

Dear Committee:

We have taken a data-driven approach to understanding the debt collection process in Utah. The data on the average amount in controversy in Utah District Court collection cases in 2016 and 2017 are as follows:

Average	\$3,807.57
Mean	\$873.85
10th Percentile	\$206.85
25th Percentile	\$453.88
50th Percentile	\$873.85
75th Percentile	\$1,977.49
90th Percentile	\$4,917.47

In these numbers is a startling story. **More than half** of all debt collection cases involve an amount less than \$874. Thus, the most relevant line – the line that is operable in more than half the cases – is the \$0-\$1,500 amount in controversy. 75 percent are less than \$1,978. The requested adjustment by the debt collectors to remove the first line and create a flat fee for all cases below \$2,000 means that **more than 75 percent of cases would fall under the first line**. It would therefore cause 75 percent of all of debt collection cases to be subject to \$400 in attorney fees. The attorney fee award for more than two thirds of these **would exceed 50 percent of the amount at issue**. The incentives are perverse and unfair.

From a fairness and judicial efficiency standpoint, these cases should not be the subject of an action in the district court at all. They should not be brought at all, but if brought, they should be filed in small claims where the defendant would have a fighting chance of defending at a single evidentiary hearing. But because of the high level of procedural protections in district courts, the average pro se defendant (read, 99% of all defendants) cannot possibly hope to comply with the requirements, resulting in a >99% default rate we see today. If the defendant does answer, he/she will likely be defeated quickly by procedural defaults for *e.g.*, failing to send initial disclosures, properly respond to discovery requests, or file a compliant opposition to a motion for summary judgment. Consumer debt collectors know this and thus avoid the small claims court, instead opting for district court where they are nearly invincible. Due process is not served by this scheme.

The sheer volume of these small cases is burdensome on the district court. More than 99% of cases filed in the district court are small dollar collection actions. Removing this incentive to file collections for trivial amounts would reduce the burden on the courts and prevent egregious doubling and tripling of debt obligations owed by and collected from the working poor. Cases involving amounts in controversy less than \$150 should not be brought, both practically and ethically.

Thus, in addition to the cap on collections proposed above in paragraph (f)(1) (no more than 30 percent of principal awarded), the schedule in new paragraph (g) should be revised as indicated to break out these small amounts in controversy and award a fair fee proportional to the amount in controversy of approximately 30 percent:

Amount of Damages, Exclusive of Costs, Attorney Fees and Post-Judgment Interest, Between	and:	Attorney Fees Allowed
0.00	150.00	None
150.00	250.00	75.00
250.01	500.00	150.00
500.01	750.00	225.00
750.01	1,000.00	300.00
1000.01	1,500.00	450.00
3,500.01	4,000.00	600.00
4,000.01	4,500.00	800.00
4,500.01	or more	900.00

**Thus, we propose the following revised statute:**

**Rule 73. Attorney fees.**

**(a) Time in which to claim.** Attorney fees must be claimed by filing a motion for attorney fees no later than 14 days after the judgment is entered unless the party claims attorney fees in accordance with the schedule in paragraph (fg) or in accordance with Utah Code Section 75-3-718 and no objection to the fee has been made.

**(b) Content of motion.** The motion must:

- (b)(1) specify the judgment and the statute, rule, contract, or other basis entitling the party to the award;
- (b)(2) disclose, if the court orders, the terms of any agreement about fees for the services for which the claim is made;
- (b)(3) specify factors showing the reasonableness of the fees, if applicable;
- (b)(4) specify the amount of attorney fees claimed and any amount previously awarded; and
- (b)(5) disclose if the attorney fees are for services rendered to an assignee or a debt collector, the terms of any agreement for sharing the fee and a statement that the attorney will not share the fee in violation of Rule of Professional Conduct 5.4.

**(c) Supporting affidavit.** The motion must be supported by an affidavit or declaration that reasonably describes the time spent and work performed, including for each item of work the name, position (such as attorney, paralegal, administrative assistant, etc.) and hourly rate of the persons who performed the work.

**(d) Liability for fees.** The court may decide issues of liability for fees before receiving submissions on the value of services. If the court has established liability for fees, the party claiming them may file an

affidavit and a proposed order. The court will enter an order for the claimed amount unless another party objects within 7 days after the affidavit and proposed order are filed.

**(e) Fees claimed in complaint.**

(e)(1) In lieu of a motion under paragraph (a), if a party may claims attorney fees in its complaint by making a claim citing this rule and asserting a claim for the attorney fees in the amount specified in schedule (g). A party claiming attorney fees under this provision must (i) specify the judgment and the statute, rule, contract, or other basis entitling the party to the award, (ii) if under a contract, under paragraph (f), the complaint must state the basis for attorney fees, state the amount of attorney fees allowed by the schedule, cite the law or attach a copy of the contract authorizing the award, and, (iii) if the attorney fees are for services rendered to an assignee or a debt collector, a statement that the attorney will not share the fee in violation of Rule of Professional Conduct 5.4.

**(f) Reciprocity and Limitation on fees under paragraph (g).**

(f)(1) Notwithstanding the amount specified in paragraph (g), the amount of fees awardable under paragraph (g) may not exceed 30 percent of the principal amount of any judgment awarded on the subject complaint.

(f)(2) If a party has claimed a right to fees under paragraph (g), and if the court finds that the party has not prevailed on all or a portion of the claims asserted in the complaint, the court may disallow the party's claim for attorney fees under paragraph (g) and award reasonable damages to the other party without regard to whether the other party was represented by an attorney.

**(fg) Schedule of fees.** Attorney fees awarded under the schedule may be augmented only for considerable additional efforts in collecting or defending the judgment and only after further order of the court.

Amount of Damages, Exclusive of Costs, Attorney Fees and Post-Judgment Interest, Between	and:	Attorney Fees Allowed
0.00	1,500.00	250.00
1,500.01	2,000.00	325.00
2,000.01	2,500.00	400.00
2,500.01	3,000.00	475.00
3,000.01	3,500.00	550.00
3,500.01	4,000.00	625.00
4,000.01	4,500.00	700.00
4,500.01	or more	775.00

<u>Amount of Damages, Exclusive of Costs, Attorney Fees and Post- Judgment Interest, Between</u>	<u>and:</u>	<u>Attorney Fees Allowed</u>
<u>0.00</u>	<u>150.00</u>	<u>None</u>
<u>150.00</u>	<u>250. 00</u>	<u>75.00</u>
<u>250.01</u>	<u>500.00</u>	<u>150.00</u>
<u>500.01</u>	<u>750.00</u>	<u>225.00</u>
<u>750.01</u>	<u>1,000.00</u>	<u>300.00</u>
<u>1000.01</u>	<u>1,500.00</u>	<u>450.00</u>
<u>3,500.01</u>	<u>4,000.00</u>	<u>600.00</u>
<u>4,000.01</u>	<u>4,500.00</u>	<u>800.00</u>
<u>4,500.01</u>	<u>or more</u>	<u>900.00</u>

**We are pleased to present more data and evidence in support of our contentions at your request.**

**Thank you for your consideration.**

**Brian M. Rothschild obo the pro se debt collectors**