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Default Prove-Up Process Chapter 193, Statutes of 2011 (AB 110, Blumenfield)

LEGISLATIVE ANALYST'S OFFICE



INTRODUCTION

In recent years, various concerns have been raised regarding the state’s “default prove-up process”—a trial court process related to certain civil cases involving the collection of debt. For example, attorneys representing debt collection companies have expressed concerns that courts take too long and charge too much in fees to process such cases. In addition, attorneys representing consumers indicate that the information debt collection companies are required to submit when the cases are initially filed is limited.

In view of the concerns raised by stakeholders, the Legislature passed Chapter 193, Statutes of 2011 (AB 110, Blumenfeld), requiring both Judicial Council (the policymaking and governing body of the judicial branch) and our office to review the state’s default prove-up process. First, Chapter 193 requires Judicial Council to provide a report to the Legislature by September 30, 2013 that analyzes (1) the different methods that trial courts use to process default prove-up filings, (2) how this process compares to the practices of other states, (3) the use of electronic filing in these cases, and (4) the costs incurred by trial courts to process default prove-up filings. The Judicial Council provided this report to the Legislature on August 28, 2013. Second, Chapter 193 requires our office to review the Judicial Council report and the default prove-up process, as well as offer any recommendations to streamline or increase the efficiency of the process (such as in regards to the use of electronic filing). In conducting our analysis, the legislation required us to consult with stakeholders and consider the best practices of other states. This report responds to the requirements specified in Chapter 193.

DEFAULT PROCESS FOR COLLECTION CASES

As we discuss below, default prove-up is part of a larger court process regarding collection cases when the defendant essentially does not respond to the plaintiff’s initial filing. Below, we describe this process in detail, as well as provide background information on fees and costs related to the default prove-up process.

Collection Cases. A collection case is a type of civil case where the plaintiff is seeking to recover up to \$25,000 (not including interest or attorney fees) from the defendant for property, services, or money that was provided to the defendant on credit. For example, a credit card company might be seeking to collect unpaid debt from one of its customers. Plaintiffs in collection cases are generally represented by attorneys and consist of: (1) creditors to whom debt is owed directly or (2) debt buying companies who purchase debt from the original creditors or another debt buying company (such debt may be sold multiple times). Defendants in collection cases tend to be individuals who represent themselves in court proceedings and can lack a clear understanding of the process.

Request for Entry of Default. Once the plaintiff submits an initial filing for the collection case with the court, the plaintiff may file a “request for entry of default”—with the default being that the defendant owes money to the plaintiff. Specifically, in this request, the plaintiff is asking the court to rule in its favor if the defendant fails to respond within a specified time period to the initial court filing. Since defendants

tend to represent themselves, they often do not know whether or how to respond to the plaintiffs' initial filings, particularly if they are unaware that their debt to the original creditor was sold to a debt buyer. If the defendant fails to respond, the court will review the request for entry of default by determining whether the plaintiff has met various procedural requirements (such as submitting specified documents and appropriately notifying the defendant of the case).

If the court finds that the plaintiff has met the above requirements, the court will then approve the request for entry of default and the case proceeds by default. At this point, the defendant may no longer argue that the debt is not owed. If the request for entry of default is not approved, the court will return a copy of the paperwork to the plaintiff and indicate the reasons why the request is rejected, such as the failure to submit complete or required documentation to the court. Rejected requests can be resubmitted to the court for approval. Since attorneys representing debt buying companies typically possess less information about the debt owed than do attorneys representing the original creditors, requests for entry of default from debt buying companies frequently lack sufficient documentation.

Request for Default Judgment. In cases when the court approves the request for entry of default, the plaintiff must then file a "request for a default judgment." In this particular request, the plaintiff is asking the court to decide how much can be collected from the defendant. In evaluating the request, the court will consider whether the amount requested by the plaintiff, which could include legal fees incurred by the plaintiff, is appropriate. Under existing state law, this determination can be made in one of the following two ways.

- ***Court Clerk.*** For requests that do not require the interpretation of law, such as when the plaintiff requests an award amount specified in certain legal documents (like a contract between the plaintiff and defendant), court clerks can grant the default judgment after confirming that all calculations made by the plaintiff are accurate and complete. The plaintiff is then allowed to collect the award from the defendant, and the case is complete.
- ***Judge.*** If the award sought by the plaintiff requires legal interpretation or is unusual (such as if it exceeds the amount cited in legal documents or lacks supporting documentation), the case enters the default prove-up process—meaning the plaintiff must prove that the requested award is appropriate. In this process, a judge (rather than a clerk) determines how much the plaintiff can collect after reviewing the amount requested by the plaintiff, which may require a court hearing. Once the default prove-up process is finished and a ruling by the judge is provided, the case is complete. Stakeholders report that collection cases that go through to the default prove-up process are lengthier than those where a clerk grants the default judgment.

According to Judicial Council, the average processing times for collection cases proceeding by default varies significantly across courts—ranging from a low of 1 day to a high of 296 days.

Fees Not Charged Specifically for Default Prove-Up Process. Under existing state law, trial courts are prohibited from assessing a fee for requests for entry of default or requests for a default judgment (which can include the default prove-up process). Thus, there is no fee collected to directly offset costs of the default prove-up process. However, like all other civil cases, parties involved in the default process are required to pay standard civil case fees (such as initial filing fees and motion fees) unless the court grants a fee waiver after determining that a party is unable to pay. These fees help support overall trial court operations.

Court Costs for Default Prove-Up Process Unknown. In 2011-12, trial courts received almost 1 million filings related to civil cases. Based on a survey of 47 of the state's 58 trial courts, Judicial Council estimates that around 250,000 (or 25 percent) of these filings were related to collection cases. Roughly half of collection cases proceeded by default. (The other half were either contested or resolved in some other way.) The rate at which collection cases proceed by default varies widely among individual trial courts—from a high of 97 percent to a low of 26 percent. The Judicial Council report estimates that it costs the state about \$16 million for trial court judges and staff to process collection cases that proceed by default, which includes cases that do not go through the default prove-up process. (This amount does not include the costs for processing the initial filings for collection cases.) It is unknown how much of these costs are specifically related to the default prove-up process.

ISSUES FOR LEGISLATIVE CONSIDERATION

As required by statute, we reviewed the report that Judicial Council provided the Legislature analyzing the default process, specifically the default prove-up process. The report included information regarding (1) the time to process a case once a request for entry of default is filed, (2) costs incurred by trial courts for cases that proceed by default, (3) fee revenue generated from collection cases that proceed by default, (4) the impact of electronic filing on processing such cases, and (5) the best practices of other states. The judicial branch also reports that it continues to work with stakeholders through a working group to monitor concerns related to collection cases and consider improvements to the process.

Based on our review of the Judicial Council's report, as well as our discussions with various stakeholders and review of the practices of selected states, we identified several issues regarding the default process that merit legislative consideration. We discuss each of these issues below.

Recent Statutory Changes Could Improve Default Process

Plaintiffs Now Required to Provide Additional Information. The frequent lack of detailed information from debt buying companies in their requests for entry

of default or for default judgment often results in the court (1) rejecting a request due to incompleteness or (2) requiring more court time in the default prove-up process. Stakeholders also indicated that this lack of information sometimes makes it difficult for defendants to understand what debt is being pursued and how to take appropriate action. In response to these concerns, the Legislature approved Chapter 64, Statutes of 2013 (SB 233, Leno), which requires attorneys representing debt buying companies to submit more detailed documentation when filing collection cases. For example, plaintiffs must now provide (1) the name and last known address of the consumer listed in the records of the original creditor and (2) a document that proves the defendant incurred the debt (such as a contract or billing statement). These new requirements could result in fewer incomplete cases being filed and resubmitted. In addition, fewer cases may need to proceed through the default prove-up process as the additional information required could result in the court needing to perform less legal interpretation. This could result in reduced workload for judges and court staff, as well as shorter processing times for all collection cases in the long run.

Effects of Similar Information Requirements Implemented in Other States. Our review found that several other states have adopted similar requirements as those specified in Chapter 64. For example, Minnesota and North Carolina require plaintiffs to submit to the court a copy of the original credit agreement or documents containing proof of the original debt, and information on each entity that bought and sold the debt. In addition, plaintiffs must provide defendants with formal notification that a case has been filed against them, which must specifically include the name, address, and telephone number of the debt buyer; the name of the original creditor; the defendant's original account number; and the amount owed by the defendant. Plaintiffs are required to provide the court with proof that such notification was made to the defendant.

Representatives from Minnesota indicate that the additional reporting requirements have improved the state's overall processing of collection cases. Specifically, requiring a copy of the original credit agreement is particularly important for court staff in Minnesota to identify legitimate claims and eliminate others, which in turn reduces the amount of staff time spent on unsubstantiated claims. However, these types of requirements could also have unintended consequences. For example, stakeholders representing plaintiffs in California claim that the stricter information requirements in North Carolina have caused debt buying companies in the state to reduce their use of the court system to collect debt. As a result, stakeholders suggest that these companies have increased their use of collection agencies to collect debt. We were unable to substantiate these claims with representatives from North Carolina.

Potential for Electronic Filing to Increase Efficiency of Default Process

Some trial courts have begun to use technology to help them operate more cost-effectively and efficiently. Specifically, a few courts have begun to use electronic files in lieu of paper documents. This could involve court users either filing paper documents that are then scanned and converted into electronic files or completing and submitting documents electronically. While electronic filing has the potential to increase

the efficiency of the default prove-up process—particularly when it is integrated with a court’s case management system—there is currently limited data on the impact of electronic filing on court processing times and costs.

Electronic Filing Not Widely Used. According to Judicial Council, only 6 of the 47 courts that submitted survey responses reported offering electronic filing for requests for entry of default or default judgment. In addition, few court users actually submit documents electronically at the courts that offer it. Specifically, five of the six surveyed courts that offer the option of electronic filing (Superior Courts of Alameda, San Bernardino, San Diego, San Francisco, and Siskiyou) reported that 20 percent or less of their requests for entry of default or default judgment were filed electronically.

Based on our conversations with various stakeholders, these low rates of electronic filing are due primarily to three reasons. First, some of the courts that offer electronic filing do not have electronic filing systems that are fully integrated with their case management systems. As a result, electronically filed documents are not inputted into the case management system more quickly than paper documents. For example, a court might have to print and scan electronically filed documents to input them into their case management system—a time intensive and costly process. As a result, electronic filing is not significantly faster or more convenient for court users than paper filings in these courts. (We would note, however, that at least 20 trial courts are in the process of contracting with vendors to supply new case management systems that typically include integrated electronic filing and electronic record storage capabilities.) Second, many court users do not make use of electronic filing because they are still becoming familiar with the electronic filing process. Third, in order to use electronic filing, court users must generally pay an additional charge (such as per page or per transaction). It is unclear whether, and to what extent, such charges could be claimed as part of the award in court proceedings, which can discourage use of electronic filing. Until these issues are addressed, it may be difficult to increase the use of electronic filing.

Use of Mandatory Electronic Filing. Unlike the five courts above that offer electronic filing on an optional basis, the Superior Court of Orange County (the sixth court surveyed that uses electronic filing) currently requires the use of electronic filing for certain civil cases. Specifically, Chapter 320, Statutes of 2012 (AB 2073, Silva), authorized the Superior Court of Orange County to establish a pilot project to *mandate* the electronic filing of certain civil case types through July 1, 2014. As a result, nearly all civil cases at the court are filed electronically. (Since the enactment of Chapter 320, all courts have been authorized to mandate electronic filing within the statewide rules adopted by Judicial Council.) The legislation also required Judicial Council to evaluate the cost effectiveness of the pilot project on the court and court users by December 31, 2013. While this evaluation report is still forthcoming, Judicial Council has provided some preliminary data on how quickly the Superior Court of Orange County currently processes default collection cases. For example, Judicial Council indicates it takes the court an average of 5 days to process a collection case once the plaintiff has filed a request for entry of default to the completion of case when reviewed by a court clerk, and an average of 33 days when reviewed by a judge through a default prove-up hearing.

However, Judicial Council was unable to provide data on the average processing times for the Superior Court of Orange County prior to the mandatory use of electronic filing. Thus, it is unclear the extent to which electronic filing has created greater efficiencies. In addition, it is unknown how Orange County's processing times compare to other courts' processing times for collection cases that go through the default prove-up process. In terms of processing costs, the Superior Court of Orange County currently estimates that it saves approximately \$3.50 per document filed electronically from reduced employee labor and storage costs. While these savings appear promising, it is unclear whether other courts would achieve similar savings if they implemented mandatory electronic filing or if other factors have contributed to the identified savings.

Other states have also implemented mandatory electronic filing. For example, Minnesota began a pilot project in two counties in 2013. Staff in the Ramsey County Court indicate that the court can process collection case claims and default requests the same day, and all are typically processed within 72 hours (unless the claim is lacking a significant amount of information). Because electronic filing is integrated with the court's case management system, the court indicates that it can process cases quickly by automatically placing all case information into its system and allowing staff to send back incomplete claims to plaintiffs within minutes of deeming the information insufficient (rather than waiting for paper copies to be delivered by the post office). However, the court was unable to provide information on the length of time it took to process these filings before mandatory electronic filing was instituted. In addition, while there are electronic filing fees in Minnesota, the staff at the Ramsey County Court believe that their stakeholders are willing to trade costs for increased efficiency and convenience. However, we were unable to speak directly with the stakeholders to confirm this.

Processing Times Depend Upon Other Case Types

Trial courts generally have broad discretion in how they allocate their funds between case types (such as criminal and civil cases). However, state law indirectly sets funding priorities for different case types by requiring that trial courts process cases within specified time frames. For example, there are a number of specified time frames for criminal case types (such as deadlines for when individuals must go to trial) that are generally shorter than those specified for certain civil case types (such as collection cases). In addition, individual trial courts will also prioritize certain case types over others. For example, a trial court might choose to assign less staff to collection cases than to other types of civil cases, despite the fact that certain civil cases generally have similar statutory deadlines. Thus, the processing times for any individual case type depends on the number of filings in other case types, how efficiently those case types are processed, and the overall amount of funding and staff available to a court. In our conversations with court staff, judges, and attorneys, they indicated that a number of different case types have statutory or local priority over collection cases. Accordingly, it may be difficult to reduce the processing times for collection cases proceeding by default without improving the processing times for other case types through either increased efficiency or additional resources. Alternatively, the Legislature could amend statute to prioritize case types, such as collection cases, differently.

Increased Standardization Needed

According to attorneys we spoke to, a number of courts currently lack standard procedures that court staff must follow when processing requests for default and default judgments. Such lack of standardization within an individual court can create inefficiencies, as the manner and time spent on similar requests can unnecessarily vary. One way a court can ensure that each request is processed similarly is by requiring clerks to use checklists to determine whether plaintiffs seeking requests for entry of default have submitted the required information. Such checklists can help ensure that staff at a given court follow the same internal procedures to process the requests. In addition, to the extent that a court uses a similar process for processing each request, court users that become familiar with the process are less likely to submit incorrect or incomplete information. Thus, these checklists can help reduce the number of filings that are rejected for being incomplete and are subsequently resubmitted, which can reduce court workload. However, Judicial Council reports that only 28 of the 47 surveyed courts use some type of checklist.

In addition, attorneys have also indicated that there are various processes related to the collection default process that lack standardization across courts. These differences likely impact how quickly and efficiently individual trial courts process collection cases that proceed by default. Examples of these differences include:

- ***Items on Checklists.*** While some courts maintain checklists to make sure plaintiffs have submitted the correct information, these checklists can vary greatly among courts—resulting in courts requiring different information. As a result, attorneys practicing in multiple courts face different or conflicting standards that can lead to filings being rejected and resubmitted. This increases the length of time and cost necessary to process these filings.
- ***Use of Clerks in Requests for Default Judgment.*** State law provides guidelines for when courts can have clerks review requests for default judgment in a collections case and when the decision must be made by a judge through the default prove-up process. According to attorney and court stakeholders, courts differ in how they follow these guidelines. While some courts use clerks to make default judgments when no legal interpretation is required, other courts require that judges review and decide all requests for default judgments—effectively requiring that all such requests go through the default prove-up process.
- ***Rescheduling Court Hearings.*** Attorneys indicate that only some courts reschedule court hearings for collection cases when the court determines it is unable to process documents filed by the plaintiffs prior to the scheduled hearing. This avoids the need for unnecessary hearings, which saves both court and attorney time.

In view of the above lack of standardization, we recommend that the Legislature direct Judicial Council to require greater consistency and standardization of collection cases that proceed by default. For example, Judicial Council could promote greater standardization by drafting uniform checklists for use across all trial courts, encouraging greater and more consistent use of clerks to process requests for default judgments, and requiring the rescheduling of cases when the court is unable to process documents prior to scheduled hearings. Such changes could increase efficiency and consistency, as well as reduce processing time.

Increased Information for Court Users Needed

Attorneys also indicate that there is a lack of transparency surrounding some aspects of cases that proceed by default. For example, according to Judicial Council and stakeholders, only some of the courts that maintain checklists actually make them available to attorneys or others making requests for entry of default in collection cases. As a result, attorneys and defendants involved in collection cases in these courts have difficulty knowing what specific information they need to submit. This can result in filings being rejected and resubmitted or more cases going through the default prove-up process. This can increase the time and costs of processing these cases. Making checklists publicly available could help plaintiffs submit complete and more accurate collection case filings with the courts—potentially reducing court workload and processing times.

In addition, there appears to be a lack of easily accessible information to help court users—particularly defendants—understand and navigate the collections case process. For example, only some trial courts have developed, or are in the process of developing, information to help court users involved in the collection process. Providing more information on the collection process could help defendants, who typically are not represented by attorneys, make an informed decision on whether they would like to contest collection cases. While this might result in fewer collection cases proceeding by default, defendants will have greater ability to be active participants in their cases.

In view of the above, we recommend that the Legislature direct Judicial Council to require trial courts to provide court users with any existing informational material (such as checklists) that can help them navigate the collection case process. Such information could improve the ability of the courts to process collection cases efficiently, such as by reducing the prevalence of missing information in court filings. Additionally, the Legislature could direct Judicial Council to assist trial courts with providing greater information on the collection process to court users. For example, Judicial Council could require trial courts to provide a link on their individual websites to the judicial branch website, which provides individuals with helpful details on the general steps of the collection case process, the options available to the defendant, and links to appropriate forms or statute. Alternatively, individual trial courts could use the judicial branch website as a model for updating their individual websites to include more detailed information about the collection process.



This report was prepared by Anita Lee, with assistance from Lia Moore, and reviewed by Drew Soderborg. The Legislative Analyst's Office (LAO) is a nonpartisan office which provides fiscal and policy information and advice to the Legislature.

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