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February 22, 2017

Christine P. Burak  
Supreme Judicial Court  
John Adams Courthouse  
One Pemberton Square  
Boston, MA 02108

**Re: Comments on Proposed Amendments to the Massachusetts Rules of Civil Procedure Regarding Credit Card Debts**

Dear Attorney Burak,

On behalf of the Boston Bar Association (BBA), I thank you for the opportunity to comment on the proposed amendments to the Massachusetts Rules of Civil Procedure, Rules 8.1 and 55.1. The BBA appreciates and recognizes the efforts put forth by the Supreme Judicial Court's Standing Advisory Committee on the Rules of Civil and Appellate Procedure in recommending the proposed new rules.

The SJC proposed rules were reviewed and discussed by the BBA's Bankruptcy Law Section, which drafted the attached comments. The comments were reviewed by all BBA Sections and the BBA Council, which approved their submission to the Standing Advisory Committee.

Please note that the enclosed comments do not constitute or reflect a position of the BBA as a whole, but rather summarize the comments received from the aforementioned Section Steering Committee. We offer these comments with the hope that they may be useful to the SJC as it considers the proposed new MRCP Rules 8.1 and 55.1.

Thank you for providing members of the bar with an opportunity to weigh in on this important issue, and please feel free to contact me should you have any questions or concerns.

Very Truly Yours,

Carol Starkey  
President

**Comments of the Boston Bar Association's Bankruptcy Law Section  
on Proposed M.R.C.P. Rules 8.1 and 55.1  
February 22, 2017**

In response to an invitation for comments from the Standing Advisory Committee on the Rules of Civil and Appellate Procedure, the Boston Bar Association's Bankruptcy Law Section reviewed the proposed new Mass. R. Civ. P. Rules 8.1 and 55.1.

The BBA notes that these comments do not represent a formal position of the Association, but rather are a collection of comments from interested Section members intended to help the Standing Advisory Committee in its consideration of the proposed rules.

Members of the Bankruptcy Law Section were generally supportive of the proposed rules. They felt that the rules would help address abuses that are common to collection of credit-card debts. Although the rules could have the effect of limiting access to default judgments, they should not hinder collection of legitimate debts. Members also noted that New York State recently implemented similar rules, with the same intention.

A concern was expressed regarding the requirement that an affiant attest under oath that the action on a debt is not time-barred. In particular, the application of the statute of limitations may not be clear-cut in all instances, such that an attorney for a creditor might reasonably be mistaken as to whether an action is time-barred. Perhaps the affiant could instead be required to attest that, after reasonable investigation, he or she believes that his or her client has a good faith basis for asserting that the action is not time-barred.

One member of the section dissented from the majority viewpoint, on the belief that special restrictions on debt collection should not apply solely to cases involving credit cards.