

State courts across the nation have begun holding remote hearings. This issue brief considers what steps courts should take to protect consumers before holding remote hearings in debt collection cases. Studies show that between [91% to 99% of consumers in debt collection cases are unrepresented](#) so this brief focuses on protecting people who do not have an attorney.

## HOW COURTS SHOULD PROTECT CONSUMERS APPEARING REMOTELY IN DEBT COLLECTION CASES

- **Postpone Hearings and Stay Enforcement of Judgments until a Safe Reopening Plan Is Implemented** – Courts should postpone hearings on collection lawsuits until they have: (1) a plan to protect the health of those who use the courts, and (2) a plan to protect the rights of those who appear remotely. Courts should also stay the enforcement of new and existing judgments in collection cases until they can quickly and safely process remote and in-person emergency hearings to assert exemptions, vacate judgments, or modify garnishments of wages or bank accounts.
- **Make Remote Appearance Optional** – Remote hearings should be optional, especially for unrepresented consumers who may face challenges, such as lack of broadband, ability to use required technology, etc. Those who do not opt in to remote hearings should be allowed to appear in person, *if safe options currently exist*, or have the hearing delayed until safe in-person hearings are possible.
- **Give Clear Notice** – Courts should: (1) provide clear information, in multiple languages, about the consumer’s options to participate remotely or appear in person; (2) explain if in-person hearings are currently delayed due to COVID-19, and (3) ensure such notice is received.
- **Provide Details** – Courts should provide clear and detailed instructions about: (1) how the remote hearing will occur, including the date and time of the hearing; (2) how to attend the hearing; (3) how evidence may be presented at the hearing; (4) how defenses may be raised; (4) a summary of exemptions and how to assert them; (5) information about free legal services that may be available; and (6) specific contact information for court personnel if the consumer has questions.
- **Require Party with Burden of Proof to Provide Evidence in Advance** – Courts should require the party with the burden of proof to provide the evidence that it intends to use at the remote hearing to the other party in advance.
- **Inquire about Reasons for Remote Default** – When unrepresented consumers fail to appear, courts should: (1) contact them to ask about the reason for the failure to appear; (2) provide a simple process for the consumer to explain the reason (e.g. technology failure, loss of internet or telephone connection, illness, etc.) that the consumer can use to move to vacate default (if necessary), and (3) make it easy to reschedule the hearing.
- **Do Not Issue Civil Arrest Warrants** – Courts should not issue civil arrest warrants (also known as *capias* or bench warrants) for failure to appear remotely.

- **Coordinate with Legal Services** – Courts should discuss potential changes to court procedures in advance with legal services organizations and work with them to ensure that unrepresented consumers have access to the same information or representation in remote hearings that they would have had if the hearings were held in person.
- **Use Free Technology** – Appearing remotely should not be a financial burden for consumers. Avoid services that charge parties to participate.
- **Use Accessible Technology** – Make sure that technology used for remote proceedings is compatible with mobile phones and accessible for those with disabilities.
- **Provide a Telephonic Alternative** – Courts should always offer the option of appearing by phone since this technology is more likely to be accessible to a wider number of unrepresented consumers. If one party needs to appear by phone, the entire hearing should take place by phone rather than having one party appear by video conferencing and one party appear by phone.
- **Avoid Bias by Creating a Uniform Appearance** – Courts should work with video conferencing providers to develop standard backgrounds for litigants appearing by video conferencing and provide suggestions about how to improve sound and video quality.
- **Allow, But Don't Require, Use of E-Filing** – Unrepresented consumers who affirmatively opt in to using e-filing systems should be allowed to do so. However, courts should provide alternative methods of communication and filing for unrepresented consumers since they may face barriers accessing or using e-filing.
- **Reform Notarization Requirements** – Courts that have notarization requirements to file documents like answers or affidavits should adapt these requirements to ensure that they are not a barrier to remote participation by unrepresented consumers.
- **Language Access** – Courts should provide language access services to consumers appearing remotely rather than relying on informal interpretation by friends or family of the consumer.
- **Stream Proceedings, But Don't Publish Recordings** – Court sessions must be open to the public, and audio should either be streamed live or shortly after the proceeding is recorded. Recordings should also be available to the parties. However, to prevent misuse, recordings should not be published permanently online.
- **Reaffirm the Consumer's Right to a Hearing** – If courts use video conferencing technology to allow parties to communicate directly before a hearing (such as by using breakout rooms in Zoom), they should clarify that such negotiations are optional and clearly inform consumers that they have a right to a hearing about the alleged debts.
- **Protect Consumers in Dispute Resolution** – Courts considering adopting alternative dispute resolution (ADR) or online dispute resolution (ODR) should consult with legal services organizations and review [Consumer Protection and Court-Sponsored Online Dispute Resolution in Collection Lawsuits](#).

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