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The Pervasive and Troubling Use of Coverage Attorneys in Assembly-Line Litigation

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ABSTRACT

Debt collection cases dominate state court civil dockets in Massachusetts and across the country. Extant scholarship regarding debt collection in the courts has focused on what makes it easy for creditors to churn out this "assembly line litigation," including repeat plaintiffs and passive courts. Some light has also been shed on creditors' counsel in these cases, highlighting how debt collection "mills" dominate dockets and rely on non-lawyer staff. However, it is not the handful of attorneys at collection firms that appear for the average court hearing in debt collection cases. Instead, debt collection mills hire substitute attorneys, also known as coverage attorneys or appearance attorneys, to make the bulk of their appearances in court. The pervasive use of such attorneys is a practice largely unique to collection cases and, along with non-lawyer staff at collection firms, is the engine that runs assembly-line debt collection litigation in Massachusetts and across much of the country. This Article relies on information gleaned through interviews with industry actors to shed light on the coverage attorney system. It posits that there are multiple ethical problems with the use of coverage attorneys and that their use compromises the rules of professional responsibility. To conclude, this Article argues for reform and better enforcement of existing rules to rein in the untethered use of coverage attorneys.

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Introduction

In the summer of 2024, Cohlette Carlino, a single mother of three went to small claims court in Lynn, Massachusetts, because she had been sued for $1,063 on an old credit card debt.[1] Her case was one of about 24 scheduled for that day and she was one of only a few defendants to appear.[2] One lawyer represented the plaintiffs in all of the cases, including Ms. Carlino's, and he was seated in front of the assistant clerk magistrate hearing the session.[3] In the courtroom, that lawyer approached Ms. Carlino.[4] Despite not knowing how the debt originated, she signed an agreement that she owed the full $1,063 because, as she told a reporter afterwards, "I didn't know that I didn't have to settle and agree to this."[5]

1. Jenifer McKim, *The Debt Mills: How State Courts Grind Through Consumer Debt Cases*, GBH (Sept. 3, 2024), https://www.wgbh.org/news/local/2024-09-03/the-debt-mills-how-state-courts-grind-through-consumer-debt-cases [https://perma.cc/D2SY-WTSP].
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*

During a typical session in small claims court, a self-represented consumer in a debt collection action will—like Ms. Carlino—end up talking to a lawyer representing the creditor. The consumer will either be approached by the lawyer before the session in or outside of the courtroom, or be told by the person hearing the session—in Massachusetts, a clerk magistrate rather than a judge[6]—to talk to that lawyer.[7] However, chances are that the creditor's attorney will not work for the law firm that filed the case on behalf of the creditor. Instead, as was true in Ms. Carlino's case, the attorney representing the creditor that day will likely be a substitute lawyer who is paid by the law firm for their appearance in court that day, commonly known as a "coverage" or "appearance" attorney.[8]

Current scholarship regarding debt collection in the courts has focused on certain elements of what has been recently dubbed "assembly line litigation,"[9] including repeat corporate creditors (more often than not, buyers of the debt),[10] high default rates,[11] overwhelmingly self-represented debtors[12] (who are disproportionately low-income consumers of color),[13] and passive courts.[14] Some light has been shed on creditors' counsel in these cases, but it has focused on how particular law firms dominate the docket and have high-volume practices given the

6. Mass. Unif. Small Claims R. 7(a) ("A small claim action shall generally be tried, and pretrial and post-judgment motions relating to such trials shall generally be determined, by a magistrate.").

7. *See* NAT'L CONSUMER L. CTR., FAIR DEBT COLLECTION 38 (10th ed. 2022) [hereinafter NCLC, FAIR DEBT COLLECTION] ("When consumers do appear in court for their collection lawsuit, collection attorneys typically try to convince them to settle rather than appearing before the judge or magistrate. Court officials often direct consumers to speak to these attorneys.").

8. *See* Beth Healy, *Dignity Faces a Steamroller: Small-Claims Proceedings Ignore Rights, Tilt to Collectors*, BOS. GLOBE, July 31, 2006, at A1, https://www.bostonglobe.com/metro/2006/07/31/dignity-faces-steamroller/SoK0TBVHzOzjLEpNqNrVYN/story.html [https://perma.cc/2CSR-52GB] (describing how "covering" attorneys are paid by collection firms to appear in courts across Massachusetts).

9. *See generally* Daniel Wilf-Townsend, *Assembly-Line Plaintiffs*, 135 HARV. L. REV. 1704 (2022) (discussing the structural features of debt collection litigation and dubbing the massive repeat filers in such cases "assembly-line plaintiffs").

10. *See, e.g.*, Erika J. Rickard, *How Debt Collectors Are Transforming the Business of State Courts: Lawsuit Trends Highlight Need to Modernize Civil Legal Systems*, PEW CHARITABLE TRS. (2020), https://www.pew.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts [https://perma.cc/A35A-J3QK] ("[D]ebt buyers are among the most active civil court users, and in some states, a small number of debt buyers account for a disproportionate percentage of civil cases filed."); *see also* NCLC, FAIR DEBT COLLECTION, *supra* note 7, at 34, n.416 (citing studies).

11. *See, e.g.*, HUM. RTS. WATCH, RUBBER STAMP JUSTICE: U.S. COURTS, DEBT BUYING CORPORATIONS, AND THE POOR 33 (2016), https://www.hrw.org/sites/default/files/report_pdf/us0116_web.pdf [https://perma.cc/5FLV-MNW2] ("In a typical court, between 60 and 95% of all debt collection lawsuits, including debt buyer cases, end with default judgments in favor of the plaintiffs."); *see also* NCLC, FAIR DEBT COLLECTION, *supra* note 7, at 36–37 (citing studies).

12. *See, e.g.*, Rickard, *supra* note 10, at 13 ("Consumers, however, typically have legal representation in less than 10% of debt claims."); *see also* NCLC, FAIR DEBT COLLECTION, *supra* note 7, at 37–38 (citing studies).

13. *See, e.g.*, Jessica K. Steinberg et al., *The Democratic (Il)Legitimacy of Assembly-Line Litigation*, 135 HARV. L. REV. 359, 363 (2022).

14. *See*, *e.g.*, Wilf-Townsend, *supra* note 9, at 1723.

number of attorneys they employ.[15] Less light has been shed on the real workhorses of debt collection in the courts: coverage attorneys.

It is not the handful of attorneys at the firms specializing in debt collection that normally appear in court in a debt collection case to obtain default judgments for creditors. Instead, in an average small claims or civil session, it is coverage attorneys with no connection to or first-hand knowledge of the cases who are generally appearing against low-income consumers.[16] In fact, according to one Massachusetts legal aid attorney who represents consumers in these cases, 99% of the time she is in small claims court she interacts with coverage attorneys rather than counsel of record.[17]

The pervasive use of coverage attorneys is a practice largely unique to collection cases and is a *sine qua non* of assembly-line debt collection litigation across the country. The reason for the coverage attorney model in collection cases is simple: the high-volume, geographically diverse, rote practice of collection law firms is impossible without the support of temporary counsel. As one former collection attorney explained it:

> Every single one of [the three firms I worked at] was heavily reliant on coverage attorneys and . . . that comes from the nature of it. . . . It's high volume, hundreds of cases get filed, and then there's all types of hearings for those types of cases. And you only have a few attorneys . . . But when you file cases all over Massachusetts, those four attorneys are not going to be able to bilocate everywhere. So you, you need coverage attorneys to cover the hearings. And the same thing with the second firm and then the third firm. They've all been the same way. You need coverage attorneys to cover the hearings.[18]

Because little to no scholarship or empirical data exists regarding the use of coverage attorneys in debt collection cases, this Article draws from my own experiences defending such cases,[19] as well as confidential telephonic interviews with on-the-ground stakeholders. Interviews with everyone from retired judges, assistant clerk magistrates, legal aid lawyers, former collection attorneys, and coverage

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15. *See, e.g.*, Claire Johnson Raba, Debt Collection Lab, One-Sided Litigation: Lessons from Civil Docket Data in California Debt Collection Lawsuits 31–32 (2023), https://debtcollectionlab.org/research/one-sided-litigation [https://perma.cc/8X8E-JDJQ].

16. *See* discussion *infra* Part 2(b)(2) and notes 106, 107; *see also* Healy, *supra* note 8 (describing how "covering" attorneys are "paid small sums by collection firms to raise their hand and say 'here' when a case is called. They appear at courts around the state, often representing as many as a dozen plaintiffs in a single session. And they typically know only the barebones facts of a given case, a name and the sum that's supposedly owed.").

17. Telephone Interview with Legal Aid Att'y Two (May 29, 2024).

18. Telephone Interview with Collection Att'y Two (May 15, 2024).

19. I have defended debt collection cases for nearly a decade, including staffing "lawyer-for-the-day" programs, so I also draw upon my own experiences dealing with coverage attorneys.

attorneys themselves facilitated my understanding of the structures of this system, including how coverage attorneys are retained and how they are compensated.

These interviews with stakeholders expose not only the structures of the coverage attorney system, but also the harms and ethical issues it generates. Almost all of the interviewees discussed the frustrations they have with the system and how it drives the assembly-line litigation of debt collection. Problems include coverage attorneys not being able to handle the volume of cases they have in a given session, not knowing the facts of the cases, not having the same kinds of authority as the attorneys for whom they are covering, and not having a way to reach the counsel of record. Because of coverage attorneys' lack of authority, consumers often face the unwelcome choice of coming to court repeatedly without resolution or simply agreeing they owe the amount alleged to be able to escape court and get back to competing obligations like work or childcare.

My interviews also expose the ethical issues with the system, which constitute violations of the Rules of Professional Responsibility, and also throw into question whether current protections around the use of coverage attorneys are being followed or are even sufficient. In Massachusetts, for example, limited rules do exist around the use of coverage attorneys.[20] However, these rules are essentially just a requirement that the coverage attorney file a notice of appearance.[21] Interviews with stakeholders confirmed my own experience that these rules are followed in some courts but not others. Moreover, as the interviews illustrate, the problems with coverage attorneys—namely, lack of supervision by counsel of record, as well as lack of preparation and authority—exist even in courts where they are properly entering notices of appearance.

In Part I, this Article provides background on elements of assembly-line debt collection litigation in state courts: repeat corporate plaintiffs, high default rates, self-represented low-income debtors, and passive courts. In Part II, drawing in large part from my interviews, the Article discusses the high-volume practice of creditors' counsel as well as how and why coverage attorneys are used. In Part III, the Article summarizes recurring themes from the interviews regarding the use of coverage attorneys in debt collection cases and its effect on consumers and the integrity of courts. Part IV discusses the limited court rules around the use of coverage attorneys and highlights the Rules of Professional Responsibility and other ethical problems that the system implicates. Finally, in Part V, I make suggestions for reform.

I. Assembly-Line Debt Collection Clogging State Courts

The Federal Trade Commission observed in a 2009 report that "[t]he majority of cases on many state court dockets on a given day often are debt collection matters" and that the "vast number of debt collection suits filed in recent years has

20. *See, e.g.*, Mass. Unif. Small Claims R. 7(f).
21. *See, e.g.*, *id.* (requiring merely that a substitute attorney file a notice of appearance).

posed considerable challenges to the smooth and efficient operation of courts."[22] More recent research by Pew Charitable Trusts suggests that in 2021, debt collection cases made up 42% of state courts' civil dockets.[23]

While there is historical research to support the notion that collection cases have dominated the dockets of civil courts since as early as the colonial period,[24] data suggests that debt collection actions have taken on an even more prominent role in state courts over the last 30 years.[25] Either way, it is clear that debt collection cases currently clog state court dockets.[26]

For example, the number of debt collection cases in Massachusetts is staggering. A 2006 investigation by the *Boston Globe* Spotlight team, aptly named "Debtors' Hell," found that debt collectors filed 575,000 lawsuits between 2000 and 2005, accounting for three out of every five civil suits (including small claims).[27] Recent numbers are even higher: from 2019 to 2023, consumer debt actions made up, on average, 62.06% of the regular civil docket and 84.08% of the small claims docket.[28]

These statistics demonstrate that debt collection actions particularly dominate small claims sessions.[29] While they vary slightly from state to state, small claims courts share several common features: a jurisdictional cap on damages,[30] relaxed

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22. Fed. Trade Comm'n, Collecting Consumer Debts: The Challenges of Change 55 (2009), https://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf [https://perma.cc/G4D6-35FB].

23. *See* Casey Chiappetta, *Debt Collection Cases Continued to Dominate Civil Dockets During Pandemic*, Pew Charitable Trs., (Sept. 18, 2023) (analyzing data from nine states), https://www.pewtrusts.org/en/research-and-analysis/articles/2023/09/18/debt-collection-cases-continued-to-dominate-civil-dockets-during-pandemic [https://perma.cc/QCT4-Y2VH].

24. *See, e.g.*, Dalié Jiménez, *Decreasing Supply to the Assembly Line of Debt Collection Litigation*, 135 Harv. L. Rev. 374, 377 (2022) (citing Claire Priest, Credit Nation: Property Laws and Institutions in Early America 43 (2021)).

25. According to one review of data by Pew Charitable Trusts, from 1993 to 2013, the amount of debt collection cases nationwide more than doubled, and the percentage of the civil docket they represented rose from 11.6% to 23.6%. *See* Rickard, *supra* note 10, at 8.

26. The National Consumer Law Center has aggregated numerous state-level studies which confirm that "debt collection cases continue to represent a growing portion of the docket [of state courts]." NCLC, Fair Debt Collection, *supra* note 7, at 34 (citing studies from numerous states, including Texas, California, Utah, and Massachusetts). Even the coronavirus pandemic did not alter this fact. Chiappetta, *supra* note 23.

27. Boston Globe Spotlight Team, *No Mercy for Consumers*, Bos. Globe (Aug. 22, 2013), https://www.bostonglobe.com/metro/2006/07/30/mercy-for-consumers/gTImLuYbDUIfyWg8X5m5pN/story.html [https://perma.cc/56NG-22GW].

28. Mass. Trial Ct. Dep't of Rsch. & Plan., Small Claims and Civil Consumer Debt Actions: Selected Statistics on Cases Filed and Disposed in the Boston Municipal and District Courts 5 (July 2024), https://www.mass.gov/doc/review-of-consumer-debt-cases-filed-and-disposed-2024/download [https://perma.cc/P4V2-YS9L].

29. Kansas established the first small claims court in 1912 and every other state has followed since. *See* Bruce Zucker & Monica Her, *The People's Court Examined: A Legal and Empirical Analysis of the Small Claims Court System*, 37 Univ. S.F. L. Rev. 315, 317 (2003) (citation omitted).

30. 67 A.L.R.4th 1117. Throughout the United States, the limit varies: Kentucky has the lowest dollar limit ($2,500), Ky. Rev. Stat. Ann. § 24A.230, and Tennessee has the highest ($25,000), Tenn. Code Ann. § 16-15-501(d)(1).

rules of evidence,[31] and lower filing fees.[32] Scholars agree that these less formal courts were developed "to satisfy the needs of average citizens who, because of the difficulties of litigating in the regular civil courts, were unwilling or unable to resolve a dispute using the existing justice system."[33] However, contrary to this original purpose of being the so-called "People's Court,"[34] small claims sessions have developed primarily into facilitators of assembly-line debt collection.[35]

In fact, in their "Debtors' Hell" series, the *Boston Globe* concluded in 2006 that "'the people's court' has become the collectors' court. . . . It is a de facto arm of a fast-growing and aggressive industry that has swamped court dockets with lawsuits. . . ."[36] The series quoted Kevin F. Callahan, then-first assistant clerk magistrate for the Civil Division of the Boston Municipal Court, who noted that small claims courts had become "sophisticated collection agencies for these people."[37] "This is a lucrative business for some," he said; "I hate it."[38]

A. Corporate Plaintiffs, Especially Debt Buyers

Not only are collection actions dominating state court dockets, but a small number of corporate entities are accounting for a large percentage of these actions.[39] Professor Daniel Wilf-Townsend's cross-sectional study of state courts from across the country found that, on average, 23% of states' civil dockets are cases brought by the top ten plaintiffs.[40] The Massachusetts Trial Court's recent report on debt collection cases showed that the nine top filers of cases—all corporate entities—accounted for 71.3% of the consumer debt cases filed in 2023.[41] In her study of debt collection in the Indiana courts in the first quarter of 2009, Professor Judith Fox similarly found that thirteen plaintiffs were responsible for filing almost 79% of collection actions.[42]

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31. Zucker & Her, *supra* note 29, at 317.

32. Steven Rinehart, *Small Claims Courts: Getting More Bang for Fewer Bucks*, 23(5) UTAH BAR J. 32, 34 (2010).

33. Suzanne E. Elwell, *The Iowa Small Claims Court: An Empirical Analysis*, 75 IOWA L. REV. 433, 434 (1990) (citations omitted); *see also* Zucker & Her, *supra* note 29, at 320–21 ("In response to an increasing need for fast and simple resolutions to minor civil disputes and in order to resolve 'minor civil disputes' in an expedient, inexpensive, and just manner, the California Legislature established the small claims divisions in the municipal court in each of the counties in California." (citations omitted)).

34. It must be noted, however, that Roscoe Pound, one of the original proponents of such courts, thought that "collection of debts in a shifting population" partly necessitated more informal courts. Roscoe Pound, *The Administration of Justice in the Modern City*, 26 HARV. L. REV. 302, 315 (1913).

35. Professor Wilf-Townsend has posited that the reason why creditors have started bringing more low-value claims is that economies of scale, involving digital technology and support staff, have allowed for easier processing of cases. *See* Wilf-Townsend, *supra* note 9, at 1719–21.

36. Healy, *supra* note 8.

37. *Id.*

38. *Id.*

39. *See, e.g.*, NCLC, FAIR DEBT COLLECTION, *supra* note 7, at 34–35 (citing studies).

40. Wilf-Townsend, *supra* note 9, at 1729–30.

41. MASS. TRIAL CT. DEP'T OF RSCH. & PLAN., *supra* note 28, at 14.

42. Judith Fox, *Do We Have a Debt Collection Crisis - Some Cautionary Tales of Debt Collection in Indiana*, 24 LOY. CONSUMER L. REV. 355, 372 (2012).

Moreover, these plaintiffs are often not the creditors with whom consumers did business—often known as "original creditors"—but instead are entities known as "debt buyers."[43] These creditors purchase defaulted debts—usually in large portfolios—from original creditors, intermediaries, or other debt buyers for pennies on the dollar.[44] Sellers generally provide limited documents and disclaim warranties about the underlying debts or the information transferred.[45]

While original creditors traditionally collected debts themselves or retained third-party debt collectors,[46] the practice of creditors selling portfolios of their defaulted debts emerged following the savings and loan crisis of the late 1980s and early 1990s and in response to the government's successful sale of unpaid loans.[47] By 2009, five of the six largest credit card issuers were selling at least some of their delinquent credit card debt to debt buyers.[48] According to a 2009 FTC report,

> [t]he most significant change in the debt collection business in recent years has been the advent and growth of debt buying. Some companies simply buy debt and seek to recover on it. In addition to these companies, debt buyers also include collection law firms, contingency collection agencies, and investors who purchase and resell portfolios of delinquent debt.[49]

The growth of debt buying increased rapidly, too: from 1993 to 2013, the total dollar value of debts acquired by debt buyers increased by more than a factor of 16, from $6 billion to $98 billion.[50] According to a 2013 FTC report, on average, debt buyers pay four cents for each dollar of debt they purchase.[51] Credit card debt is the most common type of debt sold, and many debts are purchased and resold several times.[52]

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43. *See, e.g.*, HUM. RTS. WATCH, *supra* note 11, at 10–17.

44. *See* NCLC, FAIR DEBT COLLECTION, *supra* note 7, at 20; *see also* Peter A. Holland, *Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers*, 26 LOY. CONSUMER L. REV. 179, 193 (2014).

45. *See generally* Dalié Jiménez, *Dirty Debts Sold Dirt Cheap*, 52 HARV. J. LEGIS. 41 (2015) (examining how debts are sold).

46. FED. TRADE COMM'N, THE STRUCTURE AND PRACTICES OF THE DEBT BUYING INDUSTRY 11 (2013), https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf [https://perma.cc/QSY6-73KK] [hereinafter 2013 FTC REPORT].

47. *Id.* at 12. As described by the FTC, "during the crisis, the Resolution Trust Corporation, the federal entity assigned to liquidate failed thrifts, auctioned off nearly $500 billion in unpaid loans that creditors had owned. The success of these sales in producing revenue persuaded other creditors to commence selling their debts." *Id.*

48. *Id.* at 13 (citing U.S. GOV'T ACCOUNTABILITY OFF., CREDIT CARDS: FAIR DEBT COLLECTION PRACTICES ACT COULD BETTER REFLECT THE EVOLVING DEBT COLLECTION MARKETPLACE AND USE OF TECHNOLOGY 26 (2009), https://www.gao.gov/assets/300/295588.pdf [https://perma.cc/34BV-5XYR]).

49. THE CHALLENGES OF CHANGE, *supra* note 22, at 13.

50. Rickard, *supra* note 10, at 11.

51. 2013 FTC REPORT, *supra* note 46, at 23.

52. *Id.* at 8.

While debt buyers can use other attempts at collection—such as third party collectors—they use litigation as an essential tool in their business model.[53] In fact, as study after study of state court dockets has shown, large debt buyers now account for a significant percentage of consumer debt filings in state courts.[54] For example, in 2023, three debt buyers—Midland Funding, LVNV Funding, and Portfolio Recovery Associates, LLC—were the top filers of consumer debt cases in Massachusetts, and those three plaintiffs alone accounted for 44.4% of such cases that year.[55]

Regardless of whether debt buyers or original creditors are bringing debt collection cases, the corporate plaintiffs involved have developed business models that allow them to push—or in the words of New York Court of Appeals' former Chief Judge Jonathan Lippman, "plow"[56]—thousands upon thousands of cases through the courts with relative ease. In characterizing debt collection litigation as assembly-line litigation, Professor Wilf-Townsend highlighted that "[t]he story of assembly-line litigation is one in which sophisticated litigants develop mass economies of scale when it comes to the processing and bringing of claims."[57] A few features create economies of scale for creditors in these cases: (1) lack of appearances by consumers, (2) unrepresented consumers when they do appear, and (3) passive courts.[58]

B. Low-Income, Absent, or Self-Represented Defendants

First, as consumer lawyer and former clinical professor Peter Holland has highlighted, "the business model is to file literally millions of lawsuits nationwide, and then depend on default judgments."[59] And default judgments are indeed

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53. HUM. RTS. WATCH, *supra* note 11, at 13.

54. *See, e.g.*, *id.* at 13–14 (citing data); *see also* NCLC, FAIR DEBT COLLECTION, *supra* note 7, at 34, n.416. While debt buyers make up a significant portion of every state civil docket studied, they do not necessarily make up the majority of the docket in every jurisdiction. For example, Professor Claire Johnson Raba found in her study of California debt collection cases from 2009 to 2020 that, "[d]uring the Great Recession, original creditors led filers, to be taken over the third-party debt collectors in the middle of the decade, only to switch back again in 2018 and 2019, when original creditors were filing a greater percentage of cases again." JOHNSON RABA, *supra* note 15, at 17–18.

55. MASS. TRIAL CT. DEP'T OF RSCH. & PLAN., *supra* note 28, at 14. I suspect that the Report meant "Midland Credit Management" and not Midland Funding based on my own experience defending cases against this entity in Massachusetts. After Midland, LVNV, and Portfolio Recovery Associates, the next six most pervasive filers included four original creditors (Capital One, Discover Bank, TD Bank, American Express National Bank, and Bank of America), which collectively accounted for 21.3% of debt collection cases filed, as well as another debt buyer (Cavalry SPV), which accounted for 5.6% of such cases. *Id.*; *see also* Paul Kiel & Annie Waldman, *The Color of Debt: How Collection Suits Squeeze Black Neighborhoods*, PROPUBLICA (Oct. 8, 2015), https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods [https://perma.cc/2UCJ-67P5] (finding that debt buyers were the most frequent civil plaintiffs in Newark, St. Louis, and Chicago between 2008 and 2012); HUM. RTS. WATCH, *supra* note 11, at 12 (finding that 4 of the 10 most prolific plaintiffs in New York state in 2014 were debt buyers).

56. *See* HUM. RTS. WATCH, *supra* note 11, at 14 (telling Human Rights Watch that in many states there is "a mill of these cases plowing through the system").

57. Wilf-Townsend, *supra* note 9, at 1718.

58. *See, e.g.*, *id.* at 1717–23.

59. Peter A. Holland, *Notes from the Trenches: Current Trends in Consumer Junk Debt Buyer Litigation*, 49 MD. BAR J. 18, 18, 25 (2016).

dependable for creditors: as has been confirmed in study after study, most consumer debt cases end in default judgments due to lack of answers or appearances by consumers.[60] For example, a 2023 report by the Minnesota State Bar Association Access to Justice Commission found that "the overwhelming majority of debt cases in Minnesota—82% of district court cases and 54% of conciliation court cases—end in default judgment in favor of the plaintiff."[61] One primary reason why defendants do not appear in these cases is bad service.[62] But lack of proper service is not the only explanation for high default rates in debt collection cases: even in cases with proper service, default rates are high.[63] According to an FTC report based on consultation with experts:

> [I]n general, industry representatives asserted that most debtors who default do so because they owe the debt and therefore recognize that disputing it would be futile. Consumer advocates, on the other hand, generally attributed the low participation rate to debtors not receiving notice of the action or to procedural hurdles that make it difficult and expensive for debtors to defend.[64]

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60. *See* NCLC, FAIR DEBT COLLECTION, *supra* note 7, at 36–37 (citing studies from state courts across the country).

61. ACCESS TO JUST. COMM., MINN. STATE BAR ASS'N, 2023 MINN. CONSUMER DEBT LITIG. REP. 28 (2023), https://mnbars.org/?pg=debt-litigation-report [https://perma.cc/FGH6-XKNG] [hereinafter MINNESOTA ACCESS TO JUSTICE REPORT]. In her study of California cases, Professor Johnson Raba found that the overall rate of response was less than 9% for her entire data set. *See* JOHNSON RABA, *supra* note 15, at 4. A report by the Debt Collection Lab, a research initiative based at Princeton University that tracks debt collection cases, found that fewer than 4% of Oregonians file an answer to debt collection lawsuits against them. DAVID MCCLENDON & DIVIA KALLATTIL, DEBT COLLECTION LAB, OREGON DEBT COLLECTION LAWSUITS 7 (2024), https://debtcollectionlab.org/docs/oregon-findings-chartbook.pdf [https://perma.cc/A3SH-J7DB].

62. Professor Wilf-Townsend found evidence of service problems in about 33% of his core case sample. Wilf-Townsend, *supra* note 9, at 1740. Bad service can simply be a function of the fact that creditors do not have current addresses for consumers and it can also be the result of something more nefarious—intentionally bad, also known as "sewer" service. *See, e.g.*, HUM. RTS. WATCH, *supra* note 11, at 36–38; *see also* Wilf-Townsend, *supra* note 9, at 1721–22. Moreover, in some states, including Massachusetts, small claims cases only require service by first-class mail, which is notoriously unreliable. *See* Mass. Unif. Small Claims R. 3(a); Lila Hempel-Edgers, *Postal Service Audit Finds Significant Problems, Including Mail Unprocessed for Days*, BOS. GLOBE, Dec. 12, 2024, at B1, https://www.bostonglobe.com/2024/12/11/metro/postal-service-audit-finds-significant-problems-including-mail-unprocessed-days/ [https://perma.cc/SG3M-3MSV].

63. For example, in his study of Maryland cases, Peter Holland found that 85% of consumers who were properly served by debt buyers failed to file a defense in writing. Holland, *supra* note 44, at 208; *see also* MICH. JUST. FOR ALL COMM'N, ADVANCING JUSTICE FOR ALL IN DEBT COLLECTION LAWSUITS 2 (2023), https://www.courts.michigan.gov/4ac33d/siteassets/reports/special-initiatives/justice-for-all/jfa_advancing_justice_for_all_in_debt_collection_lawsuits.pdf [https://perma.cc/RL9M-HVU7] (finding that default judgments were entered in almost 70% of debt collection cases in Michigan even after service was recorded as complete).

64. FED. TRADE COMM'N, REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION 7 (2010), https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf [https://perma.cc/6874-2WR6].

With respect to procedural barriers, consumers may not answer or otherwise defend their cases because they "cannot take time off work without pay, are afraid of courtroom processes and unfamiliar with their options, have complex and multiple demands in their lives, have transportation difficulties, or cannot obtain effective representation."[65] In some states, yet another procedural and financial barrier prevents consumers from defending debt collection cases: they have to pay a fee to even appear in court.[66] One other possible explanation for high default rates is that consumers do not recognize the names of unfamiliar debt buyers and do not defend the cases as a result.[67] In her California study, Professor Johnson Raba found that cases brought by debt buyers had a lower percentage of consumer defendants who responded as compared to those brought by original creditors.[68]

When consumers do defend these collection actions, they are overwhelmingly likely to be self-represented[69] and are disproportionately low-income people of color.[70] Studies consistently show that defendants who appear are self-represented in well over 90% of cases.[71] For example, the Massachusetts trial court's recent report concerning consumer debt actions in its courts found that between 2019 and 2023, about 97.2% of consumer-defendants were unrepresented.[72] Some scholars, including Professor Wilf-Townsend, have posited that the lopsided nature of representation—wherein plaintiff-creditors have counsel and defendant-consumers do not—is a new feature of debt collection cases.[73] Others, like Professor Dalié Jiménez, have concluded that the "evidence from the colonial through the antebellum period to today points to a world where . . . very few had

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65. *Id.* at 12.

66. *See generally* Claire Johnson Raba & Dalié Jiménez, *Pay to Plead: Finding Unfairness and Abusive Practices in California Debt Collection Cases*, 44 REV. J. BANKING & FIN. L. 113 (2025) (discussing California's $225 answer fee and its effect on consumers).

67. *See, e.g.*, Rickard, *supra* note 10, at 16 ("Observational and interview data reveal that consumers often do not recognize the name of the company that filed the lawsuit. Debt buyers present a unique challenge in this regard because they are not the original lenders. Consumers frequently report not responding because they do not recognize the debt buyer suing them.").

68. *See* JOHNSON RABA, *supra* note 15, at 21.

69. NCLC, FAIR DEBT COLLECTION, *supra* note 7, at 37–38 (citing studies).

70. *See, e.g.*, *id.*, at 14–16 (citing studies).

71. *See, e.g.*, Rickard, *supra* note 10, at 13 ("Studies from 2010 through 2019 show that the share of debt claim defendants who were served—that is, provided with official notification of the suit against them—who had an attorney ranged from 10% in Texas to zero in New York City.") (citing various studies of state dockets); *see also* NCLC, FAIR DEBT COLLECTION, *supra* note 7, at 37 ("Studies show that the overwhelming majority of consumers are unrepresented by an attorney when they are sued on a debt.").

72. MASS. TRIAL CT. DEP'T OF RSCH. & PLAN., *supra* note 28, at 9. The numbers are similar elsewhere. *See, e.g.*, Fox, *supra* note 42, at 377 (only 4% of total consumers were represented by attorneys in the civil collection cases in Fox's study); JOHNSON RABA, *supra* note 15, at 32 (less than 3% of consumer defendants had lawyers during Professor Johnson's 11 year study in California, and even in the county with the highest rate of representation (San Francisco County), the rate was only 6.1%).

73. Wilf-Townsend, *supra* note 9, at 1714 ("In state courts throughout the country, civil litigation has transitioned from a system in which most parties are represented to one in which the vast majority of litigants are advocating for themselves without an attorney.").

an attorney."[74] In any case, it is clear that the vast majority of consumers do not have representation in these collection cases.[75]

The primary reason for this broad lack of representation is likely that defendants in these lawsuits simply cannot afford attorneys. Claudia Wilner and Nasoan Sheftel-Gomes's study of lawsuits by debt buyers in New York City found that 91% of the consumers in their study lived in low- or moderate-income communities.[76]

In addition, while court systems unfortunately do not track the demographics of defendants in debt cases,[77] estimates using census track and other data have led researchers to conclude that self-represented defendants are also disproportionately likely to be people of color.[78] For example, the Minnesota Access to Justice Report concluded that "the rate of debt claims filed against Black and Latino Minnesotans is more than twice that of Non-Hispanic white Minnesotans."[79] Thus, as Wilner and Sheftel-Gomes aptly concluded, the impact of these debt collection lawsuits "is overwhelmingly concentrated in low- and moderate-income communities and communities of color."[80]

C. Passive Courts, Which Encourage Debtors to Talk to Plaintiff's Counsel

Regardless of whether defendants default or appear unrepresented, courts are extremely passive in their scrutiny of collection cases. With respect to default judgments, for example, debt buyers win many default judgments without ever

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74. Jiménez, *supra* note 24, at 377–78 (2022).

75. *See, e.g.*, NCLC, FAIR DEBT COLLECTION, *supra* note 7, at 37.

76. CLAUDIA WILNER & NASOAN SHEFTEL-GOMES, DEBT DECEPTION: HOW DEBT BUYERS ABUSE THE LEGAL SYSTEM TO PREY ON LOWER-INCOME NEW YORKERS 10 (2010), https://mobilizationforjustice.org/wp-content/uploads/reports/DEBT-DECEPTION.pdf [https://perma.cc/M9ZG-LZEZ]. A 2015 national survey conducted by the Consumer Financial Protection Bureau also found that those with lower household incomes were more likely to have been sued on debts. CONSUMER FIN. PROT. BUREAU, CONSUMER EXPERIENCES WITH DEBT COLLECTION: FINDINGS FROM THE CFPB'S SURVEY OF CONSUMER VIEWS ON DEBT 15 (2017), https://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf [https://perma.cc/GA5X-EU9Y]. *Cf.* NCLC, FAIR DEBT COLLECTION, *supra* note 7, at 13 ("Low- and moderate-income consumers are disproportionately impacted by debt collection activity.").

77. Steinberg et al., *supra* note 13, at 364. Professor Steinberg and her co-authors have aptly highlighted how the courts' failure to track this data is deeply problematic: "[T]he fact that courts do not track demographic data systematically is itself a manifestation of structural inequality: debt cases—not unlike other areas of civil law—are simply not considered important enough to study, understand, or solve. . . ." *Id.*

78. NCLC, FAIR DEBT COLLECTION, *supra* note 7, at 14–16 (citing studies).

79. MINNESOTA ACCESS TO JUSTICE REPORT, *supra* note 61, at 4; *see also* Kiel & Waldman, *supra* note 55 ("Our analysis of five years of court judgments from three metropolitan areas—St. Louis, Chicago and Newark—showed that even accounting for income, the rate of judgments was twice as high in mostly [B]lack neighborhoods as it was in mostly white ones."); MCCLENDON & KALLATTIL, *supra* note 61, at 36, 37 (finding that filing rates are 30% higher among Black and Hispanic/Latino Oregonians compared to white Oregonians, and that Black and Hispanic/Latino Oregonians at all levels of neighborhood income face higher rates of debt lawsuits); *see also* CLAIRE JOHNSON RABA, DEBT COLLECTION LAB, THE UNEQUAL BURDEN OF DEBT CLAIMS: DISPARATE IMPACT IN CALIFORNIA DEBT COLLECTION CASES 3 (2023), https://debtcollectionlab.org/research/unequal-burden-of-debt-claims [https://perma.cc/77X7-N7GR] (finding that "[c]ases filed in California courts to collect consumer debts disproportionately burden Black and Hispanic borrowers").

80. WILNER & SHEFTEL-GOMES, *supra* note 76, at 8.

presenting or even having any evidence they own the debts at issue.[81] Even in the jurisdictions that require creditors to submit specific evidence to support their claims, courts routinely grant default judgments without them: Wilner and Sheftel-Gomes's study found that debt buyers regularly obtained default judgments despite their failure to provide an affidavit from someone with personal knowledge of the facts of the case, as required under New York law.[82] Likewise, the Minnesota Access to Justice study found that, despite the requirement that certain documents be filed before a default judgment is entered, almost all cases which lacked proper documentation still ended in a default judgment.[83]

As far as cases in which consumers appear *pro se*, consumers are often ill-equipped to make the necessary arguments to defend themselves, and courts do not correct for the imbalances between represented corporate plaintiffs and unsophisticated self-represented plaintiffs. To the contrary, courts very often encourage settlement discussions between the parties despite this imbalance, and these "negotiations" often result in agreements, preventing consumers from "knowing whether their adversary can actually prove their case, or even whether they have been sued over a legally enforceable debt or for the correct amount."[84] Moreover, even where unrepresented defendants decide to defend collection cases on the merits, as Professor Steinberg and her co-authors articulate,

> [j]udges are not equipped to adjudicate cases under conditions of asymmetrical representation, often ceding undue power to the assembly-line debt buyer to control the facts and evidence considered. This type of judicial minimalism has an unsurprising result: judges churn through hundreds of cases a day and almost always rule for the plaintiff.[85]

II. Factory Workers: Collection Law Firms and Coverage Attorneys

While Professor Wilf-Townsend and others have focused on the assembly-line nature of debt collection in the courts described in Part I *supra*, he and others have focused more on the machinery and less on what I will call the "factory workers": the lawyers involved in the debt collection machine. There are two sets of factory workers in assembly-line debt collection litigation: (A) collection law firms (staffed almost entirely by non-lawyers), which churn out complaints and process payments; and (B) "coverage" or "appearance" attorneys, whom collection law firms pay by the case or session to actually appear in court.

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81. Hum. Rts. Watch, *supra* note 11, at 40–41.

82. Wilner & Sheftel-Gomes, *supra* note 76, at 14.

83. Minnesota Access to Justice Report, *supra* note 61, at 30.

84. Hum. Rts. Watch, *supra* note 11, at 54.

85. Steinberg et al., *supra* note 13, at 365. On the other hand, when consumers are represented by counsel, they win the "overwhelming majority" of debt collections cases. Hum. Rts. Watch, *supra* note 11, at 63.

A. Collection Law Firms

While some creditors channel some or all of their litigation through in-house legal departments, the majority of these creditors contract with law firms specializing in collection cases in order to carry out their litigation.[86] These firms are often compared to mills because of the way they churn out cases and employ significantly more non-attorney staff members than attorneys.[87] They are typically paid on a contingency fee basis—if, and only if, they are successful in collecting from debtors, they are paid a portion of the amount collected.[88]

Not only are there few lawyers at these firms, but there are also few of these firms in any given geographic area. As Professor Judith Fox has pointed out, "[a]s the debt collection industry has consolidated, so have the number of firms representing them."[89] In her study of debt collection in civil sessions of Indiana state courts in the first quarter of 2009, Professor Fox found that most creditor-plaintiffs were represented by a single collection firm.[90] Professor Fox's data is consistent with other studies of debt collection litigation. For example, in their study of New York City debt buyer cases, Wilner and Sheftel-Gomes found that a "small number of firms commence the majority of debt collection cases" and that 64% of the debt buyers they studied were represented by one of just five law firms.[91]

These few firms per jurisdiction also rely largely on support staff to run their collection mills, bringing their average filings per attorney to astronomical levels. For example, Professor Johnson Raba's study of California debt collection cases found that one law firm, Hunt & Henriques, with only twelve attorneys—but a team of debt collectors—had filed more than 60,000 debt collection cases in the years 2009 and 2010.[92] In 2019, its numbers were slightly lower but Hunt & Henriques still filed an average of 1,500 cases per attorney.[93]

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86. HUM. RTS. WATCH, *supra* note 11, at 15; *cf.* RICK JURGENS & ROBERT J. HOBBS, NAT'L CONSUMER L. CTR., THE DEBT MACHINE HOW THE COLLECTION INDUSTRY HOUNDS CONSUMERS AND OVERWHELMS COURTS 11 (2010), https://www.slideshare.net/slideshow/the-debt-machine/29212088 [https://perma.cc/M39K-KBCL] ("[W]ithin the debt machine, about one out of every 20 delinquent accounts gets referred to a law firm that specializes in debt collection. Specialized collection law firms posted about $1.2 billion in revenue in 2006, according to one industry estimate.").

87. NCLC, FAIR DEBT COLLECTION, *supra* note 7, at 25.

88. HUM. RTS. WATCH, *supra* note 11, at 16, n.27. An SEC filing by one debt buyer—Asta Funding—showed some of the terms of its agreement with a collection firm: Asta retained the law firm to collect 335,000 "receivables," required the law firm to "initiate litigation" on each claim within 18 months, and agreed that the law firm could keep 24% of the money it collected itself or 30% of collections made by vendors that it had engaged. JURGENS & HOBBS, *supra* note 86, at 11 (citation omitted).

89. Fox, *supra* note 42, at 380–81.

90. *Id.* at 381.

91. WILNER & SHEFTEL-GOMES, *supra* note 76, at 15; *see also* Mary Spector, *Debts, Defaults and Details: Exploring the Impact of Debt Collection Litigation on Consumers and Courts*, 6 VA. L. & BUS. REV. 257, 285 (2011) (finding that, in a study of consumer debt litigation in Dallas County, Texas, "five law firms were responsible for filing 309 cases, or 60% of the sample. A sixth firm filed 47 cases, making six firms responsible for a total of 356 cases, or 69.6% of the sample.").

92. JOHNSON RABA, *supra* note 15, at 31.

93. *Id.*

Regulatory scrutiny of these debt collection law firms has also shed light on their high-volume practices and reliance on support staff. In 2014, the Consumer Financial Protection Bureau (CFPB) sued Frederick J. Hanna & Associates, a Georgia-based law firm, and its three principal partners in connection with illegal collection tactics, alleging that the firm's "non-attorney support staff has far outnumbered its attorneys. From 2009 through 2013, [the] Defendants employed, at any given time, hundreds of non-attorney staff but only between 8 and 16 attorneys."[94] In 2016, the CFPB entered into a consent order with Pressler & Pressler, L.L.P., a law firm conducting debt collection litigation in New Jersey, New York, and Pennsylvania.[95] The firm had filed more than 500,000 collection lawsuits between 2009 and 2014.[96] According to the CFPB's findings, the firm's "litigation activities relied substantially on a non-attorney support staff that far outnumber[ed] the Firm's attorneys," and, prior to filing cases, a designated "signing attorney" simply reviewed each summons and complaint against summary data rather than "supporting documentation underlying the facts" asserted in individual complaints.[97] ProPublica's reporting on the firm also revealed that:

> According to a deposition [that Ralph Gulko, the lawyer who was the signing attorney in most of the cases,] gave as part of a lawsuit against his firm, he'd sit at a desk with two computer screens. On one screen would be a lawsuit, already prepared by the firm's support staff and ready to be filed, and on the other, a summary of basic information about the case. If Gulko saw no problems, he'd electronically sign it and a Pressler employee would electronically file it. The firm's records showed that it took Gulko as little as four seconds to review a suit, and he did between 300 and 400—sometimes as many as 1,000—per day.[98]

As evinced by this kind of automated review and signing, there are huge quality control and professional responsibility implications of high-volume debt collection litigation, discussed further infra.[99]

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94. Complaint at ¶ 14, CFPB v. Frederick J. Hanna & Assocs., 114 F.Supp.3d 1342, No. 14-cv-2211 (N.D. Ga. July 14, 2014).

95. *In re* Pressler & Pressler, LLP, CFPB No. 2016-CFPB-0009 (Apr. 26, 2015) (Consent Ord.), https://files.consumerfinance.gov/f/documents/201604_cfpb_consent-order-pressler-pressler-llp-sheldon-h-pressler-and-gerard-j-felt.pdf [https://perma.cc/TLS3-A8DT].

96. *Id.* ¶ 6.

97. *Id.* ¶¶ 8, 14–16, 28.

98. Paul Kiel, *So Sue Them: What We've Learned About the Debt Collection Lawsuit Machine*, ProPublica (May 5, 2016), https://www.propublica.org/article/so-sue-them-what-weve-learned-about-the-debt-collection-lawsuit-machine [https://perma.cc/NNS5-MC37].

99. In addition, as recognized by Professor Wilf-Townsend, another result of this assembly line churning out of debt collection cases has been that it has enabled creditors to bring low value cases with "relative ease." Wilf-Townsend, *supra* note 9, at 1720–21 ("[E]ven where court filing fees may be several hundred dollars, and a meaningful portion of defendants may not even have the means to pay a judgment, the efficiency enabled by these plaintiffs' litigation machines can make it worthwhile to file claims for $700 or $800 in consumer debt.").

B. Coverage Attorneys

1. Background on the Use of Coverage Attorneys in Debt Collection Cases

Besides the quality control problems with having so few attorneys at collection firms handling so many cases, another issue arises because counsel of record—the collection mills—cannot possibly appear at all of their court dates. In some cases, lawyers benefit from the fact that they need not appear at all, as courts often do not require them to appear in a civil case where a default judgment has been entered.[100] However, where court appearances are required, collection firms in Massachusetts and elsewhere frequently need to turn to outsiders to staff those appearances.

In its 2015 lawsuit against the collection firm Lustig, Glaser, & Wilson, P.C., the Massachusetts Attorney General's Office described this common practice:

> The number of courts involved and the volume of collection suits filed [, over 100,000 over five years,] against consumers was so large that the Lustig Firm relied on a network of unaffiliated substitute attorneys—so-called "coverage" attorneys—to appear in court on behalf of the Firm, often with no knowledge whatsoever about the alleged debt or the consumer.[101]

Although I have been unable to pinpoint exactly when or how the use of these coverage attorneys developed in debt collection cases in Massachusetts and elsewhere,[102] it is apparent that it was pervasive in Massachusetts at least as early as 2006. At that time, the *Boston Globe* highlighted coverage attorneys' use in its "Debtors' Hell" series, noting that the imbalance between unrepresented consumers going up against lawyers was "exacerbated by another widespread practice in

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100. As explained *supra*, Part I.C, the vast majority of collection cases end in default judgments and, due to the passive nature of courts, judges will often approve default judgments with little or no scrutiny; *see also* Fox, *supra* note 42, at 381 (explaining that a collection attorney in Indiana has "very good odds that he or she will not have to appear for a hearing if the case is filed as a civil collection" because of high default rates and the lack of a requirement to appear in person in those cases).

101. Complaint at ¶ 71, Commonwealth v. Lustig, Glaser & Wilson, P.C. (Mass. Super. Ct. Dec. 21, 2015). The lawsuit resulted in a $1 million consent judgment and required the Lustig firm to, *inter alia*, have an attorney meaningfully review documentation and determined that there was sufficient evidence to support its claims. *See* Press Release, Mass. Att'y Gen., AG Secures $1 Million for Consumers Exploited by Largest Debt Collection Law Firm in Massachusetts (July 27, 2017), https://www.mass.gov/news/ag-secures-1-million-for-consumers-exploited-by-largest-debt-collection-law-firm-in-massachusetts [https://perma.cc/W6XM-YG84].

102. There is scant scholarship and no aggregate data concerning these coverage attorneys, but, based on my interviews, the use of coverage attorneys seems to date back to at least the 1990s and was predated by or has coexisted with a system of group coverage, with firms covering for each other. *See* Telephone Interview with Coverage Attorney Att'y One (Oct. 28, 2024) (recalling covering his first case in 1991); Telephone Interview with Judge One (Mar. 14, 2024) (recalling seeing coverage attorneys when he was on the bench in the early 1990s). According to at least one of my interviews, for at least a time, there was also a system of "group coverage" with collection firms having agreements with each other where one firm would cover for another firm on certain days. Interview with Former Collection Att'y Two (May 15, 2024).

debt cases—the use of 'covering' attorneys."[103] By 2009, the use of coverage attorneys was a common enough practice in Massachusetts collection cases that the Massachusetts Trial Court amended the Uniform Small Claim Rules to permit "substitute counsel to file a time limited appearance, thereby acknowledging a common practice in small claims proceedings. . . ."[104]

2. My Interviews of Assembly-Line Stakeholders

The use of coverage attorneys has indeed become common practice in Massachusetts. In my nearly ten years of defending debt collection cases—first as a legal aid attorney and now as a clinical instructor in a law school clinic—I have rarely seen counsel of record in court. I wanted to highlight use of coverage attorneys in assembly-line debt collection, but was stymied by the lack of data and scholarship related to their use. I thus turned to confidential interviews with stakeholders in Massachusetts to fill the gap.

Over the course of about a year, I conducted confidential telephone interviews with various stakeholders in assembly-line debt collection. I spoke with two former judges, two assistant clerk magistrates,[105] three legal aid attorneys, two former collection attorneys, and three coverage attorneys. My interviews lasted anywhere from thirty minutes to over an hour. To ensure that people provided as open and honest information as possible, I told each stakeholder I would keep their identity confidential and anonymize the information they shared. With respect to the former judges, assistant clerk magistrates, and legal aid lawyers, I asked them questions concerning how often they see coverage attorneys as opposed to counsel of record and how they think having coverage attorneys instead of counsel of record affects the proceedings. With respect to the former collection attorneys and coverage attorneys, I asked not only about their experiences in court but also about their own backgrounds and the mechanics of the coverage attorney system.

My interviews show that in the last 20 or so years, with respect to court appearances, coverage attorneys have become the central actors in assembly-line

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103. Healy, *supra* note 8. According to the *Globe*:

> These are legal practitioners who are paid small sums by collection firms to raise their hand and say 'here' when a case is called. They appear at courts around the state, often representing as many as a dozen plaintiffs in a single session. And they typically know only the barebones facts of a given case, a name and the sum that's supposedly owed. Covering lawyers usually don't need to know more; they're simply there to collect default judgments against people who don't show up. On a busy day last September in Lowell, for instance, a handful of covering lawyers had only to say 'plaintiff' for the record 132 times. Their work was done in 90 of those cases, because the defendants did not appear. *Id.*

104. Cmt. to Mass. Unif. Small Claims R. 7 (2009 Amend.). One of the coverage attorneys I interviewed told me that prior to this amendment of the Small Claims Rules, the legality of the coverage process "wasn't clear" and as a result he "was relieved" when the amendment was put in place. Coverage Att'y One, *supra* note 102.

105. In Massachusetts, assistant clerk magistrates hear small claims cases. Mass. Unif. Small Claims R. 7(a) ("A small claim action shall generally be tried, and pretrial and post-judgment motions relating to such trials shall generally be determined, by a magistrate.").

debt collection in Massachusetts. One of the assistant clerk magistrates I interviewed estimated that they see coverage attorneys rather than counsel of record in 99.9% of the debt collection cases they hear in court; the other estimated 99.8%.[106] The legal aid lawyers I spoke with agreed that they encounter coverage attorneys in the vast majority of their court appearances.[107] As one former collection attorney succinctly stated, "[i]f you don't have coverage, you can't do it . . . You wouldn't be able to practice."[108]

In addition, likely because of the particularly high-volume, assembly-line nature of debt collection cases, the use of coverage attorneys is uniquely endemic to debt collection actions.[109] According to a former judge, "it was just the debt collection [cases] where . . . the overwhelming majority [of attorneys appearing in court] were, coverage attorney[s]."[110] The other former judge and the assistant clerk magistrate echoed this sentiment.[111]

While I only interviewed stakeholders in Massachusetts, I have confirmed that coverage attorneys are pervasively used in debt collection cases in many other states. I circulated a survey among consumer attorneys and received responses from advocates in 13 other states. Lawyers in Alabama, California, Florida, Illinois, Missouri, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee, Texas, and Virginia all reported the frequent use of

106. Telephone Interview with Assistant Clerk Mag. One (July 11, 2024); Telephone Interview with Assistant Clerk Mag. Two (July 15, 2024).

107. *See, e.g.*, Legal Aid Att'y Two, *supra* note 17 (stating that she interacts with coverage attorneys in court "99% of the time"); Telephone Interview with Legal Aid Att'y Three (June 7, 2024) ("[You] almost always [deal with] coverage counsel when you're in court."); Telephone Interview with Legal Aid Att'y One (May 20, 2024) (stating that a majority of attorneys she deals with are coverage). Week to week, too, it is often the same coverage attorney or attorneys covering a small claims or civil session in a particular court. *See., e.g.*, Assistant Clerk Mag. One, *supra* note 106 ("I'll say we typically see the same people over and over, but then randomly we'll kind of, meet new people or we'll see people that are different but for the most part, it's the same people.").

108. Telephone Interview with Collection Att'y One (Mar. 7, 2024).

109. The only exception to this seems to be in bankruptcy courts, where a similar culture has developed around coverage attorneys—or as they are known in those courts, appearance attorneys—as substitute counsel for consumers. *See, e.g.*, Geraldine Mund, *Paralegals: The Good, the Bad and the Ugly*, 2 AM. BANKR. INST. L. REV. 337, 342 (1994) ("In Los Angeles, a group of attorneys has become known as 'appearance attorneys.' They are hired by other attorneys for $30–$50 per appearance to come to court for short, high volume calendars."). Interestingly, while the use of coverage attorneys has continued in many bankruptcy courts across the country, various bankruptcy courts have frowned on the use of them or outright banned them. These courts have pointed to both the practical problems with the use of coverage attorneys when it comes to settlement and moving a case along and also to various rules of professional responsibility that are implicated by their use. *See, e.g.*, *In re* Bradley, 495 B.R. 747, 806–07 (Bankr. S.D. Tex. July 16, 2013) (criticizing and banning the use of appearance counsel); *In re* Robertson, 2024 WL 3738155, at *8–9 (Bankr. N.D. Ga. Aug. 8, 2024); *In re* Olson, 2016 WL 3453341, at *8 (Bankr. D. Idaho June 16, 2016); *In re* Al-Sammak, 2016 WL 3912375, at *2 (Bankr. D. Idaho July 12, 2016); *In re* Bernhardt, 2012 WL 646150, at *5 (Bankr. D. Colo. Feb. 28, 2012). In addition, at least two bankruptcy courts have blanket local rules making clear that only an attorney of record—with knowledge of the case—may appear at a hearing. *See* E.D.N.Y. LBR § 2090-2(a); N.D.N.Y. LBR § 2016-3(b).

110. Telephone Interview with Judge Two (May 16, 2024).

111. *See* Judge One, *supra* note 102; Assistant Clerk Mag. One, *supra* note 106.

coverage attorneys in debt collection cases in their states.[112] In addition, in earlier listserv queries to advocates in other states, I heard from advocates in Georgia, Indiana, Iowa, Ohio, Oklahoma, and Virginia that the use of coverage attorneys is commonplace in those states as well.[113]

3. The Mechanics of the Coverage Attorney System

So, who are coverage attorneys and where do law firms find them? In my experience defending debt collection cases over the last decade, collection attorneys tend to have a wide swath of backgrounds but usually fall into one of three buckets: (1) those who have struggled to find other work and do collection cases close to full-time; (2) those who have supplemented their own solo practices through some coverage work; and (3) those who are doing a little work in their retirement. For example, one coverage attorney I interviewed started covering cases right out of law school when they could not find other work.[114] Another, who only takes a handful of cases on Zoom so they do not have to travel, describes their coverage work as "almost a hobby" in their retirement.[115]

There are two different models that collection firms use for contracting coverage attorneys: the direct contracting model and the third-party model, both of which the average law firm and coverage attorney seem to use.[116] Via both systems, non-lawyer staff at a collection law firm will arrange coverage attorneys for a firm's docket in a given week.[117] Unlike in the normal attorney-client relationship, the creditor will have no say in the coverage attorneys the non-lawyer staff hires.

With the direct contracting model, a coverage attorney has developed a relationship with a particular collection firm and is asked to cover some or all of their cases at a given session.[118] As one coverage attorney puts it, the collection law firm will "just contact you, say, are you available for this? Are you available for that? And you either take it or don't."[119] Typically this contact comes by email

112. For example, a legal aid lawyer in Missouri reported that she sees coverage attorneys "every time [she goes] to court—up to a few days per week; every week." *See* March 2025 to April 2025 Multistate Survey (on file with author). The only exception was Wisconsin, where one attorney reported that they do not see coverage attorneys in their courts. *Id.* However, Court Appearance Professionals (CAP) and Docketly both tout nationwide coverage, and Docketly lists Wisconsin among the states they cover. *See Our Approach*, CT. APPEARANCE PROS., https://www.appearanywhere.com/our-attorney-network [https://perma.cc/9R2M-STAC] ("Our attorneys are available in every Court nationwide."); *Geographic Coverage*, DOCKETLY, https://docketly.com/hire-court-appearance-coverage/locations/[https://perma.cc/2PRM-TJ78].

113. These advocates reached out in February of 2024; this correspondence is on file with the author.

114. Coverage Att'y One, *supra* note 102.

115. Telephone Interview with Coverage Att'y Three (Jan. 9, 2025).

116. *See, e.g.*, Telephone Interview with Coverage Att'y Two (Dec. 16, 2024) (stating they get their cases from a mix of those two things).

117. Collection Att'y One, *supra* note 108 ("So the, the, the firm would have, either assistants or, you know, maybe a paralegal or they'll call themselves a paralegal . . . that would handle coverage."); *see also* Collection Att'y Two, *supra* note 18 (discussing how paralegals schedule coverage attorneys).

118. For example, one coverage attorney now regularly covers four courts a week and for six or seven firms a week, with an average of around 25 cases each session. Coverage Att'y One, *supra* note 102.

119. Coverage Att'y Two, *supra* note 116.

from a non-lawyer staff member of the collection law firm.[120] When a coverage attorney accepts an assignment, non-lawyer staff members at the collection firm provide some limited documents and information to the coverage attorneys by email.[121] With respect to documents, as one coverage attorney put it, "usually they send me very basic information. The copy of the complaint, documents regarding the sale (if it is assigned debt), maybe a few statements, an affidavit, that's about it."[122] According to a former collections attorney, often the documents are limited because of the amount of time it takes to upload them.[123] In addition to basic information and some documents, coverage attorneys generally receive some limited information and instructions.[124] After the hearings, the coverage attorneys report the results to the law firms' non-lawyer staff via email, generally on different forms for each law firm, and attach any relevant documents (like agreements for judgment).[125]

When established coverage attorneys are not available or when collection firms have to arrange for coverage quickly,[126] the firms reach out to third-parties for help. In the past, these third-parties were actual middlemen who took a fee.[127]

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120. Coverage Att'y One, *supra* note 102 ("It's really almost never the lawyers. It's dealing with administrative and litigation specialists or, people whose main job is really just paper wrangling."); Coverage Att'y Three, *supra* note 115 ("[I]t's mostly administrative people."); Collection Att'y Two, *supra* note 18 (stating that assistants or a paralegal would handle coverage).

121. *See* Collection Att'y One, *supra* note 108; Collection Att'y Two, *supra* note 18; Coverage Att'y One, *supra* note 102.

122. Coverage Att'y Three, *supra* note 115.

123. Collection Att'y One, *supra* note 108 ("[W]hen the debt collection firm is uploading for 30 different collections cases in just one court on a given day, they want to make it quick and thus only upload select documents."). In addition, according to the same former collection attorney, some paralegals would schedule coverage counsel without realizing they needed certain docs. *Id.*

124. Coverage Att'y Two, *supra* note 116 ("They tell me what they want for results, or they tell me the specifics about the status of the case."); Collection Att'y Two, *supra* note 18 (describing how a "coverage packet" would have a cover sheet, the amount of the claim, and the same settlement authority for all cases); Coverage Att'y Three, *supra* note 115 (talking about a range from "no instructions" to "get judgment" to an "irrelevant" paragraph); Coverage Att'y One, *supra* note 102 (observing that their competitor coverage attorneys are not as prepared with "huge stacks of documents" and lists of clients).

125. For example, the most prolific collection firm in Massachusetts—Schreiber Law—has a form in which coverage attorneys are asked to circle a number on the top of the form for particular results. Coverage Att'y One, *supra* note 102; *see also* Coverage Att'y Two, *supra* note 116 (explaining submission of detailed reports about conversations with judges, defendants, and clerks); Coverage Att'y Three, *supra* note 115 (explaining filling out questionnaire to report results to CAP, including description of events, parties, and narrative).

126. Sometimes there does not appear to be a clear rhyme or reason why law firms use the third-party platforms rather than reach out to coverage attorneys directly. *See* Coverage Att'y One, *supra* note 102 ("Some firms will send me things directly, sometimes. And then other times, I see their cases pop up on CAP. I don't know why or how, why that is happening. It seems like it's a place that they go to in desperation, maybe, that they're running behind and they just use it.").

127. Coverage Att'y One, *supra* note 102 (explaining that when they started out in the 1990s, a middleman—who took a cut—facilitated coverage for firms).

Now, in the internet age, the third-parties are contractors like Court Appearance Professionals (CAP) and Docketly.[128]

CAP, based in California, calls itself "the nation's leading provider of court appearance attorneys."[129] On its website, CAP describes the process by which a law firm can request a coverage attorney:

> Simply select the hearing date from the calendar, click on the "Request Appearance" button, enter the case information and attach any pertinent documents. Finally, click "Submit" to send the request to CAP. A written confirmation immediately follows up each request made.[130]

When the firm clicks on the request appearance button, there are required and optional fields on the subsequent screen.[131] Required fields include information regarding the law firm, docket number, hearing type, and case number.[132] Optional fields include the amount due, "how interest is being calculated," "settlement guidelines and/or contact of person for settlement authority," and "[d]esired [r]esult."[133] The collections firm gets to decide how many of these information fields to enter when requesting coverage; according to one coverage attorney, sometimes there are instructions and sometimes there are not.[134] In addition, a law firm may upload up to three case documentation files per matter, but is not required to do so.[135]

Once the collection firm submits its request for coverage on a particular case, CAP then sends emails to coverage attorneys who have been pre-screened as being in good standing and have expressed interest in that geographic region,[136] offering them an assignment on a particular day in a particular court without

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128. Collection Att'y One, *supra* note 108 (explaining that when their firm could not find coverage in a court in Western Massachusetts, they used CAP). Strangely, some collection firms also use CAP and Docketly even when they have existing relationships with coverage attorneys. *See* Coverage Att'y One, *supra* note 102 ("I've got a week coming up where I'm getting almost everything through the, through the CAP site. And so, some firms will send me things directly, sometimes. And then other times, I see their cases pop up on CAP. I don't know why or how, why that is happening. It seems like it's a place that they go to in desperation, maybe, that they're running behind and they just use it.").

129. *About Us*, Ct. Appearance Pros., https://www.appearanywhere.com/about-us [https://perma.cc/5NZF-BFJY] (last visited Mar. 2, 2026).

130. *Our Services*, Ct. Appearance Pros., https://appearanywhere.com/services.html [https://perma.cc/5APX-GL7Q] (last visited Mar. 2, 2026).

131. *Requesting a Collection Appearance* Ct. Appearance Pros., https://www.appearanywhere.com/cas.aspx?appcat=3 [https://perma.cc/VG6H-LTS4] (last visited Mar. 2, 2026).

132. *Id.*

133. *Id.*

134. Coverage Att'y Three, *supra* note 115.

135. *Id.*

136. Pre-screening is rather limited, mainly involving a check to ensure that a lawyer is in good standing and does not have any sort of conflict. Coverage Att'y One, *supra* note 102 (explaining how they had to scan their bar card and look at an online training); *see also* Collection Att'y One, *supra* note 108 (explaining that the screening involves attorneys attesting that they are qualified attorneys and that if they see a conflict, they will withdraw).

specifying the law firm or firms for whom they will be covering.[137] According to one of the coverage attorneys I spoke with:

> There's a way for you to basically put your schedule in there. You can go in and say, I will be in these courts, on these days, but even so, I will still get a, an email alert. There's probably other ways to get these alerts, but I get it through email and it says, you know, are you available to cover in such and such court?[138]

Once a coverage attorney accepts an assignment, they receive a confirmation email and are given access to the instructions and documents that the law firm uploaded to the CAP website.[139] The instructions and guidance are included in a form entitled "Appearance Details," which includes the same optional and required fields as on the form the law firm filled out.[140] After the court appearance, the coverage attorney then submits results in an interface on the CAP website that allows coverage attorneys to upload documents and answer various questions within pre-set boxes.[141]

Docketly is the other major third-party system for matching law firms with coverage attorneys and operates under a very similar system to CAP.[142] The major difference between the two systems is that CAP is facilitated through a website, while Docketly is done through an app.[143] Like CAP, a law firm uploads case documents and instructions to the Docketly system to request coverage, and pre-

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137. Coverage Att'y Three, *supra* note 115; Coverage Att'y One, *supra* note 102. It is unclear from my interviews whether the assignment emails go out to all coverage attorneys who have expressed interest or if CAP starts with particular attorneys and then broadens the inquiry in the case of non-acceptance.

138. Coverage Att'y One, *supra* note 102*; see also* Coverage Att'y Two, *supra* note 116 ("I get a solicitation and I either take it or don't take it, and they either sign me or don't, depending on my response.").

139. *How It Works*, CT. APPEARANCE PROS., https://www.appearanywhere.com/how-it-works [https://perma.cc/9HGJ-9JQY] (last visited Mar. 2, 2026). One coverage attorney noted that the number of cases mentioned in the original assignment email from CAP often is much fewer than the actual cases eventually assigned. Coverage Att'y Two, *supra* note 116 ("[W]hat's interesting about that is it'll say, can you cover one case in [in a particular court]? I'd say, and I'll say, yeah, I can cover one case. It took me a while to realize this, but then when the day rolls around, I'll get eight cases.").

140. According to one of the coverage attorneys, the instructions coming directly from a law firm or through CAP are "pretty much the same." Coverage Att'y Three, *supra* note 115. A coverage attorney mistakenly filed the "Appearance Details" form in one of my cases along with evidence he submitted at a small claims trial. For that case, there were simple instructions on obtaining "judgment," but no information was provided relating to settlement authority. *Form*, CT. APPEARANCE PROS., Appearance Details (Dec. 8, 2022) (on file with author).

141. Coverage Att'y One, *supra* note 102; Coverage Att'y Three, *supra* note 115 (explaining there are questions about whether they were on time, who else was present, "basically what happened," and a place for a narrative).

142. *How It Works*, DOCKETLY, https://docketly.com/solutions/abc-legal-and-docketly/[https://perma.cc/N4D6-ZF82] (last visited Jan. 21, 2026) (describing itself as "a custom-built software platform that can quickly and efficiently connect law firms with a wide network of experienced, reliable appearance attorneys and help you manage every detail of your hearing, from start to finish in one single-source solution").

143. *App Features*, DOCKETLY, https://docketly.com/earn/docketly-app-features/[https://perma.cc/Y8S5-4UUV] (last visited Jan. 21, 2026). Two other differences are that coverage attorneys are paid more quickly by Docketly than CAP and that Docketly has more questions for coverage attorneys to fill out post-hearing. Coverage Att'y One, *supra* note 102.

approved[144] coverage attorneys accept assignments after being offered them via email.[145] The coverage attorney will download the instructions and documents and input information into the system after the court date. According to one coverage attorney, the Docketly form is much longer and more complicated than CAP's, with a "fair amount of useless information."[146]

Regardless of how they retain coverage attorneys, law firms are ultimately the entity paying them. Collection firms either pay coverage attorneys a set rate per case they appear on, or a flat rate per entire court session.[147] Rates can vary from as little as $12.50 per case to $50 or more per case, typically with a larger flat rate of around $200 for the entire session once a certain number of cases are assigned.[148] While some firms have set rates and fee structures, every interviewed coverage attorney said that all rates are negotiable based on a number of factors, such as travel time and the total number of cases.[149] In fact, there is room for negotiation not only at the front end, when coverage attorneys are deciding whether to accept coverage assignments, but also when a court appearance ends up taking longer than expected and coverage attorneys can bill more than their normal or negotiated rates.[150]

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144. According to Docketly's website, it is relatively easy to get approved as a coverage attorney in their system as long as an attorney is in good standing and does not have a criminal record: "To be an appearance attorney with Docketly, you must be in good standing and be willing to submit to a criminal background check in accordance with your state's policies." *Earn FAQs*, DOCKETLY, https://docketly.com/earn/more/[https://perma.cc/ZYJ8-GTPD] (last visited Apr. 13, 2026).

145. According to one of the coverage attorneys I spoke with, Docketly has a more "first come, first serve" approach, with several assignments offered to many attorneys at once. Coverage Att'y Three, *supra* note 115. Docketly states the amount of money that is being offered for the assignment, although it also includes a box where an attorney can signal that they would complete the assignment for a different amount of money. *Id.*

146. Coverage Att'y Three, *supra* note 115.

147. Coverage Att'y One, *supra* note 102; Coverage Att'y Two, *supra* note 116.

148. Coverage Att'y One, *supra* note 102 (saying that with a huge volume, it is generally a "fixed fee" and that they make as little as $15 per case and as much as $200 per session and that CAP has a minimum of $50); Coverage Att'y Three, *supra* note 115 (explaining how the more cases that they take, the price per case goes down); *How Much Do Appearance Attorneys Make?*, DOCKETLY, https://docketly.com/home/how-much-do-appearance-attorneys-make/ [https://perma.cc/NFT2-7P3S] (last visited Jan. 21, 2026) ("The compensation you receive depends on the size of the docket that is available for you. For instance, if there are three hearings available in a bundle at $42 each, you would make that rate even if you only took one. It makes sense to take them all though since you would make $126 for the same amount of effort!"); *Benefit Comparison*, CT. APPEARANCE PROS., https://www.appearanywhere.com/benefit-comparison [https://perma.cc/BM4H-BXYL] (last visited Jan. 21, 2026) ("Most court appearances range from $65–$125, depending on the hearing type and location. We offer flat fees with NO hidden transportation, parking, late or cancellation charges. Additionally, discounted rates are available for multiple hearings."); Collection Att'y Two, *supra* note 18 (recalling that they heard of a range between $50 and $300 a day depending on the size of the docket).

149. Coverage Att'y One, *supra* note 102 ("It's negotiated based on, you know, the distance you travel, the number of cases, how much . . . printing."); *see also* Coverage Att'y Two, *supra* note 116 (discussing how they can negotiate rates based on reason); Coverage Att'y Three, *supra* note 115 ("[T]hey are all negotiable."); Collection Att'y One, *supra* note 108 (same); Assistant Clerk Mag. Two, *supra* note 106 (comparing the payment structure for coverage attorneys to the stock market).

150. Coverage Att'y One, *supra* note 102; Coverage Att'y Three, *supra* note 115.

III. Recurring Themes Regarding the Coverage Attorney System

The stakeholders I spoke to had varying opinions on whether the coverage attorneys system works; not surprisingly, coverage attorneys were the most enthusiastic about it.[151] As I discuss below, regardless of opinions on the system, there were a number of themes that came up in my interviews: coverage attorneys lacking settlement or other authority; courts' routine leniency toward unprepared coverage attorneys (at the expense of defendants); and the inability to run an efficient court system when one attorney has all or nearly all the cases in a given session.

A. Lack of Information About the Case, Limited Settlement and Other Authority, and Difficulty Reaching Counsel of Record

A common frustration among almost every stakeholder I spoke to, other than the coverage attorneys themselves, was that coverage attorneys have limited information and limited authority to take certain actions to settle and dismiss claims.

A repeated theme in interviews was that coverage attorneys typically do not have full information and documents concerning the history of cases.[152] For example, coverage attorneys often do not know that consumers have requested dismissals from the attorneys of record or know the status of those requests.[153] One of the former collection attorneys discussed hearing complaints from coverage attorneys about the firm not giving them relevant information about cases, attributing this lack of information to the volume of cases for which the collection firms need coverage on a given day.[154] The collection attorney explained that collections firms want to spend as little time as possible uploading information and documents for coverage attorneys to access.[155]

With respect to settlement, coverage attorneys generally have some limited authority. One of the former collection attorneys said that their firm gave all coverage attorneys some standard parameters and encouraged their coverage attorneys to settle within that rubric.[156] Another former collection attorney told me that their firm usually gave authority in the 80% range, meaning 80% repayment

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151. For example, one of the coverage attorneys compared themself to a server at a fancy restaurant, delivering the food that a chef (law firm) has prepared and said that they think the system "works pretty well for all parties involved." Coverage Att'y Two, *supra* note 116. Another coverage attorney talked about the value of having attorneys who know particular courts and their eccentricities. Coverage Att'y One, *supra* note 102. On the other hand, other stakeholders were very critical of the coverage attorney and collections system. *See, e.g.*, Legal Aid Att'y Two, *supra* note 17 ("It's already an adversarial process. And having these coverage attorneys come in, I think just makes things a lot more complicated a lot of the time. And they can have a huge impact on how many cases, you know, result in judgment for the defendant versus judgment for plaintiffs, how hard they're willing to fight and how dirty they're willing to play.").

152. *See, e.g.*, Assistant Clerk Mag. One, *supra* note 106 ("[A] lot of times it would be a different covering attorneys. They would have no idea what had happened before and so the cases just simply weren't really progressing.").

153. Legal Aid Att'y One, *supra* note 107.

154. Collection Att'y One, *supra* note 108.

155. *Id.*

156. *Id.*

of the total debt owed.[157] Similarly, multiple coverage attorneys agreed that they often get settlement authority in the 80% range.[158] However, most of the interviewees stated that the settlement ranges for coverage attorneys were generally more limited than the limits for the collection firms.[159] Likewise, they agreed that coverage attorneys are generally unwilling—or more often unable—to reach the attorneys of record to get additional settlement authority.[160] As a result, if a consumer wants to settle a case, the case will probably need to be continued for negotiations with the counsel of record.

A related frustration among consumer legal aid attorneys is that coverage attorneys lack the authority to grant hardship dismissals or dismiss cases involving identity theft.[161] Such dismissals are typical in debt collection cases where a consumer does not own real estate and is on disability benefits or is retired. As one legal aid attorney put it:

> [Coverage attorneys] can't dismiss cases, so if you have it, like, in your hands, the proof of Social Security benefits, and you're giving it to them, they don't have the authority to dismiss the case. . . . They need to take that piece of paper back, and it never gets given back to the law firm and actually dismissed. We need to then follow up with the firm and resubmit the same piece of paper that was handed over at court. And the same thing for identity theft statements as well.[162]

An added problem and layer of frustration for one assistant clerk magistrate is that the average coverage attorney does not have the requisite information or power to make decisions in court, nor do they have a way to quickly get ahold of

157. Collection Att'y Two, *supra* note 18.

158. Coverage Att'y One, *supra* note 102 (mentioning, twice, settlement authority in the 80% range); Coverage Att'y Three, *supra* note 115 (calling 80% "typical").

159. Coverage Att'y One, *supra* note 102 (explaining how they will continue cases and tell consumers to call counsel of record if they want to settle cases for less than their authority); Coverage Att'y Two, *supra* note 116 (explaining that they tell consumers they can always try to negotiate more with counsel of record if they want). *But see* Legal Aid Att'y Three, *supra* note 107 (stating that while counsel of record generally have more settlement authority, "it's been more nuanced than the way I originally experienced it. So, for example, there was an original creditor case . . . in court there was a decent settlement offer. Still too much for my client, but then when I tried to negotiate with the original firm, they wouldn't negotiate. So they actually had a better option available in court than they did with the counsel of record.").

160. Legal Aid Att'y Three, *supra* note 107; *see also* Coverage Att'y Two, *supra* note 116 (discussing how she does not do hardship dismissals and instead continues the cases for lead counsel to "handle that").

161. Legal Aid Att'y Three, *supra* note 107 ("They can't dismiss cases [for hardship] . . . and the same thing for identity theft statements as well); *see also* Legal Aid Att'y One, *supra* note 107 ("They are not dismissing cases because of hardship."); Legal Aid Att'y Two, *supra* note 17 (stating cases just get "kicked down the road" where there is a pending hardship dismissal request).

162. Legal Aid Att'y Three, *supra* note 107.

the people who do—the attorneys of record.[163] In other words, they are unable to reach the attorney of record for additional information or settlement or dismissal authority.

As a result, resolution is impossible. The consumer will either have to keep coming back to court or get a worse outcome, because, as a former judge put it, "coverage doesn't have the ability to do what needs to be done."[164] Based on my experience, a likely end result will be that the consumer—unless represented by an attorney—will agree that she owes the amount, entering what is called an "agreement for judgment." According to one coverage attorney, they are generally able to work something out with the consumer, either an agreement for judgment or, at the very least a continuance, and will only end up at an impasse in "one out of a hundred" cases involving a self-represented consumer.[165]

For those consumers who choose to come back to court in lieu of entering agreements for judgment, those repeated trips to court are taxing. As one legal aid lawyer explained:

> It's especially frustrating because these sessions, of course, are in the middle of the day on weekdays. So many of the clients that we work with are missing work, are needing to rearrange childcare to be there and then, you know, just to be told, sorry, come back next time, the other side isn't ready.[166]

In addition, repeated postponements are—just as other postponements—an inefficiency for courts, who are not clearing their dockets as quickly as they would otherwise be.

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163. Assistant Clerk Mag. One, *supra* note 106 ("[A] lot of times, you know, in small claims and in the civil session with the judge, if we ask them to, you know, if we said to them, hey, reach out and be at that point of acceptable settlement; both parties are here, we're trying to do something with this case. We would always hear from the coverage attorneys: 'okay, I can't get through to them today, they don't get back to me immediately.' So not only, not only, is this a coverage attorney who comes ill-prepared and doesn't know all the information, but it's also somebody that doesn't have a direct line to the people with the information. So that's another layer of it that's extremely problematic. It wouldn't necessarily be as bad, if they were able to make a quick call and, come back and say, 'all right, this is acceptable, we can enter this agreement,' or, you know, something like that."); *see also* Coverage Att'y Two, *supra* note 116 ("[Counsel of record is] not just sitting there waiting for me to call them. They're doing some work elsewhere. So it doesn't really work very well if you're going to be trying to talk with them on the phone."); Coverage Att'y Three, *supra* note 115 ("Sometimes I'll go out of my way and say let me call the law firm, see if I can take it somewhere, find out what is going on and even I can't get through to them."); Coverage Att'y One, *supra* note 102 (expressing how he rarely tries to get hold of counsel of record for additional settlement authority because "[he] just do[es]n't really get them.").

164. Judge One, *supra* note 102.

165. Coverage Att'y Three, *supra* note 115.

166. Legal Aid Att'y Two, *supra* note 17.

B. Waste of Resources

A related efficiency theme that came up in several of my interviews was the inability of courts to run an efficient system when there is only one coverage attorney handling most or all of the cases during a particular session.[167] This is because each case needs to proceed through the single coverage attorney, including any discussions about settlement or agreements for judgment and any trials or motion hearings. A coverage attorney cannot be dealing with more than one case at a time and the adjudicator cannot move on to the next case without the coverage attorney. This concern was also raised by a coverage attorney on their own, saying that:

> I don't think it's good for me or for that court or any of the participants to have just one person in my role. And there's, you know, a whole bunch of defense counsel and a whole bunch of defendants all looking for my attention . . . I have been toying with the idea of just limiting the number [of cases I take] for that reason, [that] there should be more than one attorney there.[168]

Assistant clerk magistrates also raised this issue as an impediment to breaking up busy sessions by having more than one clerk magistrate hear cases at a time. As one of the clerk magistrates put it:

> If we had a lot of cases where defendants showed up, we wouldn't be able to split the session. And, you know, open up another courtroom and have someone else do half of the cases because there's only one attorney [appearing for the creditors].[169]

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167. Several interview subjects mentioned that there was usually one coverage attorney with most or all of the court session list in a given session. *See* Assistant Clerk Mag. One, *supra* note 106 ("So the way that it typically seems to go is that we typically seem to have one coverage attorney that has a large majority of the list. And then, anywhere between one and three other coverage attorneys who just have a couple cases, and it does seem to usually be offer-based as we're going through the list."); Assistant Clerk Mag. Two, *supra* note 106; Judge Two, *supra* note 110 ("Yeah . . . it was one attorney that would cover all the cases or most of the cases."). *But see* Coverage Att'y Two, *supra* note 116 (saying that while they are sometimes the only coverage attorney in a session on a particular day, they prefer having other attorneys in busier sessions so everyone is not vying for their attention); Coverage Att'y Three, *supra* note 115 (saying they do not like to take more than two or three cases at once).

168. Coverage Att'y Two, *supra* note 116.

169. Assistant Clerk Mag. Two, *supra* note 106; *see also* Legal Aid Att'y Two, *supra* note 17 ("[E]specially on days where we have numerous hearings, you know, and for there to be a lot of hearings, even from a list that's three, four pages long. If there are six to eight hearings, that's considered quite a lot. And some of the coverage counsel have had, I will say stylistically long-winded, for example, and take forever reading every detail into the record and eat up a lot of time per hearing. And there have been multiple times when we almost didn't have time for every person, like for every defendant, [to] have their case heard that day, even when we're prepared because the process is taking forever. And there's just the one coverage counsel who's reviewing documents and preparing for each hearing. Well, whereas [the legal aid organization] is showing up with usually at least two attorneys. . . .").

Another assistant clerk magistrate voiced a similar concern and even mentioned how they were considering limiting the number of cases a collections law firm has on a particular day as a result.[170]

C. Lack of Accountability

Another recurring theme was that many clerk magistrates and judges are lenient on the unprepared or sloppy coverage attorney. Almost every person with whom I spoke, even some of the coverage attorneys who take pride in their own preparation, agreed that there is a wide variety of expertise and preparedness among coverage attorneys.[171] When these coverage attorneys expect that defendants will not attend hearings, they may come to court unprepared.[172] Nonetheless, they are often able to avoid consequences by simply asking for postponements, also known as "continuances," which some adjudicators routinely grant.

According to one of the legal aid lawyers:

> So, in one court in particular . . . the coverage counsel rarely shows up with the papers [which purportedly support the plaintiff's claim] because it's very low attendance in terms of litigants as well. And so when one or two defendants do show up and we're ready to go to a hearing, I'd say at least 50% of the time, coverage counsel will not have documents. And often they're allowed to just continue the case even over my objection. That's happened quite a lot, especially in [one particular court]."[173]

Other interviewees echoed that courts often allow for postponements when coverage attorneys arrive unprepared and/or without the necessary documents.[174] This

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170. Assistant Clerk Mag. One, *supra* note 106 ("[T]he mere fact that one lawyer had most of the cases is actually, you know, factored into how we run the session, so I am currently just in discussions with my staff to talk about limiting the number of cases each law firm has on a given day, because it's the same law firm [that] has 15 cases that day. It's more likely than not that that means one lawyer is doing 15 cases, meaning that we can't be doing hearings simultaneously, you know, while they're passing the cases.").

171. *See* Coverage Att'y One, *supra* note 102 (discussing how some coverage attorneys just show up with lists and look at their phones); Collection Att'y Two, *supra* note 18 (speaking about how some coverage attorneys just do not care); Assistant Clerk Mag. One, *supra* note 106; Assistant Clerk Mag. Two, *supra* note 106; Legal Aid Att'y Two, *supra* note 17.

172. As one of the assistant clerk magistrates said, "I would say that the frustration that I have is that there's, there's this assumption that, some of these coverage attorneys have that they're just coming in to answer, cases where the defendants aren't appearing, and that's just gonna be a default judgment." Assistant Clerk Mag. One, *supra* note 106.

173. Legal Aid Att'y Two, *supra* note 17.

174. *See* Legal Aid Att'y One, *supra* note 107 (explaining how coverage attorneys are often unprepared and the court will still grant them postponements); Coverage Att'y One, *supra* note 102 ("In the background here is that so many of these clerks, they're all different from each other and [have] different levels of tolerance for continuances and . . . lack of documents."). One of the assistant clerk magistrates with whom I spoke did mention that they refuse requests for postponements "very calmly and simply [by] just telling them that this is the trial date. [The assistant clerk magistrate will] often look at the date that the case was filed and it's usually many months prior. So [they]'ll say that there were X number of months to prepare for this. And if the plaintiffs, if this is a priority for the plaintiff, they should have sent everything necessary

should not be allowed under Massachusetts Uniform Small Claims Rule 7(c), which states that "[w]here the defendant has been given notice as provided in these rules, trial shall not be continued to another date unless by agreement of the parties with the approval of the court, or unless there is a showing of good cause."[175]

Of equal concern is that if defendants do not appear at the hearings, the coverage attorneys may still receive a default judgment, even when the coverage attorney does not possess documents to back up the creditor's claim.[176]

IV. The Limited Proscriptions Around the Use of Coverage Attorneys and the Ethical Problems Stemming From Their Use

While Massachusetts and some other states have limited proscriptions around the use of coverage attorneys, the rules relate to form rather than function. Moreover, courts rarely enforce the established rules. This approach results in the pervasive use of coverage attorneys in debt collection cases, which in turn implicates multiple violations of the Rules of Professional Responsibility.

A. Limited Rules Around the Use of Coverage Attorneys, Which Only Regulate Form Rather Than Function

The limited Massachusetts rules and analogous ones in other states require that a substitute attorney file a notice of appearance, but this requirement lacks teeth. For example, in Massachusetts, Uniform Small Claims Rule 7(f) requires that:

> An attorney who is not current counsel of record for a party shall not appear in court to answer for that party until he or she has filed with the court a written notice of appearance. An attorney appearing as substitute counsel for another attorney must file a written appearance, which may indicate that the attorney is appearing as substitute counsel solely for that day's proceedings. Any such notice of appearance shall be entered on the docket and filed with the case papers. The clerk need not notify counsel who has filed a time-limited appearance of any future events or proceedings in that case.[177]

The commentary to the rule explains that "the rule permits substitute counsel to file a time limited appearance, thereby acknowledging a common practice in small claim proceedings while permitting the court to maintain an accurate record

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on this date." Assistant Clerk Mag. One, *supra* note 106. However, based on all my other interviews, this assistant clerk magistrate is an outlier rather than the norm.

175. Mass. Unif. Small Claims R. 7(c).

176. I have witnessed this myself many times, with coverage attorneys having zero documents but still getting a default judgment entered. *See* Legal Aid Att'y Two, *supra* note 17 ("assuming" that default judgments are still being entered).

177. Mass. Unif. Small Claims R. 7(f).

of all attorneys who appear before the court."[178] Thus, the rule impliedly endorses the use of coverage attorneys.

Moreover, as the commentary makes clear, the small claims rule is not about substance, as it does not regulate the use of coverage attorneys in any way. Instead, it is about form, requiring them to tell the court who they are and on whose behalf they are appearing.[179]

Despite the rule requiring substitute attorneys to file notices of appearances, not all courts and clerks require the submission of such notices. As one legal aid lawyer put it, "I think it's also inconsistent, even between clerks of the same courts."[180]

The small claims rule does not specify the consequence for non-compliance. When it was enacted, Professor Marc Perlin of Suffolk Law School and John Connors, a former deputy court administrator for the Massachusetts District Court, considered the possible implications of a coverage attorney's failure to enter an appearance as required. They asked:

> Will a small claims judgment and any payment order be defective and perhaps unenforceable if a covering attorney does not file a written appearance? The rules require that a covering attorney who fails to file an appearance "shall not appear in court." If the rule is violated, it could be argued that the proceeding leading up to the judgment is invalid.[181]

However, to my knowledge, no court in Massachusetts has ever deemed a small claims judgment or payment order defective because the coverage attorney who obtained it did not file a notice of appearance.

The lower trial courts outside of Boston proper—known as district courts[182]—also have a standing rule for civil cases that, like the small claims rule, explicitly allows for the use of coverage attorneys and requires the filing of a notice of substitute appearance. The district court rule largely mirrors the small claims rule: a

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178. Cmt. to Mass. Unif. Small Claims R. 7, *supra* note 102.

179. I have also never witnessed a coverage attorney give a defendant or defense counsel a copy of a notice of substitute counsel, unlike regular notices of appearances, which are served on the opposing party or counsel.

180. Legal Aid Att'y Three, *supra* note 107; *see also* Coverage Att'y One, *supra* note 102 (saying that while they are "meticulous" about filing notices of appearances, they think there are still lawyers who don't file the substitute appearance counsel and that some clerks put it on the docket and others do not); Coverage Att'y Two, *supra* note 116 (explaining that they sometimes forget to file a notice of appearance and nobody insists on it).

181. Marc G. Perlin & John M. Connors, *More on small claims changes: new requirements for 'covering' attorneys*, MASS. LAWS. WKLY. (June 28, 2010), https://masslawyersweekly.com/2010/06/28/more-on-small-claims-changes-new-requirements-for-8216covering8217-attorneys/ [https://perma.cc/63ZR-34RK].

182. Massachusetts has two levels of trial courts: lower courts include district courts (outside of Boston) and the Boston municipal courts and the higher court is known as superior court. Civil actions can only proceed in superior court if there is a reasonable likelihood that recovery will exceed $50,000. § 3:7. District Court and Boston Municipal Court—Generally, 14 Mass. Prac., Summary Of Basic Law § 3:7 (5th ed.).

coverage attorney must file a written appearance and "shall not appear" until she has filed such an appearance.[183] However, the district court rule contains an additional piece of language: "The scope of an appearance as substitute counsel may not otherwise be limited, and substitute counsel must be authorized and prepared to proceed with all matters before the court at that time."[184] This language provides some basis for the court to reject the use of a coverage attorney who is unprepared for court, but the district court rule does not dictate any sort of sanction. Moreover, while a few stakeholders I spoke with mentioned that they had witnessed judges get frustrated at times with coverage attorneys,[185] none of them invoked this rule. I have not seen the rule raised in court when coverage attorneys are unprepared, and I believe that this is because the use of coverage attorneys is explicitly allowed and is so entrenched in the culture of the district courts.

Interestingly, the Boston Municipal Court (BMC), the community court equivalent to the district courts for the City of Boston, does not have a standing order related to coverage attorneys. Their usage is still prevalent in the BMC and many judges allow them to appear as substitute counsel.[186] However, at least two BMC judges do not allow lawyers in their courtroom to appear as substitute counsel because of the lack of a standing order.[187]

Assistant clerk magistrates explained that, in order to appear on the collection cases, substitute attorneys work around the ambiguity in the BMC and the requirements of these particular judges by entering full appearances.[188] One of the assistant clerk magistrates finds this frustrating because they think the lawyers are flouting the requirement of full appearances.[189] The clerk did say that filing full appearances "changes the game a little bit, right? So the judge is able to say, 'you know [you are counsel of record],' when they respond, 'oh, I don't know,' or 'I don't have that information.'"[190] In other words, judges may hold substitute attorneys to a higher standard if they file full appearances.

The light touch of Massachusetts courts—outside of those two BMC judges—with respect to coverage attorney appearances is in stark contrast with the tight rules around the use of Limited Assistance Representation (LAR) Counsel. LAR permits

183. Dist. Ct. Standing Order 1-11(b)(16): Limited assistance representation and substitute counsel (Jan. 25, 2011), https://www.mass.gov/districtmunicipal-court-rules/district-court-standing-order-1-11-limited-assistance-representation-and-substitute-counsel [https://perma.cc/MK56-NMX3] ("In cases where a party is already represented by counsel who has filed a general appearance in the case, an attorney who is not current counsel of record shall not appear in court to answer for that party until he or she has filed with the court a written notice of appearance as substitute counsel.").

184. *Id.*

185. *See, e.g.*, Judge Two, *supra* note 110 (explaining that they found coverage attorneys who lacked information about the case history "very frustrating").

186. Assistant Clerk Mag. Two, *supra* note 106 ("[O]ther judges don't care.").

187. Assistant Clerk Mag. One, *supra* note 106; Assistant Clerk Mag. Two, *supra* note 106.

188. Assistant Clerk Mag. One, *supra* note 106; Assistant Clerk Mag. Two, *supra* note 106. I recently had an experience with that judge, where the assigned coverage attorney considered filing a full appearance but did not have adequate background on the case and then ultimately decided not to appear, resulting in the plaintiff defaulting on my client's counterclaims.

189. Assistant Clerk Mag. One, *supra* note 106.

190. *Id.*

"attorneys to assist self-represented litigants on a limited basis without undertaking a full representation of the client on all issues related to the legal matter for which the attorney is engaged."[191] To be an LAR attorney in any Massachusetts court, an attorney must complete a training and certify that she is "LAR-qualified" on a Notice of Limited Appearance."[192] She must also file her notice of appearance and serve it on all parties.[193] By contrast, coverage attorneys are not required to undergo any training before being qualified and there is no requirement—neither in the small claims rules nor in the district court standing order—that they serve their notices of appearance on the other parties to the case.

In addition, despite the fact that coverage attorneys are also being used in debt collection cases in other states, those states' trial courts appear to be taking as light a touch as, or an even lighter touch than, in Massachusetts. They either have similarly sparse rules that merely require the filing of a notice of appearance[194] or their rules do not address the use of coverage attorneys at all.[195]

B. Ethical Violations Inherent in the Coverage Attorney System

While the use of coverage attorneys is generally allowed under court rules, the current unfettered use of them violates Rules of Professional Conduct, and the Board of Bar Overseers (BBO) should act accordingly.

1. Violations of Rules Around Supervision of Other Lawyers

First and foremost, the use of coverage attorneys implicates ethical rules concerning supervision of lawyers. Massachusetts Rule of Professional Conduct 5.1, which mimics the American Bar Association's Model Rule 5.1,[196] requires that "a lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct."[197] As articulated in the Massachusetts Board of Bar Overseers' treatise concerning the history, practice, and procedure of bar discipline in the state:

> Lawyers hire subordinate lawyers, paralegals, and support staff in order to delegate work and operate a more efficient law practice. Delegation requires careful oversight, however. While lawyers obviously need not reproduce all of the work others perform under their supervision,

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191. Limited Assistance Representation, 10 Mass. Prac., Procedural Forms Annotated § 11:16.20 (6th ed.).

192. Mass. Trial Court Rule XVI: Uniform Rule on Limited Assistance Representation.

193. *Id.*

194. *See, e.g.*, Fla. Rule Gen. Prac. & Jud. Admin. 2.505(g) ("An attorney may stand in for another attorney to cover a proceeding or hearing only if a notice of stand-in counsel is filed or the appearance of stand-in counsel is reflected on a record maintained by the court or by the clerk of court. A stand-in attorney from the same law firm, company, or governmental agency as an attorney of record is not required to file a notice of stand-in counsel.").

195. The vast majority of states appear to be taking the latter laissez-faire approach, as I was unable to find any court decision or rule addressing the use of coverage attorneys for most other states.

196. *See* MODEL RULES OF PRO. CONDUCT r. 5.1 (AM. BAR ASS'N 2025).

197. MASS. RULES OF. PRO. CONDUCT r. 5.1.

> lawyers must have in place systems to ensure that the work is done correctly. A lawyer cannot defend against a misconduct charge by saying that the lawyer being supervised made the mistakes.[198]

As was made clear from my interviews, in debt collection cases, counsel of record are certainly not making reasonable efforts to ensure that their coverage attorneys are conforming with the Rules of Professional Conduct.[199] My interviews show that counsel of record do not actually supervise their coverage attorneys in any way, let alone a meaningful way. They are not preparing their coverage attorneys themselves, they are not providing oversight or quality control, and they are not even available to respond to any issues that may arise. At the core, counsel of record cannot possibly be making reasonable efforts to ensure that their coverage attorneys are conforming with the Rules of Professional Conduct when they are generally not communicating with them at all.[200]

2. Violations of Rules Concerning Communications with Clients

The collection law firms' failure to provide their coverage attorneys with full authority or a direct communication line to them *or* the clients also results in ethical violations. Despite doing nearly all the in-court lawyering in these cases, coverage attorneys do not communicate with the creditors, their so-called clients. However, one of the most basic tenets of client representation, as articulated in the preamble to the Massachusetts Rule of Professional Conduct, is that "[a] lawyer should maintain communication with a client concerning the representation."[201] In addition, Comment 2 to Rule 1.4, which governs client communication, makes clear that a lawyer who receives a settlement offer must promptly inform their client.[202] My interviews made clear that coverage attorneys do not have any sort of direct line

198. BD. OF BAR OVERSEERS OF THE SUP. JUD. CT., MASSACHUSETTS BAR DISCIPLINE: HISTORY, PRACTICE, AND PROCEDURE 328 (2008), https://bbopublic.massbbo.org/web/f/Massachusetts_Bar_Discipline.pdf [https://perma.cc/4XGY-B9SV].

199. Several bankruptcy courts have also concluded that counsel of record in their courts have violated Rule 5.1 in failing to prepare their coverage attorneys for hearings. *See, e.g.*, *In re* D'Arata, 587 B.R. 819, 827 (Bankr. S.D.N.Y. 2018); *see also In re* Robertson, No. 23-61014-JWC, 2024 WL 3738155 at *9 (Bankr. N.D. Ga. 2024) (finding coverage attorneys "uninformed, unprepared, and unable to answer any of the Court's questions.").

200. At best, the law firm's administrative staff is emailing instructions directly to the substitute attorney; at worst, all communications are going through a third-party website. *See supra* Part II.B.3. In addition, coverage attorneys reported that they have trouble reaching counsel of record when they try to contact them. *See supra* Part III.A.

201. MASS. RULES OF PRO. CONDUCT pmbl. § 4. The ABA Model Rules have this same language; *see* MODEL RULES OF PRO. CONDUCT pmbl. & scope (AM. BAR ASS'N 2025).

202. MASS. RULES OF PRO. CONDUCT r. 1.4 cmt. 2 ("... [A] lawyer who receives from opposing counsel an offer of settlement in a civil controversy ... must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer."); *see also* MASS. RULES OF PRO. CONDUCT r. 1.4 cmt. 3 ¶ (a)(2) (requiring the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations—depending on both the importance of the action under consideration and the feasibility of consulting with the client—this duty will require consultation prior to taking action).

to counsel of record, let alone the actual clients—creditors—to communicate settlement offers or requests for hardship dismissals.[203] The result is a total absence of the communication required under Rule 1.4, which is slowing down cases and resulting in harm to consumers, opposing counsel (where present), and the courts.

3. Violations of Catchall Rules Concerning Prejudice

Because of the way it so greatly affects the other parties in these cases, the unfettered use of coverage attorneys also implicates the catchall provision of Massachusetts Rule of Professional Conduct 8.4(d), which states that "[i]t is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice."[204] The Massachusetts Supreme Judicial Court has stated that a rule sanctioning conduct that "is prejudicial to the administration of justice" needs limiting interpretations to avoid "the risk of vagueness and arbitrary application."[205] However, where counsel of record files pleadings en masse, never appears in court, does not give coverage counsel full authority, and is unreacheable, that is undoubtedly prejudicial to the administration of justice because it harms consumers and overwhelms the court.

Moreover, Rule 11 of the Massachusetts Rules of Civil Procedure governs appearances in civil cases. As interpreted by the Massachusetts Supreme Judicial Court, "[w]hen an attorney who is a partner, shareholder, or employee of a law firm enters an appearance in a civil case, the appearance binds both the individual attorney and that law firm to *appear* on behalf of the client."[206] Attorneys and parties must be able to rely on the availability of counsel of record. That is not what is happening in these assembly-line debt collection case and the BBO should recognize and sanction counsel of record accordingly.

In sum, even though the current rules allow for the use of substitute counsel, counsel of record's complete abdication of lawyering to coverage attorneys in these assembly-line cases is something for which the Massachusetts and other BBOs must sanction them.[207]

V. Suggestions for Reform

Creditors' counsel's use of coverage attorneys is a symptom of a much larger problem—debt buyers and other corporate creditors' capture of state courts through assembly-line debt collection. These courts, especially the so-called People's Court, are no longer resolving disputes between individuals. Instead the captured

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203. *See supra* Part III.A.

204. Mass. Rules of Pro. Conduct r. 8.4(d).

205. Matter of the Discipline of Two Att'ys, 660 N.E.2d 1093, 1098 (Mass. 1996).

206. *In re* Kiley, 947 N.E.2d. 1, 7 (Mass. 2011) (emphasis added).

207. *See, e.g.*, Irwin D. Miller, *Preventing Misconduct by Promoting the Ethics of Attorneys' Supervisory Duties*, 70 Notre Dame L. Rev. 259, 285 (1994) ("Individual supervisory attorneys will increase their (supervisory) efforts if the bar imposes appropriate sanctions for failing to provide the required level of reasonable supervision.").

court systems are effectively acting as debt collectors for corporate entities.[208] As described in Part I *supra*, the serious harms of assembly-line litigation go well beyond those introduced by the coverage attorney system. Researchers and scholars who have expounded on the issues with assembly-line debt collection in the courts have offered a wide variety of reforms, ranging from incremental to radical.[209] Make no mistake: I agree with others that serious reform is necessary. However, this Article is intended to address the specific harms that come from the use of coverage attorneys within this very broken system. As a result, the only reforms suggested here assume that we are working within this broken system and pertain only to that particular aspect of assembly-line debt collection in the courts.

With respect to the use of coverage attorneys, Massachusetts and other state trial courts, along with state boards of bar overseers, need to address the ethical and practical problems that arise with the pervasive use of coverage attorneys. As explained above, BBOs should be sanctioning debt collection mills for their abdication of responsibilities when that abdication comes with no oversight. In addition, the most significant reform would be to eliminate the rules explicitly allowing for the use of substitute counsel in small claims cases and in the district court. Instead, courts should make clear in their rules that the counsel of record must appear in court and be knowledgeable about their cases. While this may not completely eliminate the use of coverage attorneys, because some coverage attorneys may enter full appearances, I do think some attorneys will be leery of filing full appearances and being stuck on cases. In the words of the assistant clerk magistrate, a full appearance "changes the game a little bit"[210] and prevents coverage attorneys from saying that they do not have all the information and case history because they are just helping on a particular day.

To the extent that courts still allow for substitutions of appearance, they need to strengthen and enforce the existing court rules around the use of coverage attorneys, requiring all coverage attorneys to file notices of appearance and docketing those appearances. As with LAR representation, the courts should require training for substitute counsel and should require that a notice of appearance be served on all parties. It is important for courts and consumers alike to have a record of

208. Wilf-Townsend, *supra* note 9, at 1768.

209. On the more incremental side, Human Rights Watch has suggested stricter requirements of proof and more funding for legal services to represent consumer-defendants. HUM. RTS. WATCH, *supra* note 11, at 77. On the more radical side, Professor Wilf-Townsend has recommended, *inter alia*, moving debt collection cases into agency-style adjudication in a "debt court," where a creditor would submit related claims in bulk and then a judge could engage in claim sampling and look for patterns. Wilf-Townsend, *supra* note 9, at 1769–73. Professor Wilf-Townsend also suggests congestion pricing for frequent filers in court. *Id.* at 1758–61; *see also* Jiménez, *supra* note 24, at 388–89 (suggesting a hard and federally-mandated limitation on the time in which creditors can attempt to collect a defaulted debt or enforce a judgment on a debt); Steinberg, *supra* note 13, at 370–73 (taking a more upstream and abolitionist view of necessary reform, advocating investing in the social safety net and driving cases that reinforce inequality out of the civil courts through canceling student loan debt and providing universal healthcare).

210. Assistant Clerk Mag. One, *supra* note 106.

who appeared in a case on a particular day. Without this record, neither the court nor consumers can hold coverage attorneys responsible for bad acts.

In addition, using Professors Perlin and Connors's analysis from when the small claims rule regarding substitutions of counsel was adopted,[211] any orders or judgments that stem from coverage attorneys who did not file notices of appearance should be void ab initio and judgment should be entered for the defendants. Changing judicial behavior is often difficult. Consumer attorneys may be able to shift the judiciaries' mindset by challenging judgments and orders in cases where substitute attorneys have failed to file notices of appearance.

Courts must also stop being passive regarding other rules and necessary proof in debt collection cases because coverage attorneys are not prepared for cases to be contested. Clerk magistrates and judges alike must enforce rules which require parties to be prepared—regardless of their counsel that day—and issue judgments for defendant-consumers when coverage attorneys are not ready to go forward, and they must otherwise sanction the unprepared counsel.

By the same token, courts should issue sanctions against parties when their purported counsel is unable to facilitate hardship dismissals or settlements in court. Anyone appearing in court should be required to have the same authority to settle and to dismiss cases. That means coverage attorneys must have a direct line to the creditors, or, at the very least, a direct line to the counsel of record. If a coverage attorney does not have authority to dismiss for hardship or for settlement and cannot reach counsel of record during a session in which a trial or pre-trial conference is scheduled, courts should dismiss the cases with prejudice.

In addition, just as coverage attorneys' lack of settlement and other authority creates massive inefficiencies for courts and delays resolutions of cases, so too do situations where only one attorney covers a single session. Thus, if substitute appearances are allowed to continue, courts must also limit the number of firms that a particular attorney covers for and the number of cases he or she has per session. A coverage attorney should be limited to covering for two law firms and ten cases in a particular session.

The use of third-party services for finding and retaining substitute counsel often leads to the inadequate supervision discussed previously and can implicate the rules of professional responsibility. Thus, one solution would be to require firms to hire coverage attorneys directly and develop supervision policies. This would increase the likelihood and ability of firms to responsibly monitor their substitute counsel.

In sum, courts, debtors' counsel, and boards of bar overseers need to properly leverage existing tools to ensure that if coverage attorneys are being used, they are an actual substitute for counsel of record with the same authority and ability to reach their clients.

In addition, collecting data on the use of substitute counsel is critical. Massachusetts and other courts must maintain, aggregate, and publish better data

211. *See* Perlin & Connors, *supra* note 181.

regarding which counsel is filing and appearing in debt collection cases. While some states have begun to collect and release data concerning debt collection cases,[212] data collection is limited in Massachusetts and across the country.[213] Without this data, it is impossible to understand the extent to which law firms are using coverage attorneys, as well as the extent to which particular collection law firms are dominating the civil docket and filing cases that far exceed their ability to review complaints and appear in court.

VI. Conclusion

Assembly-line debt collection in Massachusetts and throughout much of the country is completely reliant on its day-to-day factory workers—coverage attorneys. The pervasive use of coverage attorneys allows high-volume debt collection to churn through state courts, with little court scrutiny and frequent inefficiencies. It also presents clear ethical violations, as counsel of record are not adequately supervising their substitute counsel. Moreover, coverage attorneys frequently do not enter required appearances and are lacking the requisite case knowledge or settlement and other authority. Trial courts should rescind existing rules allowing for substitute appearances, and they and boards of bar overseers should enforce applicable rules of professional responsibility to provide tools that courts and boards of bar overseers can use to ensure that the buck stops with the counsel of record.

The economies of scale of high-volume debt collection in the courts may well be fundamentally altered if the use of coverage attorneys is properly regulated since collection mills would need to hire substantially more lawyers to cover all their cases. Highly regulated and careful lawyering in these cases may also have the secondary effect of addressing problems discussed by others before me, such as creditors filing cases without sufficient documentation of ownership of debts. Finally, proper oversight and regulation of creditors' counsel might also have the effect of returning the People's Court to the people, rather than its current role as a collection court for absent creditors and their counsel.

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212. For example, Minnesota and Michigan both released data on their debt collection lawsuits, facilitating reports by their respective Access to Justice Commissions. *See* Minnesota Access to Justice Report, *supra* note 61; Mich. Just. for All Comm'n, *supra* note 63. In addition, the Debt Collection Lab, an interdisciplinary team of scholars studying debt, debt collection, and courts, has managed to obtain data from several states on their debt collection cases. *Debt Collection Tracker*, Debt Collection Lab, https://debtcollectionlab.org [https://perma.cc/6CXH-DQ7A].

213. *See New Project Illuminates Data About Debt Claims*, Pew Rsch. Trs. (Oct. 27, 2021), https://www.pewtrusts.org/en/research-and-analysis/articles/2021/10/27/new-project-illuminates-data-about-debt-claims [https://perma.cc/F643-J33Y] ("Gathering court data is difficult. The court systems lack transparency because they're decentralized and their methods of data collection and the kinds of information they collect vary from jurisdiction to jurisdiction. So obtaining data on debt collection case trends is like navigating a maze within each system.").