

## **Revisions to Proposal 15-03 – Identified in Red**

### **Revisions to Rules 280.2, 280.3, and Credit Card or Debt Buyer Collection Action Affidavit**

#### **Rule Changes:**

- A. **Addition to 280.2 (c)** – “Include a statement that the suit is filed within a relevant statute of limitations; and”
- B. **Addition to 280.3 (c)** – the ISBA Commercial Law section expressed concern that text of this section would limit their ability to seek an emergency continuance due to weather, travel issues or family emergencies under 231(f). The phrase “properly noticed” in relation to the reference to Rule 231, in some minds, prevents such emergency motions which are, by their nature, unable to noticed “properly.”

#### **Affidavit Changes:**

- A. Added the preamble so that the affiants are clear the affidavit shall be in the form consistent with other affidavits, including use of a notary rather than certification;
- B. Added the language in Section b. to state “a statement reflecting the charge-off balance;”
- C. Amended Section c. to require the affiants to state the last the date of last payment on the account, whether pre or post charge off rather than limit it only to payments made pre-charge off. We believe this increases the accuracy of the affidavit, avoids questions of whether the suit is brought within statute and does not leave a consumer believing that there are uncredited payments;
- D. We also re-ordered the columns and added another column to better reflect the balances;
- E. Removed Section 3 as to the Statute of Limitations; and
- F. Changed references to “application” and “complaint” to affidavit.

**Rule 280.2. Complaint in Credit Card or Debt Buyer Collection Actions.** In addition to the requirements set forth in Rules 131 and 282(a), the complaint in a credit card or debt buyer collection actions shall:

- (a) Print the name of the person who signs the complaint under the signature line;
- (b) Attach a completed Credit Card or Debt Buyer Collection Affidavit, together with all required documents, in accordance with the form accompanying this Rule; **and**
- (c) Include a statement that the suit is filed within a relevant statute of limitations; and**
- (e)(d)** Have the Credit Card or Debt Buyer Collection Affidavit signed by the Plaintiff or the Plaintiff's designated agent. For purposes of this Rule, the attorney for the Plaintiff may not sign the affidavit on behalf of the Plaintiff or Plaintiff's designated agent.

**Rule 280.3. Continuance of Trial or Voluntary Dismissal of Credit Card or Debt Buyer Collection Actions.** Absent a properly noticed written motion for continuance under Rule 231 or for voluntary dismissal under section 2-1009 of the Code of Civil Procedure, a motion for continuance or voluntary dismissal made on the date of trial shall be denied and the case shall proceed to trial, unless:

- (a) The court finds that (i) each party has consented to a continuance with an understanding of the potential consequences of not consenting, and (ii) a continuance serves the interest of justice; or
- (b) The court is unable to proceed on the trial date, in which case an order may be entered continuing the case for a final trial date.
- (c) Nothing herein shall limit the right of any litigant to seek a continuance subject the provisions and requirements of Rule 231(f).**

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
 \_\_\_\_\_ COUNTY, ILLINOIS  
 (OR, IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS)

\_\_\_\_\_  
 Plaintiff )  
 )  
 v. ) CASE NUMBER: \_\_\_\_\_  
 )  
 \_\_\_\_\_ )  
 Defendant )

CREDIT CARD OR DEBT BUYER COLLECTION ACTION AFFIDAVIT  
 (SUPREME COURT RULE 280.2)

INSTRUCTIONS: Provide the following information and documents. Supreme Court Rule 280.1 provides the definitions of the terms in this Affidavit.

Comes now affiant, and states:

I am Plaintiff  
 (Name of Affiant)

OR

a designated full-time employee of \_\_\_\_\_ (Plaintiff).  
 (Name of Plaintiff or Agent)

I am of adult age and am fully authorized by Plaintiff to make the following representations. I am familiar with the record keeping practices of Plaintiff. The following representations are true according to documents kept in the normal course of Plaintiff's business and/or my personal knowledge:

I. IDENTIFICATION ABOUT THE CONSUMER DEBT OR ACCOUNT

Complete the tables and check all applicable boxes.

a. As of charge-off date:

Full name of the creditor	Full name of the defendant as it appears on the account	Last four digits of the account number	Date the account was opened or the debt originated	Nature of the debt, (credit card debt, payday loan, retail installment loan, etc.)

b. Attach one of the following:

- The written contract giving rise to the debt that is the subject of this court case (the "Consumer Debt").

- The court case is based on an unwritten contract, and attached is a copy of a document provided to the consumer while the account was active, demonstrating that the consumer debt was incurred by the consumer. For a revolving credit account, a statement reflecting the charge-off balance statement shall be deemed sufficient to satisfy this requirement. The Plaintiff further certifies that it has in its possession and can produce on request the most recent monthly statement recording a purchase transaction, last payment, or balance transfer. The charge-off statement attached will not reflect any post charge-off payments or credits by or to the charge-off creditor, the debt buyer or their attorneys.

c. The most recent activity on the account prior to or after charge-off, includes:

<u>Amount of Original Debt or Charge-off Balance</u>	<u>Charge-off Date Date of last payment</u>	<u>Date of Last Payment Amount of last payment</u>	<u>Amount of Last Payment original debt or charge-off balance</u>	<u>Total Amount Paid Since Charge-off Date Charge-off date</u>

2. PROOF OF OWNERSHIP OR RIGHT TO SUE FOR DEBT BUYERS

Complete the table and list the prior owners or creditors since the charge-off date. Start with the first assignment through the current creditor or owner of the consumer debt. List in chronological order, beginning with the first assignment:

From (Name)	To (Name)	Date of Assignment

- Does not apply – Plaintiff is the charge-off creditor.

3. **STATUTE OF LIMITATIONS**

~~The relevant statute of limitations has not run.~~

- Yes
- No

4. ADDITIONAL ACCOUNT INFORMATION AFTER CHARGE-OFF

Plaintiff is seeking additional amounts after the charge-off date:

- No
- Yes. If yes, as the charge-off date and within the last 30 days:
  - Defendant has made additional payments in the amount of \$ \_\_\_\_\_;
  - Total amount of interest accrued: \$ \_\_\_\_\_;
  - Total amount of non-interest charges or fee accrued \$ \_\_\_\_\_;
  - Plaintiff is seeking attorney's fees in the amount of \$ \_\_\_\_\_.

~~I CERTIFY that (1) I am  Plaintiff or  the agent of Plaintiff, (2) I have firsthand knowledge of the matters stated in this application, (3) Plaintiff is the owner of the consumer debt which is the subject of this case, and (4) there is due and owing by Defendant to Plaintiff the amount(s) set forth in the complaint.~~

Affiants may certify their statements pursuant to section 1-109 of the Code of Civil Procedure or have their signature notarized in the manner required by law.

Under penalties as provided by law under section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that [s]he verily believes the same to be true.

\_\_\_\_\_  
Name of Affiant

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date