

Texas Supreme Court Advisory Committee
P.O. Box 12248
Austin, Texas 78711-2248

RE: Proposed Rules for debt collection cases recommended by
the Texas Supreme Court Justice Court Task Force

May 11, 2012

Dear Justice Hecht and Honorable Members of the Supreme Court Advisory Committee:

This response is made by DBA International (f/k/a/ Debt Buyers Association, International, "DBA"), to the Supreme Court Advisory Committee, regarding the proposed rules for debt collection cases in Justice Courts, ("Proposed Rules").

DBA International is the national trade association that represents the interests of companies involved in the secondary market who purchase debt asset portfolios. Representing over 550 companies with membership in all 50 states, DBA International strives to ensure that any rules, regulations, or legislation that is considered at either the state or federal levels adopt existing best practices to protect the consumer and debt holder alike.

DBA members are knowledgeable and held to high ethical standards. DBA provides continuing education opportunities at its annual conference, promotes the debt buying industry at major industry conferences, and requires members to accept and abide by a strict code of ethics. Additionally, DBA has created a Task Force to develop a national debt buyer certification program that will contain required examination and education components.

With 31 member companies headquartered in Texas, DBA members employ thousands of Texans who have and continue to comply with Texas Court rules in the filing of claims after they are assigned the debt from the original creditor. We believe several of the Proposed Rules, by limiting access to the courts, will not only negatively impact our Texas-based members and their employees but will have a chilling effect on the credit industry as a whole. By imposing unreasonable restrictions on the secondary market, these Proposed Rules will likely decrease the level and amount of credit extended by originating creditors to Texas consumers.

DBA fully supports the position of the Texas Creditor's Bar Association ("TXCBA") in their letter to the Texas Supreme Court Justice Court Task Force dated March 14, 2012 where TXCBA suggests alternatives to the Proposed Rules. DBA shares the same concern for the rules

as proposed, and in particular, offers the following additional responses regarding the data, documentation, and original creditor affidavit requirements under Proposed Rules 577 and 578.

Proposed Rule 577(a)(1). Plaintiff's Pleadings, subsection (a) (1) would require the original petition to include the defendant's name and address as appearing on the original creditor's records. Unfortunately, many consumers with charged-off debt move frequently and the last known address is truly the pertinent address for service of process and identification. Creditors and debt buyers may not have the original address available due to consumer portability. When a creditor loses contact with a consumer, the creditor will perform skip tracing efforts to find the consumer's new address. Creditors will then label any "prior addresses" of record as a "bad address" and replace it with the current address. The file that is sold on the secondary market by the creditors contains the current address, not the bad address. Debt buyers are obligated to find the consumer at a proper service address in order to file suit and it is the service address that is available for inclusion in the original petition.

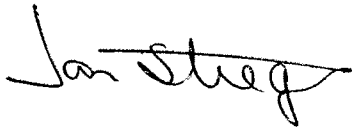
Proposed Rule 577(a)(4). Plaintiff's Pleadings, subsection (a) (4) would require the original petition to include the date of origination / issue of the account. Many accounts have been opened for many years and the date of origination of an account is meaningless to the consumer. Additionally, creditors are required to keep documentation for two years under Truth in Lending Act (Regulation Z); thus some information may no longer be available. The charge-off date and balance are heavily regulated at the federal level which makes them more reliable and pertinent to a consumer in identifying an account.

Proposed Rule 577(a)(5). Plaintiff's Pleadings, subsection (a) (5) would require the original petition to include the date and amount of last payment. Sometimes, consumers default on the first payment ("first payment default") and therefore the date of last payment to the creditor would not be applicable. Further, the consumer may have made payments after charge-off which would be reflected in the current claim amount set forth in the petition.

Proposed Rule 578(a) and (b). Default Judgments, subsections (a) and (b) would require copies of certain account documents of the original creditor along with a business records affidavit from the original creditor. Original creditors are governed by the Truth in Lending Act (TILA) which only requires that documents be retained for two (2) years. Further, an exception to the hearsay rule permits a debt buyer, as the creditor's assignee, to testify regarding business records kept in the ordinary course of business by the assignor. This is a rule embraced by federal circuit courts interpreting the Federal Rules of Evidence, as well as numerous Texas courts of appeal. It is simply unfair to require debt buyer plaintiffs to obtain testimony from each creditor regarding the validity of an account sold along with the business records before a debt may be deemed valid. Finally, any additional expense will ultimately be borne by the consumer by way of increased settlement guidelines to reduce costs associated with a rule that is only imposed by the State of Texas.

DBA, International appreciates this opportunity to provide this response to the Advisory Committee and looks forward to the development of a set of rules that our members can support. Please do not hesitate to contact me at (916) 482-2462 should you have any questions or require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Stieger". The signature is fluid and cursive, with a horizontal line crossing through the middle of the name.

Jan Stieger
Executive Director

cc: Marisa Secco, Supreme Court Rules Attorney