

# YOU'RE STILL MUTED

## Access to Justice Barriers in Massachusetts' Virtual Small Claims Court

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### Overview

When the Massachusetts Trial Court's debt collection ecosystem became remote, individual courts and clerks were given significant discretion to determine when to schedule and how to conduct trials in small claims debt collection cases – cases involving claims of under \$7,000. This level of discretion, coupled with a stark digital divide which falls along racial and socioeconomic lines, has led to debt collection inequities that disproportionately impact communities of color, underserved populations, and those of low and modest means who already face so many hurdles to accessing justice – in particular, a lack of legal representation.

This research study was conducted to explore the access to justice implications of virtual small claims proceedings for self-represented litigants in Massachusetts, and for legal assistance programs (such as “Lawyer for the Day”) attempting to support this population.

Data was gathered from volunteer law students who observed 21 small claims sessions in courts across the Commonwealth between December 2020 and March 2021, as well as conducted interviews with self-represented litigants who attended the virtual hearings observed by the students.

### Key Findings



#### LACK OF STANDARDIZATION ACROSS VIRTUAL SMALL CLAIMS SESSIONS

- Significantly different litigant introductions and explanatory instructions were observed in small claims sessions across courthouses, and across clerks in the same courthouse
- Variance among default issuance at all six courts that were observed for this study, and significant differences in the way courts addressed lack of attendance from plaintiffs, compared to defendants
- How “Lawyer for the Day” (LFD) programs were introduced, whether or not the litigants were individually asked if they wanted to work with the LFD program, and any active encouragement of the use of the program may have a significant impact on the percentage of defendants who are likely to use LFD services at any given session



#### TECHNOLOGY BARRIERS

- Half of small claims litigants attended their sessions via video, and about half of litigants were unable to (potentially due to a lack of technological capacity) or chose not to do so (potentially due to a challenge of presenting a “court appropriate” background or limited minutes available for data usage)
- Difficulties with dial-in only sessions mean participants and court staff are unable to tell who is speaking at any given time
- Small claims sessions across the board were plagued with problems related to poor volume and difficulties muting and unmuting; in more than half of all sessions observed, distractions, confusion, or other problems due to muting and unmuting were reported
- Many litigants attended their virtual small claims hearings from work or from their car, further indicating that a significant number of litigants may lack a quiet and private space to attend virtual court

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### TO IMPROVE USER EXPERIENCE AND COURT EFFICIENCY

**#1** Given the significantly high default rate of defendants in remote debt collection small claims hearings—almost half of all defendants were recorded as defaulting in the sessions we observed—more protective notice(s) should be given to defendants of their pending cases. To be valid, these notices should require proof that the defendant received actual notice, such as return receipt certification, or personal service in line with the requirements of Massachusetts Civil Procedure Rule 4(d).

**#2** All notices for remote hearings should include clear, plain-language instructions on how to participate by phone or video.

**#3** Opportunities should be provided for litigants to learn more about the process of their virtual hearing – both at the beginning of the session and before the session starts.

**#4** Court staff, magistrates, and judges should be specifically trained on how to best support litigants participating in remote hearings.

**#5** At least one court staff member in addition to the clerk magistrate should attend all remote hearings.

**#6** The Trial Court should track and make available case data, including the number of small claims debt collection cases filed each year, case outcomes, and the percentage of defendants that fail to appear for trial.

### TO IMPROVE TRIAL COURT STANDARDIZATION

**#1** All clerk magistrates should be required to introduce themselves and explain their role at the beginning of every court session.

**#2** The Trial Court should work with legal aid organizations and non-profits to develop a bench card that standardizes the instructions clerk magistrates provide litigants at the beginning of every session.

**#3** When a litigant is unable to fully participate in their remote hearing for technological reasons—such as being unable to hear or accidentally dropping off the call—the clerk magistrate should be required to re-schedule the hearing in a manner that allows for full participation (whether remote or in-person).

**#4** The Trial Court should standardize how clerk magistrates enter default judgments against litigants who appear late to a remote session or do not appear at all, and how they treat absent parties.

### TO SUPPORT LAWYER FOR THE DAY PROGRAMS

**#1** All courts that do not currently have a Lawyer for the Day (LFD) program should be encouraged to contact local legal service providers and inquire whether they would be interested in establishing an LFD program.

**#2** Court locations with Lawyer for the Day programs operating virtually should ensure that after the majority of litigants have joined the session, LFD program staff are able to introduce themselves and explain their services.

**#3** Court locations with LFD programs operating virtually should allow LFD programs to frequently re-introduce themselves (in English, as well as any languages required so that all attendees can access the information in their native or preferred language(s)) as new litigants join the session.

**#4** Clerk magistrates running sessions with LFD programs present should explicitly ask each defendant if they want to work with an LFD once their case is called and before soliciting further information.

**#5** The Court should allow continuances for litigants who wish to retain an LFD program, if requested by the pro se litigant.

**#6** The Court should adopt a proposed Consumer Debt Standing Order related to LFD, which includes: court docket consolidation, space for LFD programs to operate in courthouses (or the virtual equivalent), and collaboration with LFD programs to maximize the number of litigants served.