

February 9, 2023

Via email

Hon. Tamiko Amaker
Acting Chief Administrative Judge
New York State Unified Court System
25 Beaver Street, Room 852
New York, NY 10004

Dear Judge Amaker:

We write from the New York Legal Assistance Group (NYLAG), Legal Services of the Hudson Valley, and Legal Services NYC to request your assistance in remedying the court system’s failure to implement the new 2% cap on post-judgment interest in all consumer debt cases. NYLAG is a leading civil legal services organization combatting economic, social, and racial injustice by providing free legal services to New Yorkers experiencing poverty or crisis. Legal Services of the Hudson Valley provides free, high-quality civil legal services to poor and low-income individuals and families in Westchester, Putnam, Rockland, Dutchess, Orange, Sullivan and Ulster counties. Legal Services NYC provides free, high-quality civil legal services to low-income individuals and families through neighborhood-based offices and outreach sites. Our organizations’ practitioners across issue areas, as well other advocates across the state, have seen judgments entered with the wrong post-judgment interest rate in many New York Courts.

As we are sure you can appreciate, a high interest rate can cause a judgment amount to grow rapidly, costing hundreds or thousands of dollars over the lifetime of a judgment—money that many New Yorkers need to keep a roof over their head and food on the table. That is precisely why the legislature passed, and Governor Hochul signed, the Fair Consumer Judgment Interest Act, which provides necessary relief to New Yorkers. Specifically, this act amended N.Y. C.P.L.R. § 5004, the provision that governs post-judgment interest. As of April 30, 2022, when the Act went into effect, “the annual rate of interest to be paid in an action arising out of a consumer debt where a natural person is a defendant shall be two per centum per annum.” N.Y. C.P.L.R. § 5004(a).

The new interest rate applies broadly to all “consumer debt(s),” which includes “any obligation . . . arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes. . . .” N.Y. C.P.L.R. § 5004(b). Crucially, this term includes, but is “*not limited to*, a consumer credit transaction, as defined in” N.Y. C.P.L.R. § 105(f). *Id.* (emphasis added). There are many types of other cases that fall within the definition of “consumer debt,” including residential rental arrears, medical debt, and student loans.

Even though the act was signed into law on December 31, 2021 and went into effect last April, we have seen a consistent practice across numerous courts of issuing judgments that improperly reflect the old 9% interest rate, rather than the 2% rate provided by law. Clerks' offices routinely accept default judgment applications improperly seeking the 9% rate, even though such applications should be rejected. More concerning, some courts' standard judgment forms appear to provide only the old interest rate, virtually ensuring that many consumer debt judgments are entered with the wrong rate. Various advocates have brought up this issue to judges, clerks, and court administrators at multiple New York Courts, but have not received any satisfactory response; meanwhile, these improper court practices continue. We have heard from other advocates who have conducted outreach that the Courts' computer system may have the technological capability to label cases as "consumer debt" cases, which would automatically apply the correct interest rate, but that that label is not properly being applied to many—or perhaps most—of the cases that it should.

We know that this issue was brought directly to your attention during the February 7, 2023 Joint Legislative Public Hearing on the 2023 Executive Budget Proposal. We appreciate that you take this issue seriously and said that you would look into it. We look forward to hearing from you promptly to discuss measures the New York Unified Court System can take to ensure compliance with the law going forward, to remediate judgments that have already been entered with the wrong interest rate, and to monitor continued compliance. Please note that, given all of the efforts advocates have made to work with the Court system to correct this problem in the more than nine months that this law has been in effect, we are exploring all legal options necessary to protect the rights of our clients and other New Yorkers subject to unlawful interest as a result of the courts' practices. We can be reached at stallarico@nylag.org and dtarantolo@nylag.org or 212-613-6555 and 212-613-6551.

Sincerely,



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