

Agenda

Committee on Resources for Self-represented Parties

August 10, 2018
12:00 to 2:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Judicial Council Room, Suite N31

Welcome and approval of minutes	Tab 1	Judge Barry Lawrence, Chair
Committee membership		Judge Barry Lawrence
Coordination with Access to Justice Committee and local pro bono committees		Judge Barry Lawrence
Know Your Rights Panel Discussion: August 16, 2018	Tab 2	Nancy Sylvester
Access to Justice Forum: October 23 8 a.m. to 1 p.m.	Tab 3	Judge Barry Lawrence
Update on 10-day summons and forms		Judge Barry Lawrence
Subcommittee reports and discussion on prioritizing projects and timelines for completing them <ul style="list-style-type: none">• Education• Outreach• Rural Services• Self-Help Center/Non-lawyer Assistance/Court Updates Subcommittee	Tab 4	All
Other Business		All

[Committee Web Page](#)

Proposed Bimonthly Meeting Schedule: Matheson Courthouse, 12:00 to 2:00 p.m. unless otherwise stated.

October 12, 2018

December 14, 2018

Tab 1

Utah Judicial Council's Standing Committee on Resources for Self-Represented Parties Meeting Minutes

Matheson Courthouse
Council Room, N31

June 8, 2018
12 PM – 2 PM

Members Present

Sue Crismon
Jacob Kent
Monica Fjeldsted – via phone conference
Leslie Francis – via phone conference
Carol Frank – via phone conference
Judge Catherine Hoskins
Judge Barry Lawrence – Chair
Shaunda McNeill
Nathanael Player
Judge Brook Sessions
Judge Doug Thomas
Jessica Van Buren

Members Excused

Lisa Collins
Virginia Sudbury
Susan Griffith
Carl Hernandez
Chris Martinez

Staff

Nancy Sylvester
Minhvan Brimhall – recording secretary

Guests

Christine Durham
Amy Sorenson
Judge Camille Neider

(1) Welcome and approval of minutes – Judge Barry Lawrence, Chair

Judge Lawrence welcomed the committee to the meeting. Following the correction of a committee member's name, Judge Lawrence asked if there were any objections to the March 30 minutes. No objections were raised. Nathanael Player moved to approve the minutes. Sue Crismon seconded the motion. The motion carried unanimously.

Committee membership – There are three potential openings on the Committee. Shaunda McNeill's term is coming up. Ms. McNeill will inform the committee in the next few weeks as to whether she will seek a second term. Juvenile court Judge Knight resigned from the committee so the committee will seek another juvenile court judge. The community member position is also open. Nancy Sylvester presented several options to the committee of victim advocates in Weber County. Judge Lawrence invited any committee members who have suggestions on community members to contact Ms. Sylvester.

Judge Lawrence welcomed justice court Judge Catherine Hoskins as a new member to the committee. Judge Hoskins shared her experiences with self-represented parties. The committee also welcomed district court Judge Camille Neider to the meeting.

(2) Access to Justice Update -

Judge Lawrence welcomed Amy Sorensen and Retired Justice Christine Durham, co-chairs of the Bar's Access to Justice Committee, and thanked them for participating in the meeting. Justice Durham explained her role. She said she was contacted by John Lund, President of the Utah State Bar, to explore the history of the access to justice efforts in the state and to study the resources available throughout the state. Mr. Lund created a small committee to discuss the legal needs throughout the state and to meet with stakeholders to look at ways legal resources could be made more easily accessible. Ms. Sorensen said that the committee has looked at prior studies, "access maps," and programs throughout the state to identify areas that need additional support or planning. Ms. Sorensen praised the Self-Represented Parties Committee for the work it is doing and expressed interest in better coordinating the efforts of the two committees.

(3) Subcommittee Reports -

- a. **Education** – Judge Lawrence is the head of this subcommittee. The subcommittee provides education to various groups. They have visited both law schools in the state to present to and educate law students on pro bono resources and opportunities to participate. The subcommittee has also shared their work with judges and clerks throughout the state.
- b. **Outreach** – Judge Lawrence discussed that lawyers are not able to do it all but lawyers can help with some things. But people need to know what those things are. So part of this committee's efforts have to include outreach. The state has several pro bono services providers throughout the state; however, many rural communities may not have resources to access those services. Ms. Crismon, the subcommittee chair, shared that the group has met and is looking at multiple ideas to provide outreach to rural and non-rural areas. The group is considering taking out a newspaper article to share information for education purposes. The group is also looking at making refrigerator magnets with contact information for and information on legal resources. Judge Lawrence suggested having them available at public and state court libraries. The Committee discussed creating posters to place in public areas. Judge Doug Thomas suggested creating a podcast that can be uploaded to social media where information and answers to various questions may be provided. Judge Lawrence suggested setting up a lunch meeting with the Martin Luther King Commission on ways to outreach throughout the state.

Ms. Sylvester raised the possibility of an MLK Commission member being appointed to the committee's community member position. Committee members agreed that that would go a long way toward helping with outreach. Ms. Van Buren is an officer of the Utah Library Association. She will contact librarians around the state about how to better outreach to the public. Ms. Crismon and

Ms. McNeill will identify locations such as aide centers, food banks, etc. where outreach may be available and provide a report at the next meeting on what should be said and how it should be said.

- c. **Rural Services** – Ms. Van Buren noted that Nathanael Player had discussed with Judge Peterson the needs of the Eighth District, and had also discussed a possible virtual clinic in Sixth District with staff and judges there. Ms. Van Buren queried whether the subcommittee should conduct a needs assessment in each district rather than coming up with solutions to perceived problems first. Ms. Van Buren suggested Survey Monkey. Judge Thomas then discussed that rural districts do not have the kind of debt collection calendars Third District has, nor do they have any volunteer attorneys to assist. There needs to be better access to remote services in areas like Green River. There are too many default judgments due to defendants not having the ability to even drive to hearings because of the great distance.

Judge Lawrence and Mr. Player will contact Judge Peterson to discuss the Vernal debt collection cases. Judge Lawrence will meet with Nick Stiles about how the various pro bono commissions throughout the state and rural areas can better assist the committee in assessing needs and culling resources.

- d. **Self-Help** – Judge Lawrence said that the Self-Help Center has taken on the task of trying to help solve the high default rates in debt collection cases. The SHC has observed that default judgment rates may be high primarily due to people's inability to get adequate notices of summons and hearings.

(4) Proposal to amend Rules of Civil Procedure 3, 4, 7, 36 and Forms.

Judge Lawrence discussed the current process for a 10 day summons. The current process is very archaic and often times confusing to both plaintiff and defendant. Judge Lawrence recommended doing away with the 10-day summons. Mr. Player reported that in 1994, the Rules Committee voted to get rid of this rule and add additional language to the rule for clarity. In 1999, a vote was taken up again with the Rules Committee to remove the rule and once again the rule went through another revision. The rule was raised again in 2010 where, then Mr. Tom Lee, made suggestions to better clarify the rule with the Supreme Court and the Rules Committee. Due to the other sweeping rule changes happening at the time, the rule wasn't amended.

Judge Lawrence proposed getting rid of the 10 days summons and providing better notice of the consequences of not responding to, for example, requests for admission. He thought both of these would help the default rate. Justice Durham suggested that Judge Lawrence take this through the Board of District Court Judges and then present it in a petition to the Supreme Court, rather than first taking it through the rules committee.

(5) Adjournment.

The meeting adjourned at 2:02 PM. The next meeting is scheduled for August 10, 2018, at 12 p.m. in the Judicial Council Room.

Tab 2



PANEL DISCUSSION

KNOW YOUR RIGHTS

MODERATOR

Jennifer Napier-Pearce

Salt Lake Tribune, Editor



Panelist: Ethnic Community Leaders

AUGUST 16, 2018 - 7 pm to 830 pm

Salt Lake County Building 2001 S State Street

South Building, Room S1-120

veronamauga@gmail.com

Tab 3



Nancy Sylvester <nancyjs@utcourts.gov>

Save the Date for the First Annual A2J Summit

Justice Christine Durham <christine.durham@utahbarfoundation.org>

Wed, Aug 1, 2018 at 11:51 AM

Reply-To: christine.durham@utahbarfoundation.org

To: nancyjs@utcourts.gov

The graphic features a blue header with the text "Have you ever wondered where to send someone for legal help?". Below this is a photograph of a computer keyboard with a prominent blue key labeled "legal advice". To the right of the keyboard, a red banner contains the text "Learn about legal services, networking, and growing your organization." Below the banner, the text "at the" is followed by "UTAH ACCESS TO JUSTICE SUMMIT" in large, bold, red letters. The date and time "October 23, 2018 8:00 am – 1:00 pm" are listed below. The location "Utah Law & Justice Center 645 South 200 East, SLC" is provided. At the bottom, a blue banner states "Opening Remarks by Justice Christine M. Durham (Ret.)". Small text at the bottom left of the graphic reads "Sponsored by: The Utah State Bar, The Utah Bar Foundation, and The Lund Family Foundation."

Save the Date! First Annual Access to Justice Summit Coming October 23

The Lund Family Foundation, the Utah Bar Foundation, and the Utah State Bar are joining forces to bring you the First Annual Access to Justice Summit. Here's your chance to learn more about the resources that are available for those who need help finding access to justice. Representatives from a variety of organizations will be presenting options to increase funding, grow your organization, and help you better serve the public. Watch for more details coming soon!

Utah Bar Foundation | [645 S. 200 E., Salt Lake City, UT 84111](#)

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Sent by christine.durham@utahbarfoundation.org

Tab 4

Prioritizing Projects of the Committee on Resources for Self-represented Parties

Self-Help Center/Non-Lawyer Assistance/Court Updates Subcommittee

- **Rename this committee**
 - Justice Himonas suggested that we call people without lawyers “unrepresented” instead of saying self-represented or *pro se* to more accurately describe the reality that many cannot afford attorneys.
 - [Rule 1-205\(1\)\(B\)\(viii\)](#); [Rule 3-115](#); [committee webpage](#); [boards and committees webpage](#)
- **8th District pilot of a new system with debt collection cases**
 - There were 530 debt collection cases filed in Vernal in FY 2017 – 890 in all of the 8th District.
 - Judge Peterson already holds a consolidated debt collection calendar in Vernal
 - Judge Peterson was open to allowing volunteer attorneys to appear remotely , but is not able to align his calendar to match the debt collection calendar at Matheson (Wednesdays at 1:00 p.m.)
 - Judge Peterson thinks that having attorneys on his debt collection calendar would not be super helpful because most people have already defaulted – most of the proceedings on his calendar are for supplemental proceedings
- **Increasing attendance of 3rd district debt collection calendars**
 - Volunteer attorneys are not always enthused about returning due to the low attendance rate.
- **Multiplying the impact of clinics through video chat.**
 - Susan Griffith from TLC, JoLynn Spruance from the University of Utah’s Pro Bono Initiative, Tatiana Christiansen from Utah Legal Services, Nick Stiles from the Utah Bar and Nathanael met to discuss legal clinics. This group is working on multiplying the impact of the numerous physical clinics happening on the Wasatch Front to explore whether providing video chats will be helpful in providing legal services to rural areas.
 - The group is working on sorting out issues around malpractice insurance right now.

Rural Subcommittee

- **Needs assessment**
 - We tend to assume that we know the needs in rural areas without asking the questions. Where the Bar in general seems removed from most rural communities it could be very positive to actually ask people what services they see as most important.
 - But It is time consuming to figure out the right questions to ask, how to get the assessment to people who will actually answer it, how to get enough people to respond that the data is meaningful. We don’t have money or personnel to do it.
 - We might consider asking attorneys, court clerks, and professionals in the community who work with the people we are trying to help. Their feedback might give us the insight we need. We could do it through a quick Survey Monkey type of format.

- Or work with local pro bono committee to assess needs. Regular updates to our committee?
- **Debt collection in rural areas**
 - Have Harvard help with notices for the calendar, and also build a system for having volunteer attorneys who consult with the defendants before the calendar to talk about their options, including settlement/payment plan, bankruptcy, defenses, etc. The consultation would be virtual, perhaps as part of the Self-Help Center's Lawyer of the Day, perhaps building of some of your experience with TLC's virtual clinic. The idea is also to have attorneys appear remotely at the hearings.
 - Judges in rural areas are not keen on order to show cause calendars for debt collection.
- **Virtual Clinic in Richfield**
 - The 7th District Pro Bono Committee discussed the idea of creating a legal clinic at the Richfield Library. One of the librarians there reached out to the State Courts to ask about a clinic. Most individuals in the rural areas are low income and can't afford an attorney. A legal clinic would provide an opportunity for individuals to speak with an attorney and get directed on how to file using OCAP.
 - ULS pulled out because the clinics were so poorly attended. They felt that clients could benefit more from using their daily intake system which allows clients to get some info and advice from an attorney or paralegal. They also have access to the Self-Help Center paired with the Attorney of the Day. Using these two programs people in remote areas can get help as the need arises, but it is by phone. Perhaps our committee could do more to publicize these services that are currently available.
 - An idea is percolating to try to provide virtual clinics to people in remote areas, perhaps getting Bar Foundation money to pay attorneys to provide the service. The proposed test site for that is Richfield.
- **Supporting Live Clinics in Rural Areas**
 - Create an opportunity to personally meet with attorneys to create a "Tuesday Night Bar" (TNB) type of event once or twice a year. We could pair it with a free CLE event to encourage attorney participation.
 - "Justice Bus" initiative: bringing attorneys from other more populated districts to offer brief legal advice to people in rural communities. Potentially link an "Attorney of the Day" with the Bookmobile. As another option, we could put information about how to access legal resources in the Bookmobiles.

Outreach Sub-Committee

- **Local newspaper articles regarding available legal services.**
 - We could start with an overview of how to identify whether their problem has a legal solution and how to reach the self-help center and in future articles highlight specific services like the debt collection resources. Shaunda knows the editor of the Poplar grove paper and will reach out to them. There is also a little newspaper in Sugarhouse Sue will look into.
- **Materials for community partners (such as ecclesiastical leaders and 211) to provide to potential clients letting them know how to reach legal services.**

- Perhaps magnets like “ask a nurse” did years ago with a phone number to the self-help center to get triaged to the appropriate legal provider. We could also hand out the self-help center cards and create flyers to supplement.
- **Work with Bar on Licensed Lawyer’s incorporation of non-profit resources for modest to low incomes.**
- **Work with the Martin Luther King Commission and the Indian Walk-In-Center to reach diverse populations through community resources.**

Education Subcommittee

- **Meet with law schools twice a year to discuss student involvement.**
- **Meet with judges, clerks to discuss legal advice versus procedure**
- **Meet with lawyers and/or write Bar articles to provide updates on rule changes, i.e. Rule 73, Rule 5, 10-day summons**

- Presented by the 3rd District Pro Bono Committee

Training: 3rd District Court/Utah Bar Pro Se Debt Collection Calendar

- **Brian M. Rothschild, Parsons Behle & Latimer**
- **Scott Skeen, Jefferson Capital**
- **Charles A. Stormont, Utah Transit Authority***
- **Thursday, June 21, 2018**

Objectives

- Volunteer attorneys should—
 - Understand the opportunity and benefits of serving
 - Understand legal framework and protections for limited-scope volunteer representations
 - Understand basic strategies for resolving cases

Debt Collection Calendar

- The 3rd District Court has instituted the “Pro Se Debt Collection Calendar as a means of channeling cases (a) for collections under \$20,000, (b) in which the defendant has responded or appeared, and (c) in which the defendant is unrepresented.
- All cases meeting the criteria, regardless of assigned judge or location, will be set for hearings before the pro se calendar to be held on Wednesdays starting at 1:00 p.m.

Benefits of Participation

- Practical Legal Skills and Experience
- Rapport with 3rd District Judges
- Public Service
- Professional Responsibility (See Preamble and RPC 6.1)
- Fun...and you will live longer!

Professional Responsibility

- Rules of Professional Conduct

- Preamble:

- A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.
- As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance and therefore, all lawyers should devote professional time and resources and use civic influence in their behalf to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the Bar regulate itself in the public interest.

Ethics Framework

Rule of Professional Conduct 1.2(c)

“A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.” (emphases added)

Rule of Professional Conduct 6.5:

“(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter

(a)(1) is subject to Rule 1.7 [current clients] and 1.9(a) [former clients] only if the lawyer knows that the representation of the client involves a conflict of interest, and

(a)(2) is subject to Rule 1.10 [imputation] only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.” (emphases added)

**DEBT COLLECTION VOLUNTEER ATTORNEY PROGRAM
CLIENT INFORMATION SHEET AND REPRESENTATION AGREEMENT**

The Debt Collection Volunteer Attorney Program is a program sponsored by the Utah State Bar and the Utah Law & Justice Center. This program will provide temporary representation in a debt collection matter for the hearing at which the client has appeared today and requested such limited representation. The program is designed to provide you with preliminary counseling and general legal information applicable to the specific hearing for which you have appeared in Court today, and may provide representation in Court for the limited purposes of your hearing today. Additional information may be provided to you to assist you in handling your case going forward. **However, the program does not create an ongoing attorney-client relationship between you and the volunteer attorney who assists you beyond today's hearing, nor is it intended to assist you with any other debt collection or other legal matters you may have that are not the subject of the hearing for which you have appeared in Court today. You remain responsible for all aspects of your case.**

The volunteer attorneys who participate in the Debt Collection Volunteer Attorney Program come from various law offices and have various types of practice. Therefore, your volunteer attorney may or may not be experienced in the area of your need. The attorney will attempt to provide you as much guidance as is feasible in light of the information you provide the attorney about your case. The attorney is also here on an individual volunteer basis through the Debt Collection Volunteer Attorney Program, and not as a representative or agent of his/her law office.

Client acknowledges that he/she has read and understands the information above. Client agrees to the limited representation by an attorney from the Debt Collection Volunteer Attorney Program as set forth above.

Acknowledged and Agreed: _____ Date: _____
(signature)

Personal Information

If you have questions about this information sheet, please ask for help. Be sure your answers are as complete and accurate as possible. All the information given on this sheet or to the volunteer attorney is **strictly confidential!**
The information below is used to check for any conflicts the attorney may have and to ensure you are assigned an attorney without any such conflicts.

Client Name: _____

Address: _____
Street Apt.

City State Zip
Case Number: _____ Judge: _____ Plaintiff: _____

Have you previously consulted with an attorney regarding this issue? _____ If yes, who? _____

Is there an attorney or law firm representing any of the other people or businesses involved with your legal issue? _____

If yes, who? _____

Do you currently have any matters pending with, or have you been contacted by, any of the following entities about an outstanding debt or other matter? Please check the appropriate box(es) below.

- | | |
|--|--|
| <input type="checkbox"/> Department of Workforce Services | <input type="checkbox"/> Zions First National Bank |
| <input type="checkbox"/> University of Utah (including any of its hospital facilities) | <input type="checkbox"/> Chase Bank |
| <input type="checkbox"/> Utah State Tax Commission | <input type="checkbox"/> Bank of American Fork |
| <input type="checkbox"/> Utah Labor Commission | <input type="checkbox"/> Washington Federal Bank |
| <input type="checkbox"/> Child and Family Services | |
| <input type="checkbox"/> Any Utah State Agency If so, name of agency: _____ | |

☐ I **have not** been contacted by any of the above entities

I have read and understand the above information and have filled this form out accurately to the best of my knowledge.

Signature: _____ Date: _____

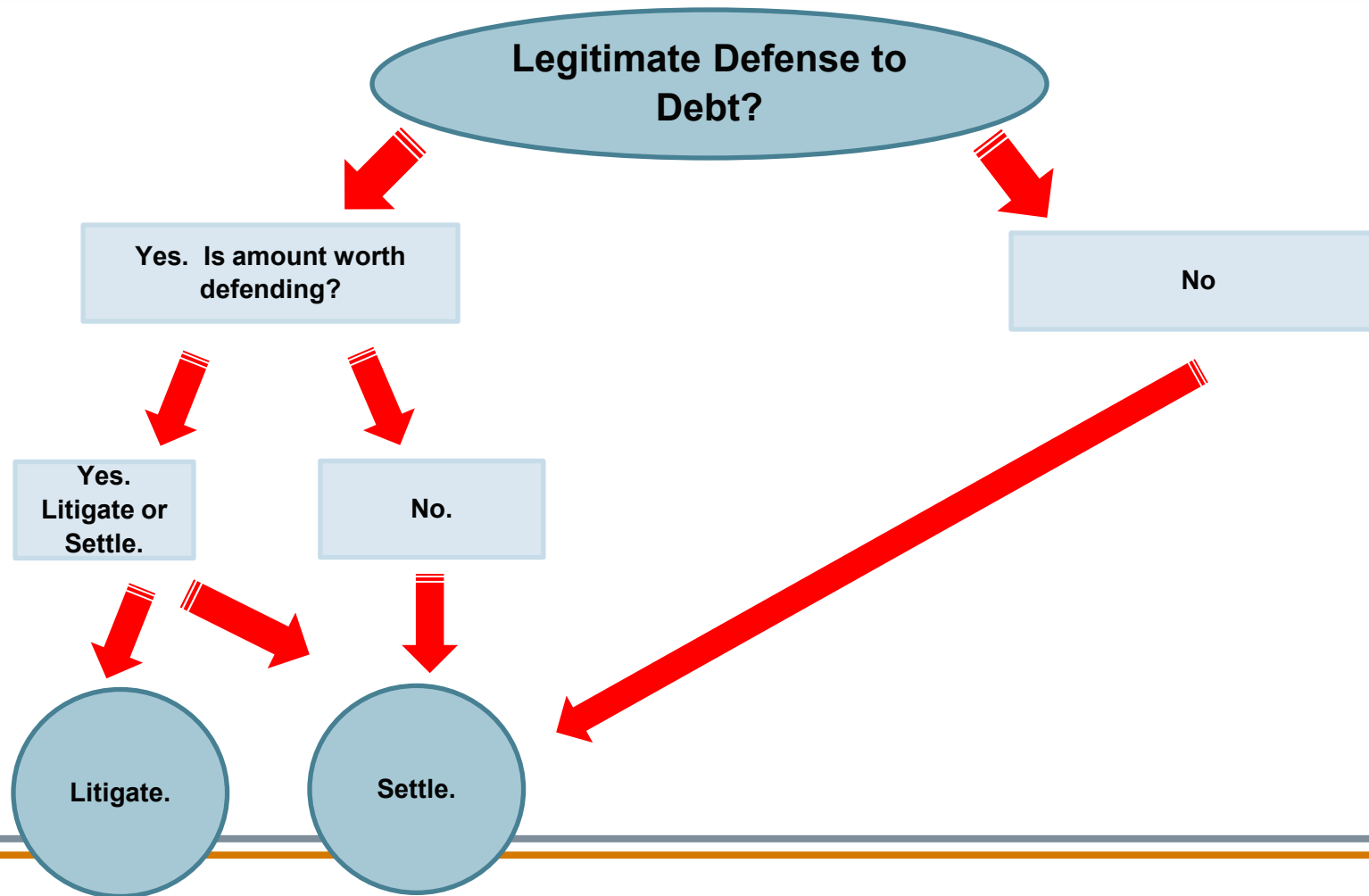
Intake Agreement

- » Agreement promulgated by the Utah State Bar and Utah Law & Justice Center
- » Expressly limits the scope of representation to that day's hearing
- » Each client is required to agree and sign to participate
- » Common financial institutions are listed to help avoid accidentally becoming adverse to an existing client

Strategies for Resolving Cases

1. Assessment
2. Negotiation
3. Appearance and Representation

Initial Assessment Flowchart



Common Defenses

Statute of Limitations

Written agreement – 6 years – Utah Code Ann. § 78B-2-309(2)

Unwritten agreement – 4 years – Utah Code Ann. § 78B-2-307 - “after the last charge is made or the last payment is received”

Statute of Frauds – Utah Code Ann. § 25-5-3:

“Every contract for the leasing for a longer period than one year, or for the sale, of any lands, or any interest in lands, shall be void unless the contract, or some note or memorandum thereof, is in writing subscribed by the party by whom the lease or sale is to be made, or by his lawful agent thereunto authorized in writing.”

Stale Judgment > 8 years – Utah Code Ann. § 78B-2-311

Counterclaims – FDCPA Violations, malpractice, setoff, etc.

Common Defenses

- **Statute of Frauds – Utah Code 25-5-4:**

- “(1) The following agreements are void unless the agreement, or some note or memorandum of the agreement, is in writing, signed by the party to be charged with the agreement: (a) every agreement that by its terms is not to be performed within one year from the making of the agreement; ... (f) every credit agreement.
- “Credit agreement” does not include deposit accounts/overdraft
- “(e) A credit agreement is binding and enforceable without any signature by the party to be charged if: (i) the debtor is provided with a written copy of the terms of the agreement; (ii) the agreement provides that any use of the credit offered shall constitute acceptance of those terms; and (iii) after the debtor receives the agreement, the debtor, or a person authorized by the debtor, requests funds pursuant to the credit agreement or otherwise uses the credit offered.”

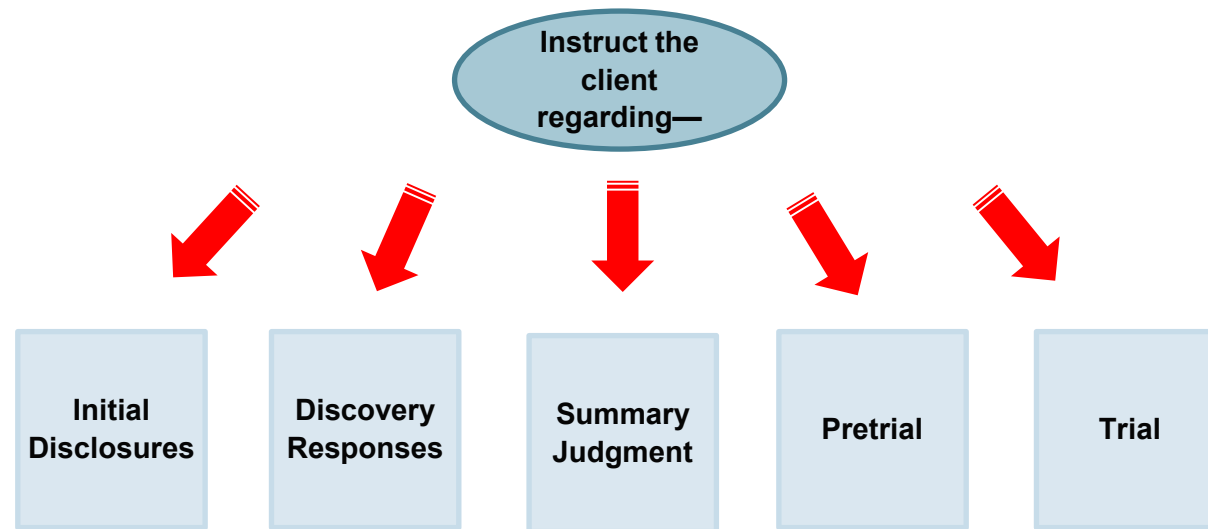
Common Defenses

Federated Capital v. Libby, 2016 UT 41

- Para 9: "Utah's borrowing statute requires a court to apply the limitation period of a foreign jurisdiction when a party's 'cause of action arises in [that] jurisdiction' and is 'not actionable' there 'by reason of the lapse of time.'" (Utah Code 78B-2-103)
- Federated did not challenge that its cause of action arose in Pennsylvania, which has a four year statute of limitations. Argument in trial court was that payment was due/payable/not credited until received at Pennsylvania address identified in credit agreement.
- Concurrence invites further litigation of issue of where cause of action arises.
- Court applies reciprocal attorney fee statute (78B-5-826)

Litigation Flowchart

If the matter must be litigated (or if settlement cannot be achieved today), give the client basic instructions regarding next steps in litigation and the basics of how to do each, and the consequences of failure to comply. Refer to legal clinics, OCAP and forms on www.utcourts.gov, and USB's modest means program. Always advise to hire counsel.



Common Defenses

Assignment Documents

- Check each step of assignment
 - Are the company names the same from one assignment to the next?
 - Company A assigns to Company B assigns to Company C
 - Company C II, LLC assigns to Plaintiff?
 - How did it get from Company C to Company C II?
 - Do the dates go chronologically?
 - Company C assigns to Plaintiff before Company B assigns to Company C – so what was assigned?
 - Ut. R. Civ. P. 55(b)(1)(D) (defaults), Ut. R. Civ. P. 56 (summary judgment) both require a plaintiff to establish that they are entitled to judgment as a matter of law (including ownership of the debt!)

Common Defenses

- Who can authenticate business records relating to original account?
 - Original creditor can usually authenticate as business records under Ut. R. Evid. 803(6)
 - What about debt buyer – can they authenticate someone else's records if they regularly rely on such records as part of their business?
 - Hearsay rules can be invoked where there are genuine issues of authenticity (or used as a negotiation point)
 - Portfolio Recovery Services v. Migliore, 2013 UT App 255, para. 7 – not an abuse of discretion for trial court to accept affidavit of debt buyer to satisfy business records exception as to records relating to original account
 - No Utah cases finding exclusion for lack of proper foundation by person with personal knowledge or original account records proper, but arguable that trial court has discretion here

Common Issues

■ Rule 26 / Discovery Issues

- Did Defendant Make Initial Disclosures? Do they need to?
- Do they need to make pretrial disclosures?
 - Try to stipulate on the record during pretrial conference.

■ Motion to Set Aside

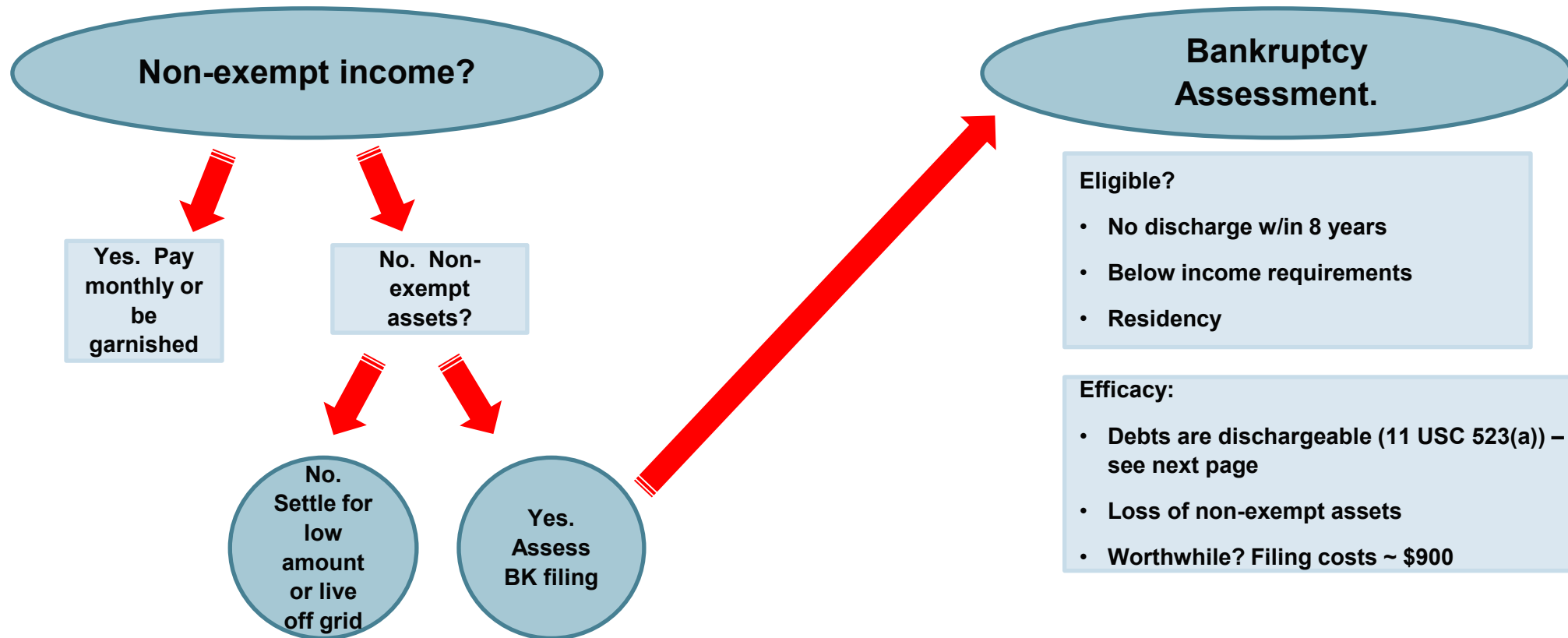
- Check Rule 60(b)
 - (b)(4) - Void for lack of service?
 - Valid defense? Amount in dispute?
- Direct to Court Forms

■ Family Expense – Utah Code 30-2-9

- “The expenses of the family and the education of the children are chargeable upon the property of both spouses or of either of them separately, for which expenses they may be sued jointly or separately.”

Ability to Pay Flowchart

A client's (in)ability to pay is usually the best leverage for settlement with a negotiating debt collector.



Garnishment/Execution Defenses

- Statutory Exemptions – Utah Code Ann. § 78B-5-501, *et seq.*
 - Common exempt property from which creditors will attempt to garnish include—
 - Unemployment/disability benefit wages – must show no non-exempt property
 - Unpaid wages in excess of “1/24 of the Utah State annual median family income”
 - Homestead up to \$30,000
 - Pretty much any firearm and 1000 rounds of ammunition each
 - Furnishings, etc., up to \$1,000
 - Motor vehicle (up to \$3,000 for personal use or \$5,000 for professional use)

Limitation on Garnishment

Limitations on garnishment are found in URCP 64D:

The maximum portion of disposable earnings of an individual subject to seizure is the lesser of:

(a)(1) 50% of the defendant's disposable earnings for a writ to enforce payment of a judgment for failure to support dependent children or 25% of the defendant's disposable earnings for any other judgment; or

(a)(2) the amount by which the defendant's disposable earnings for a pay period exceeds the number of weeks in that pay period multiplied by thirty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act in effect at the time the earnings are payable.

How to Make a Limited Appearance

URCP 75:

“(a) An attorney acting **pursuant to an agreement** with a party for limited representation that complies with the Utah Rules of Professional Conduct may enter an appearance limited to one or more of the following purposes: ... (a)(4) acting as counsel for a specific hearing, including a trial, pretrial conference, or an alternative dispute resolution proceeding;

(b) Before commencement of the limited appearance the attorney **shall file a Notice of Limited Appearance signed by the attorney and the party or, if permitted by the judge, orally announce the limited appearance on the record in a proceeding.** The Notice shall specifically describe the purpose and scope of the appearance and state that the party remains responsible for all matters not specifically described in the Notice. The clerk shall enter on the docket the attorney’s name and a brief statement of the limited appearance. The Notice of Limited Appearance and all actions taken pursuant to it are subject to Rule 11. ...” (emphasis added)

URCP 74(b):

“An attorney who has entered a limited appearance under Rule 75 shall withdraw from the case upon the conclusion of the purpose or proceeding identified in the Notice of Limited Appearance: (b)(1) by filing and serving a notice of withdrawal; or (b)(2) if **permitted by the judge, by orally announcing the withdrawal on the record in a proceeding.**”

Settlements

There are two types of settlements typically offered by creditors:

1. Compromise in exchange for payment in full. For example:

Debtor owes \$3,000 for credit account. Debtor can get some funds and is willing to do so in exchange for full release. Creditor agrees to accept short pay of \$1,000 within 20 days. Creditor must give satisfaction of judgment and grant full release.

Creditor typically has confession of judgment for full value if payment is not timely made.

2. Payments, typically of full amount, over time. For example:

Debtor owes \$3,000 for credit account. Debtor has regular income and wants time to pay. Creditor agrees to accept payments of \$300 per month for 11 months, typically with interest. Upon payment in full, creditor must give satisfaction of judgment and grant full release.

Same confession of judgment typically required.

3. Review any proposed agreement with the defendant, and make sure they understand the importance of payment. Don't agree to it if they cannot make the payments!

Bankruptcy Eligibility/Usefulness

- Debtors are eligible for a discharge only once every 8 years. Therefore, ask “have you previously received a bankruptcy discharge and, if so, when?” If not eligible, can still file a chapter 13 and live in it until eligible.
- Debtors are subject to the means test in section 707(b) of the Bankruptcy Code and certain limitations on debt (usually not an issue).
- Debtors may lose non-exempt property (see exemptions slide)
- Bankruptcy discharge does not resolve certain types of debts (see next slide).

Non-Dischargeable Debts

Section 523(a) of the Bankruptcy Code lists debts that are unaffected by bankruptcy discharge. The most common for consumers are as follows:

§ 523(a)(1) and (a)(7) – taxes < 2 years, or taxes for which no return was filed, but complicated

§ 523(a)(2) and (a)(4) – debts for fraud, defalcation, embezzlement, larceny

§ 523(a)(5) and (a)(15) – domestic support, child support, debts assumed in domestic dissolution

§ 523(a)(6) – willful and malicious injury (intentional torts)

§ 523(a)(8) – student loans

§ 523(a)(11) – federal criminal restitution obligations

JEFFERSON CAPITAL SYSTEMS LLC
PO BOX
17210
GOLDEN, CO 80032
PHONE (303) 215-0050 FAX (303) 215-1251
303-215-0050

November 16, 2016

STATEMENT OF ACCOUNT

For account of: [REDACTED]
Our client: JEFFERSON CAPITAL SYSTEMS, LLC
Account #: [REDACTED]
Please refer to our file: [REDACTED]
Creditor: [REDACTED]
Judgment start: 11/15/12 JUDGMENT
Starting interest rate: 26.99%
Interest calculation date: 10/12/2011
Simple interest calculation accrue on: P

Payment arrangement: \$239.63 2/MONTH due 11/28/2016

#	Date	Pmt/Adj	Date	Approved	Unpaid	Unpaid	Unpaid	New
			Princip	Interest	Princip	Interest	On Chgs	Balance
0	10/12/2011				1336.12	0.00		1336.12
			JUDGMENT					
0	10/12/2011	0.00	0.00	0.00	1336.12	0.00	0.00	1336.12
			INTEREST RATE - Judgment Int Rate to rate: 26.99%					
17C	06/15/2012	3.50	0.00	304.30	1336.12	304.30	3.50	1643.82
			496000-1330 - Case #: 112900435 - Outfile - TELETYPE					
17C	08/27/2013	3.50	0.00	221.31	1336.12	525.61	7.00	1859.73
			599547-33/27/2013 - Case #: 119900435 - O - Teletype					
17C	04/30/2013	6.00	0.00	33.59	1336.12	559.21	13.00	1903.32
			516000-NON-SERVE FEE - Case #: 119900435 - CONSTABLE FOR REITH					
17C	09/22/2013	35.00	0.00	43.76	1336.12	702.47	48.00	2086.55
			594776-Supplemental Pleading Service - - CONSTABLE BOB REITH					
17C	01/14/2014	39.00	0.00	12.63	1336.12	815.10	178.00	2274.23
			715573-01/14/2014 - Case #: 119900435 - O - Nighthawk					

STATEMENT OF ACCOUNT FOR DEBTOR: [REDACTED]

#	Date	Pmt/Adj	Paid	Approved	Unpaid	Unpaid	Unpaid	New
			Princip	Interest	Princip	Interest	On Chgs	Balance
17	01/14/2014				1336.12	815.10	178.00	2274.22
17C	02/26/2014	50.00	0.00	19.76	1336.12	834.86	176.00	2346.98
			731814-SERVE FEE - Case #: 11550 - SALT LAKE CITY DISTRICT COURT					
17C	07/03/2014	25.00	0.00	0.00	1336.12	834.86	203.00	2573.99
			781344-Service on Employer - Case #: 119 - RESOURCEREC					
17C	02/11/2014	25.00	0.00	7.88	1336.12	842.76	228.01	2556.88

Sample Debt Ledger

The ledger on this slide and the next page is typical of the statement you can request from the plaintiff. In this case, the client maxed out a \$500 JC Penny credit card, and then defaulted. The creditor obtained a default judgment for \$1,336.12. Interest continued to accrue at 26.99%. Constable and garnishment fees were tacked on every few months regardless of whether there was any amount garnished. The debt ballooned to \$3,794.77. The garnishment was in an amount less than the accruing interest.

In the end, the creditor collected \$1,433.60. We resolved this in a voluntary settlement with the creditor for no additional consideration. This debt had haunted this debtor for more than 6 years.

737666-Writ of Continuing Garnishment on - CONSTABLE BOB KEITH
 01P 03/19/2014 -63.06 0.00 33.63 1336.12 873.33 168.94 2373.45
 01P 03/21/2014 -33.11 0.00 6.92 1336.12 880.31 137.83 2349.26
 01P 03/23/2014 -67.06 0.00 6.92 1336.12 887.22 79.77 2294.11
 01P 04/07/2014 -23.79 0.00 9.60 1336.12 897.10 41.98 2275.20
 01P 04/11/2014 -67.06 0.00 3.95 1336.12 880.97 3.00 2217.39
 01P 04/25/2014 -59.61 0.00 12.83 1336.12 834.38 3.00 2171.11
 01P 05/09/2014 -56.82 0.00 13.83 1336.12 782.01 3.00 2128.13
 01P 05/15/2014 -73.77 0.00 5.93 1336.12 764.44 3.00 2100.94
 01P 05/23/2014 -62.06 0.00 5.90 1336.12 710.67 3.00 2046.19
 01P 05/30/2014 -26.36 0.00 6.92 1336.12 697.32 3.00 2027.34
 01P 06/06/2014 -35.73 0.00 6.92 1336.12 665.03 3.00 2001.15
 01P 06/13/2014 -30.00 0.00 6.92 1336.12 641.35 3.00 1978.07
 01P 06/23/2014 -62.06 0.00 9.38 1336.12 584.77 3.00 1925.80
 17C 06/30/2014 50.00 0.00 6.92 1336.12 596.88 50.00 1982.60

781223-PREPAID WORK GARN - Case #: 1196C - SALT LAKE CITY DISTRICT COURT

STATEMENT OF ACCOUNT FOR DEBTOR: [REDACTED] 49

#	Date	Pmt/Adj	Paid Principal	Accrued Interest	Unpaid Principal	Unpaid Interest	Unpaid Oth Chgs	New Balance
0	11/11/2016				1336.12	1211.17	0.00	2547.29
01P	11/14/2016	-181.06	0.00	2.96	1336.12	1023.07	0.00	2358.19
NOV	11/16/2016			1.96	1336.12	1025.05	0.00	2361.17
=====								
TOTALS		accrued	less credits		New balance			
Principal:		1336.12	0.00		1336.12			
Interest :		1025.05	814.60		1025.05			
Costs :		610.00	610.00		0.00			
		-----			-----			
SUBTOTAL :		3794.77	1438.60		2356.17			
Less credits:								
Payments :		-1438.60						
Adjustment:		0.00						

BALANCE :		2361.17			- daily interest at \$0.9880 at rate 26.99%			
					Month interest \$28.9694			

this firm is a debt collector. We are attempting to collect a debt, and any information obtained will be used for the purpose of collecting the debt.

STATEMENT OF ACCOUNT FOR CREDITOR: [REDACTED] 99

#	Date	Pmt/Adj	Paid Principal	Accrued Interest	Unpaid Principal	Unpaid Interest	Unpaid Oth Chgs	New Balance
17C	06/30/2014				1336.12	596.68	50.00	1982.80
17C	06/30/2014	25.00	0.00	0.00	1336.12	596.68	75.00	2007.80
01P	07/07/2014	-50.57	0.00	6.92	1336.12	603.60	24.00	1964.28
01P	07/10/2014	-21.57	0.00	2.96	1336.12	606.56	2.91	1945.56
17C	07/14/2014	25.00	0.00	3.95	1336.12	610.51	27.91	1974.54
01P	07/25/2014	-14.61	0.00	3.87	1336.12	621.38	14.30	1991.80
01P	08/01/2014	-51.52	0.00	6.92	1336.12	552.08	0.00	1928.20
17C	10/15/2014	31.00	0.00	74.10	1336.12	666.18	31.00	2044.30
17C	11/04/2014	51.00	0.00	19.75	1336.12	685.94	81.00	2133.08
17C	11/04/2014	25.00	0.00	8.00	1336.12	685.94	106.00	2129.06
17C	11/16/2014	19.00	0.00	15.83	1336.12	699.77	116.00	2151.69
17C	04/16/2016	75.00	0.00	629.35	1336.12	1329.17	161.00	2956.24
17C	03/16/2016	25.00	0.00	20.75	1336.12	1349.87	216.00	2931.99
17C	03/16/2016	50.00	0.00	0.00	1336.12	1349.87	266.00	2951.99
17C	03/23/2016	25.00	0.00	26.68	1336.12	1376.55	261.00	3033.67
01P	03/18/2016	-255.29	0.00	14.02	1336.12	1371.87	35.72	2763.21
01P	03/31/2016	-739.83	0.00	12.84	1336.12	1200.30	0.00	2536.42
01P	04/11/2016	0.00	0.00	10.67	1336.12	1211.17	0.00	2547.29

SYSTEM INTEREST UPDATE -

John Oliver's Piece

HBO's Last Week Tonight with John Oliver has a mostly-accurate piece describing the debt-buying industry:

<https://youtu.be/hxUAntt1z2c>

(Warning: explicit language)