



THE 508 SERIES - DEBT CLAIM CASES

RULE 508.1. APPLICATION

Rule 508 applies to a claim for the Recovery of a Debt brought by an Assignee of a Claim, a Financial Institution, a Debt Collector or Collection Agency, or a person or entity primarily engaged in the business of lending money at interest.

RULE 508.2. PETITION

(a) *Contents.* In addition to the information required by Rule 502.2, a petition filed in a lawsuit governed by this rule must contain the following information:

(1) Credit Accounts. In a claim based upon a credit card, revolving credit, or open account, the petition must state:

- (A) The account or card name;
- (B) The account number (which may be masked);
- (C) The date of issue or origination of the account, if known;
- (D) The date of charge-off or breach of the account, if known;
- (E) The amount owed as of a date certain; and
- (F) Whether the plaintiff seeks ongoing interest.

(2) Personal and Business Loans. In a claim based upon a promissory note or other promise to pay a specific amount as of a date certain, the petition must state:

- (A) The date and amount of the original loan;
- (B) Whether the repayment of the debt was accelerated, if known;
- (C) The date final payment was due;
- (D) The amount due as of the final payment date;
- (E) The amount owed as of a date certain; and
- (F) Whether plaintiff seeks ongoing interest.

(3) Ongoing Interest. If a plaintiff seeks ongoing interest, the petition must state:

- (A) The effective interest rate claimed;
- (B) Whether the interest rate is based upon contract or statute; and
- (C) The dollar amount of interest claimed as of a date certain.

(4) Assigned Debt. If the debt that is the subject of the claim has been assigned or transferred, the petition must state:

- (A) That the debt claim has been transferred or assigned;
- (B) The date of the transfer or assignment;
- (C) The name of any prior holders of the debt; and
- (D) The name or a description of the original creditor.

RULE 508.3. DEFAULT JUDGMENT

(a) *Generally.* If the defendant does not file an answer to a claim by the answer date or otherwise appear in the case, the judge must promptly render a Default Judgment upon the plaintiff's proof of the amount of damages.

(b) *Proof of the Amount of Damages.*

(1) Evidence Must Be Served or Submitted. Evidence of plaintiff's damages must either be attached to the petition and served on the defendant or submitted to the court after defendant's failure to answer by the answer date.

(2) Form of Evidence. Evidence of plaintiff's damages may be offered in a sworn statement or in live testimony. The evidence offered may include documentary evidence.

(3) Establishment of the Amount of Damages. The amount of damages is established by evidence:

(A) That the account or loan was issued to the defendant and the defendant is obligated to pay it;

(B) That the account was closed or the defendant breached the terms of the account or loan agreement;

(C) Of the amount due on the account or loan as of a date certain after all payment credits and offsets have been applied; and

(D) That the plaintiff owns the account or loan and, if applicable, how the plaintiff acquired the account or loan.

(4) Documentary Evidence Offered By Sworn Statement. Documentary evidence may be considered if it is attached to a sworn statement made by the plaintiff or its representative, a prior holder of the debt or its representative, or the original creditor or its representative that attests to the following:

(A) The documents were kept in the regular course of business;

(B) It was the regular course of business for an employee or representative with knowledge of the act recorded to make the record or to transmit information to be included in such record;

(C) The documents were created at or near the time or reasonably soon thereafter; and

(D) The documents attached are the original or exact duplicates of the original.

(5) Consideration of Sworn Statement. A judge is not required to accept a sworn statement if the source of information or the method or circumstances of preparation indicate lack of trustworthiness. But a judge may not reject a sworn statement only because it is not made by the original creditor or because the documents attested to were created by a third party and subsequently incorporated into and relied upon by the business of the plaintiff.

(c) *Hearing*. The judge may enter a default judgment without a hearing if the plaintiff submits sufficient written evidence of its damages and should do so to avoid undue expense and delay. Otherwise, the plaintiff may request a default judgment hearing at which the plaintiff must appear, in person or by telephonic or electronic means, and prove its damages. If the plaintiff proves its damages, the judge must render judgment for the plaintiff in the amount proven. If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant.

(d) *Appearance*. If the defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge, the judge must not render a default judgment and must set the case for trial.

(e) *Post-Answer Default*. If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on liability and damages and render judgment accordingly.