



**Testimony of New Jersey Appleseed Public Interest Law Center  
with respect to the  
Civil Practice Committee’s Proposed Amendment to Appendix XI-A(1)**

**May 29, 2024 Hearing before the New Jersey Supreme Court**

Chief Justice Rabner and Justices of the Supreme Court:

My name is Renée Steinhagen. I am Executive Director of New Jersey Appleseed Public Interest Law Center (NJ Appleseed), a nonprofit, nonpartisan legal advocacy center based in Newark. I am here to testify in support of the proposed amendment to Appendix XL-A(1), the form used for Summons and Return of Service in Special Civil Part. The amendment would add the following language in boldface, underscored font: “If you file an Answer, your case will go to a settlement conference with a trained, neutral third person on the day of trial.”

Let me explain why we support this amendment and what more we think should be done. NJ Appleseed has been active in health care reform issues since its inception in 1998 and is a founding member of the New Jersey for Healthcare Coalition, which has been working to bring guaranteed, high-quality, affordable health care to all New Jersey residents. A more recent but growing area of our work has been in the area of financial justice, where we have been working to protect the most vulnerable New Jerseyans from predatory financial practices and products. A key area of our current efforts is medical debt, which lies at the intersection of health care access and financial justice.

We believe the Court shares our concerns with how debt collection in general is dealt with under the current system and that is why there already exists a program by which all cases filed in the Special Civil docket are referred to a settlement conference on the trial date if the defendant has filed an answer to the complaint—the program which is the subject of the proposed amendment. Debt collection defendants, who usually lack legal representation and thus do not understand their rights, can feel intimidated on the receipt of a Summons and fearful of going to court and are thus more likely to default, and then get hit with a default judgment – a judgment that despite the high likelihood of being based on incorrect billing (in the case of medical debt), can cause real economic hardship. Though we hope the court system will ultimately go further, the settlement conference is a solid start in the right direction and we think the proposed Amendment will be very effective in insuring that defendants are aware of this option. Even if the process does not lead to settlement, the added language will induce more people to file an Answer so that there will be the opportunity for judicial oversight in those cases

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that will provide an opportunity to protect defendants from claims that are erroneous or otherwise lack merit.

Our belief that the notice language can help but more can and should be done to ensure that the court system operates justly and fairly for debt collection defendants is bolstered by a recent study by our sister organization, Texas Appleseed. The study was designed to support implementation of a decision by the Texas Judicial Council to develop a **model plain language post-service and pre-default judgment packet of information** to be sent to debt defendants, with the goal of educating them about the court process and making it easier for them to answer the lawsuit. Texas debt collection actions are typically heard in Texas Justice Court, which is similar to our Special Civil Part and has the same \$20,000 jurisdictional limit. The Texas judiciary was concerned by the high rate of default judgments, the almost complete absence of counsel for debt defendants and the disproportionate impact on Black and Latino communities, similar to the situation in NJ.

The information packet developed by Texas Appleseed, with input from state and national consumer law experts (and also available in Spanish), provides general information about being sued, saying that if they do not file an Answer they will lose the case and what the consequences of that are and suggests obtaining counsel, for which referral information is provided. A second page contains step-by-step instructions starting with “Read the lawsuit papers” and “Get any information you have about the debt.” A section on filling out the Answer discusses possible defenses and discusses what types of income (*i.e.* a/k/a exemptions) are protected from debt collectors. The final section addresses where and how to file the Answer.

The study found that although an information packet cannot replace access to legal counsel, it can serve as a helpful tool for pro se debt collection defendants to assert their legal rights. It recommended statewide adoption and further honing of the information packet contents. A copy of the Texas study,<sup>1</sup> is appended to the written copy of my testimony and is available on the Texas Appleseed website.

We need to continue to develop ways that encourage low- and moderate-income people, who are often overwhelmed with the details of their daily lives, to participate in the court system to avoid the additional financial burdens arising from default judgments. Further reforms that transform the court into an institution that offers resolution of debt on terms fair to both debtors and creditors, acknowledging the difference in their power and knowledge of the law, are needed.

I want to take this opportunity to discuss how getting notice of the prospect of a settlement conference can be especially helpful to those who have incurred debt arising from the receipt of medical services.

As many as 16.2% of NJ residents have medical debt<sup>2</sup> and this debt prevents 1 in 3<sup>3</sup> from seeking health care. Medical debt collection cases, like other debt collection matters, tend to be

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<sup>1</sup> Briana Gordley, Jesse Stafford, Ellen Stone & Ann Baddour, *Improving Access to Justice in Consumer Debt Lawsuits* (May 2023), at [https://www.texasappleseed.org/sites/default/files/Debt\\_Collection\\_Report\\_2023.pdf](https://www.texasappleseed.org/sites/default/files/Debt_Collection_Report_2023.pdf).

<sup>2</sup> “16.2% of NJ adults have unpaid medical bills, study finds,” The Center Square, April 14, 2020, [https://www.thecentersquare.com/new\\_jersey/article\\_d785a910-79f1-11ea-83c3-9ff3fae48956.html](https://www.thecentersquare.com/new_jersey/article_d785a910-79f1-11ea-83c3-9ff3fae48956.html).

heard in Special Civil Part, where, as mentioned above, requirements for service and discovery are stripped down, and defendants are not likely to be represented by counsel (in contrast to debt collectors who almost always are) or even respond to the summons, resulting in a high rate of default judgments. Not only does that leave them on the hook for the bill to the provider, but also all the additional amounts that get added on to a default judgment -- interest, legal fees, court fees and the economic burdens that can come from the impact of that enhanced judgment amount on their credit score. These consequences are especially troubling given that the percentage of New Jersey consumers in communities of color who have medical debt in collections is twice as high in communities of color as in white communities – 16% versus 8%.<sup>4</sup>

Default judgments in the case of debts arising from the receipt of health care services are more problematic than other forms of debt given the nature of medical debt. Medical bills tend to be not only involuntarily incurred but also rife with error. Becker's Hospital Review, a trade magazine that covers the medical industry, reported that 80% of American medical bills had some sort of mistake or inaccuracy.<sup>5</sup> And it can be hard for patients to correct or even recognize those errors due to the complex nature of medical billing and the vagaries of insurance coverage and disputes. In fact, a survey of patients by Zelis, a NJ company that handles financial aspects of the healthcare industry, found that only 30% felt extremely confident in their ability to identify a medical billing error.<sup>6</sup> The upshot is a system that produces unfair, arbitrary, cruel and often discriminatory results.

The prevalence of medical debt in New Jersey and the United States is to a large extent the result of the failure of our society to prioritize and provide resources to enable universal, or at least affordable, care for all. We must do our utmost not to compound that by allowing the judicial system also to fail those who have medical debt.

For these reasons, NJ Appleseed believes medical debt belongs on a separate track from other types of debt collection cases and other Special Civil Part cases generally and that, ideally, lawsuits to collect medical debt should be diverted from the court system into mediation or another form of alternative dispute resolution process where debtors will be assigned some sort of helper (trained, but not necessarily a lawyer) to guide them through the process. This approach would help level the playing field, allow an opportunity to identify and correct errors in the bills, and will ultimately yield a more just and equitable result that will enhance confidence in and respect for the judicial system.

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<sup>3</sup> "Many New Jersey Residents Struggle with Medical Debt, Highlighting Healthcare Affordability Issues Even for Those with Insurance," Healthcare Value Hub Data Brief 126, September 2022, <https://www.healthcarevaluehub.org/advocate-resources/publications/many-new-jersey-residents-struggle-medical-debt-highlighting-healthcare-affordability-issues-even-those-insurance>

<sup>4</sup> Interactive Map: Medical Debt—New Jersey, Urban Institute, accessed May 28, 2024, <https://apps.urban.org/features/debt-interactive-map/?type=medical&variable=medcoll&state=34>

<sup>5</sup> Kelly Gooch, "Medical billing errors growing, say Medical Billing Advocates of America," Becker Hospital Review, April 12, 2016, accessed May 28, 2024, <https://www.beckershospitalreview.com/finance/medical-billing-errors-growing-says-medical-billing-advocates-of-america.html>

<sup>6</sup> Noah Schwartz, "30% of patients feel confident to identify a medical billing error," Becker Hospital Review, Jan. 11, 2023, accessed May 28, 2024, <https://www.beckershospitalreview.com/capital/30-of-patients-feel-confident-to-identify-a-medical-billing-error.html>

In closing, we urge you to adopt the proposed amendment to Appendix XL-A(1) but to do so only as a first step in a process that will look for ways to improve the collection of medical debt— and ultimately all debt— in New Jersey courts and make it more just and equitable. We would be happy to work with you to achieve that. We thank you for the opportunity to speak on this important subject.

Respectfully submitted,

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