

Proposal 15-03
Creates Supreme Court Rules 280, 280.1, 280.2, 280.3, 280.4, 280.5 and Affidavits
Offered by the Illinois Supreme Court Commission on Access to Justice

PART I. CREDIT CARD OR DEBT BUYER COLLECTION ACTIONS

Rule 280. Applicability. A civil action is subject to the requirements of this Part if the complaint contains any claim originating from a credit card or by a debt buyer attempting to collect a consumer debt.

Rule 280.1. Definitions for Credit Card or Debt Buyer Collection Actions. For purposes of a civil action subject to the requirements of this Part:

- (a) “Affidavit” means an affidavit or a verification under Section I-109 of the Code of Civil Procedure.
- (b) “Assignment” means a transfer of debt from the owner of the debt to the purchaser of the debt.
- (c) “Charge-off balance” means an account principal and other legally collectible costs, expenses, and interest accrued prior to the charge-off date, less any payments or settlement.
- (d) “Charge-off creditor” means the person or entity who extended credit to the natural persons involved in a consumer credit transaction on the charge-off date.
- (e) “Charge-off date” means the date on which a receivable is treated as a loss or expense.
- (f) “Consumer credit transaction” means a transaction between a natural person and another person in which property, service, or money is acquired on credit by that natural person from such other person primarily for personal, family, or household purposes.
- (g) “Consumer debt” or “consumer credit” means money, property, or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction.
- (h) “Credit card” means any instrument or device, whether known as a credit card, credit plate, charge plate or any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit or in consideration or an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder.
- (i) “Debt buyer” means a person or entity that is engaged in the business of purchasing delinquent or charged-off consumer loans or consumer credit accounts or other delinquent consumer debt for collection purposes, whether it collects the

debt itself or hires a third-party for collection or an attorney at law for litigation in order to collect such debt.

- (j) “Debt buyer collection action” means a civil action in which the complaint seeks to recover on a consumer debt purchased by a debt buyer.
- (k) “Original consumer debt” means the amount of the charge-off balance.
- (l) “Person” means any natural person or business entity of any kind, including but not limited to, a corporation, partnership, limited partnership, limited liability partnership, or limited liability company.
- (m) “Principal” means the unpaid balance of the amount borrowed in any consumer credit transaction, not including any interest, fees, or other charges.

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

- (a) Print the name of the person who signs the complaint under the signature line;
- (b) Attach a completed Credit Card or Debt Buyer Collection Affidavit, together with all required documents, in accordance with the form accompanying this Rule; and
- (c) Have the Credit Card or Debt Buyer Collection Affidavit signed by the Plaintiff or the Plaintiff’s designated agent. For purposes of this Rule, the attorney for the Plaintiff may not sign the affidavit on behalf of the Plaintiff or Plaintiff’s designated agent.

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

- (a) The court finds that (i) each party has consented to a continuance with an understanding of the potential consequences of not consenting, and (ii) a continuance serves the interest of justice; or
- (b) The court is unable to proceed on the trial date, in which case an order may be entered continuing the case for a final trial date.

Rule 280.4. Consequences for Non-Compliance. If the plaintiff fails to comply with the requirements of this Part the court may not enter a default judgment, and the court, on motion or on its own initiative, may dismiss the complaint.

Rule 280.5. Identity Theft Relating to Credit Card or Debt Buyer Collection Actions.

- (a) A defendant in a credit card or debt buyer collection action who asserts that he or she is a victim of identity theft with respect to the consumer debt that is the subject of the action, must serve the following on the plaintiff:
 - (1) An Identity Theft Affidavit in accordance with the form approved by the Illinois Attorney General; and
 - (2) An Identity Theft Affidavit (Credit Card or Debt Buyer Collection Action) in accordance with the form approved by the Illinois Supreme Court.
- (b) Of these two affidavits, only the Identity Theft Affidavit (Credit Card or Debt Buyer Collection Action) must be filed with the court. Within 90 days of service of the Identity Theft Affidavit (Credit Card or Debt Buyer Collection Action) on the plaintiff, the plaintiff or the court, on its motion, shall dismiss the case unless the plaintiff files an affidavit asserting facts that indicate the defendant is not the victim of identity theft and is responsible for the consumer debt at issue.

Note:

Current "PART I. SMALL CLAIMS" will be amended to be known as "PART J. SMALL CLAIMS."

Current "PART J. MISCELLANEOUS" will be amended to be known as "PART K. MISCELLANEOUS."

Draft Date: December 20, 2017

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

Plaintiff)
)
)
 v.) CASE NUMBER: _____
)
)

Defendant)

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

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

I. IDENTIFICATION ABOUT THE CONSUMER DEBT OR ACCOUNT

Complete the tables and check all applicable boxes.

a. As of charge-off date:

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

b. Attach one of the following:

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

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

Date of last payment	Amount of last payment	Amount of original debt or charge-off balance	Charge-off date

STATE OF ILLINOIS, CIRCUIT COURT _____ COUNTY	IDENTITY THEFT AFFIDAVIT (Credit Card or Debt Buyer Collection Action)	<i>For Court Use Only</i>
Instructions ▼ Directly above, enter the name of the county where the case was filed. Enter the name of the person who started the lawsuit as Plaintiff. Enter the name of the person being sued as Defendant. Enter the Case Number given by the Circuit Clerk.	_____ Plaintiff (First, middle, last name) v. _____ Defendant (First, middle, last name)	_____ Case Number

Complete this form and file it with the Circuit Clerk.

You must also complete the Illinois Attorney General Identity Theft Affidavit and send it to the other party.

You can find it here: www.ag.state.il.us/publications/pdf/victim.pdf

Do not file it with the Circuit Clerk.

1. I am the defendant in this lawsuit.
2. This lawsuit is about a debt that I did not create. Someone stole my identity and used my identity to create the debt.
3. I have completed an Illinois Attorney General Identity Theft Affidavit. I am mailing the Illinois Attorney General Identity Theft Affidavit, along with all required documentation, to the plaintiff.

Sign and print your name in front of an official Illinois notary public.

Enter your complete address and telephone number.

_____ <i>Your Signature</i>	_____ <i>Street Address</i>
_____ <i>Print Your Name</i>	_____ <i>City, State, ZIP</i>
_____ <i>Telephone</i>	

DO NOT complete this section. The notary will complete it.

Notary Public
 State of Illinois
 County of _____

Signed and sworn to before me on _____ by _____
Date *Name*

Seal

Signature of Notary

PROOF OF DELIVERY

In 1a, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In 1b, check the box to show how you sent the document, and fill in any other information required on the blank lines.

CAUTION: If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

In c, fill in the date and time that you sent the document.

In 2, if you sent the document to more than 1 party or lawyer, fill in a, b, and c. Otherwise leave 2 blank.

1. I sent this document:

a. To:

Name:

First Middle Last

Address:

Street, Apt # City State ZIP

Email address: _____

b. By:

- Personal hand delivery
 Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

Address of Post Office or Mailbox

- Third-party commercial carrier, with delivery paid for at:

Name (for example, FedEx or UPS) and office address

- The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
 Email (not through an EFM or EFSP)
 Mail from a prison or jail at:

Name of prison or jail

c. On:

Date

At: _____ a.m. p.m.
Time

2. I sent this document:

a. To:

Name:

First Middle Last

Address:

Street, Apt # City State ZIP

Email address: _____

b. By:

- Personal hand delivery
 Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

Address of Post Office or Mailbox

- Third-party commercial carrier, with delivery paid for at:

Name (for example, FedEx or UPS) and office address

- The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
 Email (not through an EFM or EFSP)
 Mail from a prison or jail at:

Name of prison or jail

Getting Started

Identify Theft Affidavit (Credit Card or Debt Buyer Collection Action)

IMPORTANT: This getting started guide and the instructions are not legal advice. They are only meant to help you learn how to do a *Identify Theft Affidavit (Credit Card or Debt Buyer Collection Action)* in order to tell the court and the other party that you are not responsible for the debt that is the subject of the lawsuit. Your use of the form does not guarantee you will be successful in court.

To learn how to fill out the form and file it with the court, read the *How to File an Identify Theft Affidavit (Credit Card or Debt Buyer Collection Action)* instruction sheet and the instructions on the form.

Name of form:	<i>Identify Theft Affidavit (Credit Card or Debt Buyer Collection Action)</i>
Purpose of the form:	To tell the court and the other party that debt you are being sued about is not your debt.
Types of cases the form CAN be used for:	Cases where other party is either a credit card company or a debt buyer. This means that the other party purchased the debt from another company or person.
Types of cases the form CANNOT be used for:	Any other types of cases.
Cost to file the form:	None.
Special information or papers needed to complete the form:	<ul style="list-style-type: none">• Illinois Attorney General Identify Theft Affidavit available here: http://www.ag.state.il.us/publications/pdf/victim.pdf• A copy of the police report relating to the identity theft, if applicable.
Supreme Court Rules covering the form:	Illinois Supreme Court Rule 280
Where to find the form and instruction sheet:	http://www.illinoiscourts.gov/Forms/approved/
For more information:	Read the <i>How to File an Identify Theft Affidavit (Credit Card or Debt Buyer Action)</i> instruction sheet that comes with this form. You may also find more information, resources, and the location of your local county self help center at: https://www.illinoislegalaid.org .

HOW TO FILE AN IDENTITY THEFT AFFIDAVIT (CREDIT CARD OR DEBT BUYER COLLECTION ACTION)

Who can file an *Identify Theft Affidavit (Credit Card or Debt Buyer Collection Action)*?

Anyone who is sued by a credit card company or a debt buyer and is not responsible for the debt that is the subject of the lawsuit because of identity theft.

What is an *Identify Theft Affidavit (Credit Card or Debt Buyer Collection Action)*?

An *Identify Theft Affidavit (Credit Card or Debt Buyer Collection Action)* is an official way to tell the other party and the court that you were a victim of identity theft. It also states that you should not be responsible for paying the debt. Filling out the forms requires the other party to produce additional information showing that you are the person responsible for the debt.

When should I file the *Identify Theft Affidavit (Credit Card or Debt Buyer Collection Action)*?

You should file the *Identify Theft Affidavit (Credit Card or Debt Buyer Collection Action)* as soon as you identify that the debt you are being sued for is not your debt. This may be at the same time you file your appearance, or later on in the lawsuit once you discover that the debt is not yours.

What forms do I need for the *Identify Theft Affidavit (Credit Card or Debt Buyer Collection Action)*?

- ***Identify Theft Affidavit (Credit Card or Debt Buyer Collection Action)***: This form tells the court and the plaintiff that you are not responsible for the debt because of identity theft.
- **Illinois Attorney General Identify Theft Affidavit**: This form tells the plaintiff specific details about you and your personal information, including details about how and when you believe your identity was stolen, and if a police report was filed.

Where can I find the forms I need?

- You can find the *Identify Theft Affidavit (Credit Card or Debt Buyer Collection Action)* and an *Appearance (if needed)* at:
<http://www.illinoiscourts.gov/Forms/approved/>.
- You can find the Illinois Attorney General Identify Theft Affidavit at:
<http://www.ag.state.il.us/publications/pdf/victim.pdf>.

Does it cost to file an *Identify Theft Affidavit (Credit Card or Debt Buyer Collection Action)*?

No.

How do I get my forms notarized?

- To get your forms notarized, you must sign them in front of an official Illinois notary public.
- You can often find a notary public at your local bank, county courthouse, or town/city hall. Some currency exchanges, real estate offices, and law firms offer this service. You may also find an independent notary public by searching online or the phone book yellow pages.
- Call ahead to find out if the location has a notary public and if you need an appointment.
- There may be a small fee for getting your form notarized.
- You must bring your photo I.D. to the notary public. Your I.D. cannot be expired and must show your current address.

What do I do after I fill out the *Identify Theft Affidavit (Credit Card or Debt Buyer Action)*?

Step 1: File the *Identify Theft Affidavit (Credit Card or Debt Buyer Collection Action)* with the Circuit Clerk in the county where the court case is filed.

- If you are an inmate in a prison or jail and don't have an attorney, you may file your forms by mail. Otherwise, you must electronically file (e-file) your forms. If you are unable to e-file for other reasons, you can ask the court to file by mail or in person. To ask the court for approval to file this way, you can use the *Motion* form found here:
<http://www.illinoiscourts.gov/Forms/approved/default.asp>. You must have a good reason that prevents you from e-filing.
- To e-file, create an account with an e-filing service provider. Visit <http://efile.illinoiscourts.gov/service-providers.htm> to select a service provider. Some service providers are free, while others charge a processing fee. For instructions on how to e-file for free with Odyssey eFileIL, see *Odyssey File & Serve: Individual Filer User Guide* here:
<https://tylertech.egain.cloud/kb/ilh5/content/PROD-16579/HTML-5-Individual-Filer-User-Guide-20170>
- If you do not have access to a computer, or if you need help e-filing, take your forms to the Circuit Clerk's office, where you can use a public computer to e-file your forms. You can bring your paper forms, or bring them saved on a flash drive. The terminal will have a scanner and computer that you can use to scan, save, and e-file your forms.

NOTE: Do not file the Illinois General Identify Theft Affidavit with the Circuit Clerk because it contains personal information that should not be made public.

Step 2: Send a copy of your *Identity Theft Affidavit (Credit Card or Debt Buyer Collection Action)*, Illinois Attorney General Identify Theft Affidavit, and any other required documents to the other party.

- You must send your *Identity Theft Affidavit (Credit Card or Debt Buyer Collection Action)*, Illinois Attorney General Identify Theft Affidavit, and any other required documents to the other parties in the case. If a party has a lawyer, send the forms to the lawyer.
- You may send forms to the other parties by personal hand delivery, by mail, third-party commercial carrier (for example, FedEx or UPS), or through the court's electronic filing manager or an approved e-filing service provider. You may e-mail your form to a party if they have listed their e-mail address on a court document. Complete the *Proof of Delivery* with information to show how you sent the forms to each party.