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Testimony of Houston Putnam Lowry

OPPOSING

House Bill 6173, AAC The Reform of Debt Collection Practices in the State

Committee on Banks

February 14, 2013

Our law firm generally represents creditors with the State of Connecticut, almost exclusively in the commercial context (and not the consumer context). As such, this bill may not affect our practice.

Generally, the legislature should not interfere with the functioning of a co-equal branch of government, the Judicial Department. Our separation of powers is constitutionally proscribed. Having pleading requirements put into the Connecticut General Statutes instead of the Practice Book is not prudent.

Since the bill's final language isn't available, there are a number of questions that can't be answered from the present text:

1. Are consumer creditors expected to be treated differently from commercial creditors regarding production of documents? If so, why? Does this create an equal protection issue?
2. Why should additional pages containing exhibits be served by a Marshal in light of the current procedure under Practice Book §10-29?¹ This can be prohibitively

¹ Practice Book §10-29. Exhibits as Part of Pleading

(a) Any plaintiff, except as otherwise provided in subsection (b) in connection with a plaintiff in the housing division as defined in Section 1-7, desiring to make a copy of any document a part of the complaint shall refer to it as Exhibit A, B, C, etc.. No later than the return date, the plaintiff shall file the original or a copy of such exhibit or exhibits in court. The plaintiff shall serve a copy of such exhibit or exhibits on each party no later than ten days after receipt of notice of the appearance of such party, in the manner provided in Sections 10-12 through 10-17, and shall file proof of service on each appearing party with the court. Except as required by statute, the plaintiff shall not annex the document or documents referred to as exhibits to the complaint, or incorporate them in the complaint, at full length, and if the plaintiff does so the plaintiff shall not be allowed in costs for such part of the fees of the

expensive, considering Marshals are paid for each page delivered to each defendant.

3. What will be the relationship between the proposed statute and Practice Book §10-29?
4. Why is current Practice Book §10-35² inadequate? If a party wants to get a copy of a relevant document, courts commonly order it attached to the complaint when a request to revise is made. A defendant is not required to answer the complaint before the document is provided. See *U.S. Bank National Association as Trustee v. Ascenzia*, 48 Conn. L. Rptr. 345 (2009) quoting *Bennett v. Automobile Insurance Co. of Hartford*, 230 Conn. 795, 802 (1994).
5. Why isn't a request for production under Practice Book §13-9³ adequate to obtain a copy of a reasonably necessary document?

officer for copies of such complaint left in service, as are chargeable for copying such document or documents referred to as exhibits.

(b) The provisions of subsection (a) shall apply to a plaintiff in the housing division, as defined in Section 1-7, desiring to make a copy of any document a part of the complaint, except that the plaintiff shall serve on each party who has appeared a copy of such exhibit or exhibits at the first court session of the matter or no later than seven days after receipt of notice of the appearance of such party, whichever is earlier.

(c) When either the plaintiff or the defendant in any pleading subsequent to the complaint desires to make a copy of any document a part of his or her pleading, such party may, without reciting it therein, either annex it thereto, or refer to it therein, and shall serve it and file it in court with proof of service in the manner provided in Sections 10-12 through 10-17.

² Practice Book §10-35. Request to Revise

Whenever any party desires to obtain (1) a more complete or particular statement of the allegations of an adverse party's pleading, or (2) the deletion of any unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations in an adverse party's pleading, or (3) separation of causes of action which may be united in one complaint when they are improperly combined in one count, or the separation of two or more grounds of defense improperly combined in one defense, or (4) any other appropriate correction in an adverse party's pleading, the party desiring any such amendment in an adverse party's pleading may file a timely request to revise that pleading.

³ Practice Book §13-9. Requests for Production, Inspection and Examination; In General

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6. Is the proposed bill intended to cover foreclosure actions and summary process actions? It would appear not because their primary purpose is not the collection of money.
7. What is the remedy is a creditor fails to comply regarding the production of documents? May creditors cure a defect? If not, why not?
8. Why does this apply only to complaints, but not to all actions (such as counterclaims and cross-claims)?
9. This bill cannot affect proceedings under the Federal Rules of Civil Procedure.

Consumer collection agencies are already well regulated by Connecticut General Statutes §36a-800, *et seq.* There seems to be no reason to regulate them under Chapter 669 Part I.

This bill does not correct an existing problem and should **NOT** be reported from the Banks Committee to the General Assembly.

(a) In any civil action ... where the judicial authority finds it reasonably probable that evidence outside the record will be required, any party may serve ... upon any other party a request to ... inspect, copy, photograph or otherwise reproduce designated documents

(b) Requests for production may be served upon any party without leave of court at any time after the return day. ...

(c) The request shall clearly designate the items to be inspected either individually or by category. The request ... for production shall specify a reasonable time, place and manner of making the inspection. Unless the judicial authority orders otherwise, the frequency of use of requests for production in all actions ... is not limited.

(d) If information has been electronically stored, and if a request for production does not specify a form for producing a type of electronically stored information, the responding party shall produce the information in a form in which it is ordinarily maintained or in a form that is reasonably usable. A party need not produce the same electronically stored information in more than one form. ...

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