample forms, and a link to the Court Rules. It will help to explain what Plaintiff must prove to win its lawsuit.