

Client Newsletter

Dibble & Miller, P.C.

July 1, 2014 – No 083

www.dibblelaw.com



D&M^{P.C.}

From the
Law Offices of

Dibble & Miller, P.C.

55 Canterbury Road
Rochester, NY 14607

Tel: (585) 271-1500
Fax: (585) 271-0118

If You Owe Money and Are Not Making Payments, You Should Read this Newsletter

(Debt Collection Reforms For The Protection Of Debtors)

Reforms governing consumer credit collection practices in New York State's city courts* are expected to take effect soon, and will require creditors to comply with certain procedural requirements before they can obtain default judgments against debtors.

Collection Litigation – A Growing Issue for Debtors

Debt collection litigation is pervasive in the city court system, and the majority of the cases filed result in default judgments, which are granted against debtors who do not properly respond to a collection claim. Many of these default judgments are entered against unsuspecting debtors who may not have received any notice there was a lawsuit pending against them. The new reforms provide protection for debtors that we, as defense counsel, have long sought on behalf of our clients. The new rules are designed to prevent unjustified default judgments and to ensure a fair legal process.

Validation of Debts – New Creditor Affidavits

The new rules will require creditors to submit affidavits on personal knowledge attesting to the following:

- the underlying facts regarding the debt, including the name of debtor, last four digits of the account, date and terms of the original credit agreement, and the date and amount of the last payment;
- if there is a claim for account stated, a statement indicating the accounting was sent to the debtor and the debtor retained the accounting without objection;
- a summary of the amount the debtor allegedly owes,

including an itemization of how the amount was calculated based on principal, interest, fees, and charges;

- a true copy of the original credit agreement must be attached to the affidavit; and
- a statement setting forth where and when the claim arose, the statute of limitations for New York and any other jurisdiction where the claim arose, and stating that after reasonable inquiry, it is believed that the statute of limitations did not expire.

And, if the action is by a creditor that has purchased the debt from the original creditor, the affidavit will also need to include, among other things, statements that:

- the debt was assigned to the creditor, the amount owed to the original creditor, and the date of the assignment;
- records specific to the debt were created and maintained in the ordinary course of business of the original creditor; and
- a true copy of all written assignments of the debt must be attached to the affidavit.

Additional Notice Requirements – To Prevent Unjustified Debtor Default

Creditors will also be required to prepare, and submit to the court, an additional notice to the debtor about the consumer credit transaction, including the debtor's address information, which will then be mailed to the debtor by the court. If the notice is returned to the court because of a wrong or unknown address, the court will not grant a default judgment.

Uniform Forms Designed for Debtors

Forms specifically designed for use by unrepresented debtors will also be made available. Specifically, an answer that contains a list of standard defenses that a debtor can check off if they apply, and a form order to show cause to vacate a default judgment.

Dibble & Miller Can Help

Dibble & Miller has successfully handled the defense of all types of debt collection matters. If you have been sued, are experiencing debt, are just falling behind, or have a problem with a debt collector, please contact us today and speak to our professionals who are dedicated to serving your needs.

*Many collection law suits are brought in city courts. However, if you are sued in Supreme Court, it is likely more serious and we recommend that you contact us for immediate assistance.

DIBBLE & MILLER, P. C.

ATTORNEYS AT LAW

55 CANTERBURY ROAD, ROCHESTER, NEW YORK 14607

PHONE: 585-271-1500 FAX: 585-271-0118

WEB SITE: www.dibblelaw.com

WE THANK YOU FOR USING OUR FIRM.

PLEASE REMEMBER THAT WE HAVE AN EXTENSIVE PRACTICE TO SERVE YOU:

- **Business Agreements** — *All Types, including Non-Compete, Buy-Sell, Non-Disclosure, Employment, Shareholder and Partnership Agreements*
- **Business Formations** — *Start-Up Businesses and Partnerships, Business Purchase and Sale Agreements, and Formation of Corporations and LLC*
- **Criminal Law** — *Arrests, Felonies, Misdemeanors, Traffic Tickets, White Collar Crimes, DWIs, Plea Bargains, Trials, and Appeals (State and Federal)*
- **Debtor Rights** — *Debt Resolution and Bankruptcy — We Are A Debt Relief Agency — We Help People File for Bankruptcy Under the Bankruptcy Code*
- **Estate Planning** — *Preparation of Wills, Trusts, Health Care Proxies, and Powers of Attorney; Medicaid and Estate Planning; and Estate Administration*
- **Family Law** — *Divorce, Custody, Visitation, Child Support, Paternity, Pre-Nuptial Agreements, Separation Agreements, and Family Mediation*
- **Litigation** — *Civil, Business, Contract, Commercial, Corporate, Real Estate and Stockholder and Partner Disputes*
- **Personal Injury** — *All Types, including Car Accidents, Slip and Fall, Physical and Sexual Abuse, Assaults and Work Accidents*
- **Real Estate** — *Residential and Commercial Purchases, Sales, Closings, Mortgages, Land Contracts, Foreclosures and Real Estate Leases*
- **Tax Defense** — *Defense of IRS & NYS Tax Compliance Enforcement:*
 - *Defense against Civil and Criminal Tax, Workers Compensation and Unemployment Audits, Investigations, Protests and Litigation*
 - *Defense against Collection of Income, Payroll, Sales and Corporate Taxes*
 - *Resolution of Tax Levies, Liens and Income Executions*
 - *Responsible Person and TFRP Defense for Trust Funds, Sales, Use and Withholding Taxes Assessments and Collections*
 - *Preparation, Filing and Negotiation of Offers in Compromise*
 - *Negotiation of Tax Installment Agreements and Tax Payment Plans*
 - *Innocent & Injured Spouse Defense*

*** IF YOU NEED LEGAL ADVICE, PLEASE CONTACT US FOR A FREE CONSULTATION ***

We Are A Full Service Law Firm – Free Initial Consultation – Attorney Advertising