

## I. Qualifications and experience

I have been a full-time attorney working for a civil legal aid law firm<sup>1</sup> for almost 16 years. Exhibit, Kornya C.V. In my first five years of practice as a staff attorney, I mainly litigated family, housing, consumer protection, public benefits, employment, and tax cases on behalf of low-income Iowans. I began directly advocating for people who owe “court debt”<sup>2</sup> in 2009, when I filed several successful challenges to administrative garnishment procedures used by the Iowa Department of Revenue.

Even though these cases arose in a criminal context, I accepted them as a civil legal aid attorney in part because they were governed by the same civil legal principles as my consumer protection work. In addition, court debt was often the economic driver of the emergency needs issues that our clients typically presented with, such as evictions, utility shut-offs, and repossessions. Finally, while my clients had a right to defense counsel in the guilt-or-innocence phase of their criminal case, these actions were taking place many years after that right had elapsed.

After initial successes in this area, I started taking many more court debt cases statewide, including administrative garnishment and state payment offset challenges, wrongful levy actions, judicial garnishments, and court debt amnesty and settlement cases. In 2012, I provided commentary to an Iowa Judicial Branch committee tasked with court debt reform, and then directly to members of the Iowa Supreme Court about Iowa Court Rule 26, which established Iowa Judicial Branch procedures regarding court debt. I became a Senior Staff Attorney in 2013, which involved taking on a formal “project” that focused on building capacity to address the imposition and collection of court debt against our clients. This involved drafting training materials and practice manuals for our staff, researching court debt, and expanding litigation to new areas, including discharging court debt in bankruptcy, and juvenile court debt ability to pay hearings.

Since taking a statewide role in 2014, I have continued to build capacity for advocacy and to understand court debt and the intersection of court debt and consumer protection advocacy. In 2017, I founded the Iowa Legal Aid Race Equity Project, which has since served over 2,500 Iowans with issues related to court debt, record clearance, and licensure. I designed and assisted in coding Napier, an application that automates information collection and organization. The design of the application was based on ten years of deep experience advocating and researching court debt issues. In turn, the data acquired from this mass-representation model helped me understand patterns in how court debt was assessed and collected in various parts of the state.

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<sup>1</sup> While much of my expertise comes from my years working at Iowa Legal Aid, my services in this case are rendered completely on my own time and not as part of my current employment. Iowa Legal Aid did not review this report or participate in its making in any way, and this report does not reflect any position of Iowa Legal Aid, and is purely an expression of my own independent expert opinion as an individual. No Iowa Legal Aid resources were used in any way in the production of this report.

<sup>2</sup> I use the term “court debt” throughout this report. This is the general term of art in Iowa for debt imposed by the state in connection with participation in the criminal, juvenile, and sometimes civil justice systems. “Court debt” includes not only punitive fines, but also compensatory debt such as the jail fees at issue in this case.

From 2018 to 2020, I served as a consultant to the Iowa Judicial Branch court debt rule committee alongside the Harvard Criminal Justice Policy Program. I presented the draft rule to the Iowa Judicial Council and Iowa Supreme Court. I later testified in state legislative hearings in 2019 about the challenges faced by Iowans who owe court debt. In 2020 and 2021, I contributed to drafting of new court rules for criminal record expungements. Over the years, I have provided oral and written commentary related to court debt in agency rulemakings with several Iowa agencies, including the Department of Revenue, Insurance Division, State Public Defender, and Department of Administrative Services. I frequently collect and analyze data from the Iowa Judicial Branch and other external sources to better advocate for systemic understanding and change.

Since 2013, I have made well over 50 formal presentations at conferences and seminars about the imposition and collection of court debt. Since the crystallization of a national advocacy movement around this issue in 2014, I have taken an active role in organizing and learning from colleagues dealing with similar issues in every part of the country. I regularly provide analysis to local and national media about court debt. I have co-authored several publications about the intersection of court debt collection and consumer protection, most notably *Confronting Criminal Justice Debt: A Guide for Litigation* (2016), a joint endeavor of the Harvard Criminal Justice Policy Program and NCLC, and *Crimsumerism: Combating Consumer Abuses in the Criminal Legal System*, Harvard Civil Rights – Civil Liberties Law Review (2018). I have consulted with researchers, including at the National Center for Access to Justice for their Fines and Fees Index (2019 & 2024), and the National Legal Aid and Defender Association’s study *At What Cost* (2022) about indigent defense reimbursement. I received the Rolland Grefe Pro Bono award from the Iowa State Bar Association in 2021, and the Gideon Award from the Iowa Association for Justice in 2024.

Over the last 16 years, I have also handled hundreds of direct services cases in the area of consumer protection generally, and provided strategic support in hundreds more. The vast majority of these cases involve private sector debt collection, primarily defense, but also selected affirmative cases. I am currently litigating an affirmative case that has been consolidated in the Southern District of Iowa concerning the validity confessions of judgment in a student loan context, *Mason v. Iowa Student Loan Liquidity Corporation*, 4:23-cv-00515. The lead-up to that case involved document review of hundreds of confessions of judgment filed across the state. I have handled or provided strategic support in many other cases, beginning in 2013, directly involving confessions of judgment.

Finally, 16 years as a legal aid attorney has given me a deep understanding of poverty, and how people attempt to survive and navigate systems when they are woefully short of the necessary resources. My decade as litigation director in an organization that provides holistic representation to people in poverty has helped me to see how these challenges compound and act to amplify the effects of poverty. These experiences recently guided my design of an online tool to determine ability to pay court debt (<http://abilitytopay.org>).

## **II. Scope and basis of the report**

The purpose of this report is not to advocate for or against a particular position, but rather to explain how confessions of judgment and pay-to-stay jail fee laws have worked in Iowa in recent years. My observations and expertise are solely provided to illustrate how these systems actually work in the real world, not how I believe the law requires they should work. Occasionally I will cite law, but only to set up sufficient context and where a legal principle is a necessary operative fact.

In the preparation of this report, I reviewed the complaint, amended complaint, and exhibits attached to those documents. I also do not take a position on the factual veracity any of the events detailed in Complaint, but for the purposes of this report will assume these facts to be true for the purposes of my analysis. Different facts may result in different conclusions. I also reviewed publicly available HUD Fair Market Rent rates for Black Hawk County.

## **III. Confessions of judgments in Iowa contrasted with the rest of the country**

### **A. Background and History**

A confession of judgment, sometimes referred to as a *cognovit*, is an ancient legal device that operates as the civil equivalent to a criminal confession, waiving of each and every right otherwise considered fundamental to due process of law in civil lawsuits. Fifty years ago, the use of confessions against consumers was a prevalent if very controversial tactic. However, in the wake of two watershed United States Supreme Court decisions in 1972,<sup>3</sup> thirteen states abolished the use of confessions of judgment entirely. Many others have reformed their existing laws to provide additional protections, especially for unsophisticated parties such as consumers.

State judicial and legislative reforms were joined by federal agency attention in the form of the Federal Trade Commission (FTC)'s Credit Practices Rule.<sup>4</sup> After a decade-long study leading up to the adoption of the rule in 1984,<sup>5</sup> the FTC concluded that:

*Cognovit* clauses typically are worded in arcane language and may appear in small print. Record evidence supports the conclusion that debtors are unaware that they have agreed to such clauses and that they waive due process rights by doing so. When debtors receive notice of a judgment entered against them, they may not understand its import or that they must act affirmatively to raise any defenses against it. This problem is exacerbated by the fact that many states... do not require notice informing the debtor of the right to contest the judgment or the grounds for doing so. As a result the debtor may fail to respond despite having valid defenses to the judgment. The rulemaking record shows that judgments entered by

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<sup>3</sup> *D.H. Overmyer Co. Inc., of Ohio v. Frick Co.*, 405 U.S. 174 (1972) and *Swarb v. Lennox*, 405 U.S. 191 (1972).

<sup>4</sup> 16 C.F.R. § 444.2.

<sup>5</sup> 49 FR 7740-01 (March 1, 1984).

confession frequently are invalid on their face. It also shows that debtors frequently have some defense to the judgment.

When debtors are not apprised of their rights and therefore fail to challenge facially invalid judgments or fail to assert valid defenses, the consumer injury is clear. The judgment debtor's property may be taken in satisfaction of a claim that would not survive judicial scrutiny at a hearing on its merits.

This language was the foundation of the FTC's subsequent ban on confessions of judgments nationwide in most consumer transactions in the Credit Practices Rule. The cumulative effect of these reforms in the 1970s and 1980s was that confessions of judgment, at least in transactions with unsophisticated and unrepresented parties, were effectively abolished nationwide – except, of course, in Iowa.

## **B. Confessions of Judgment in Iowa**

In my time as a consumer protection litigator, I have seen confessions of judgment used against consumers<sup>6</sup> in four ways – collection of attorney fees by private bar attorneys, student loans, jail fees, and collection of financed bail bond premiums or forfeited bail bonds. The cases I have reviewed over the years uniformly involve unsophisticated and unrepresented judgment debtors. People subject to confessions receive no notice, no opportunity to be heard at a meaningful time and a meaningful manner, no opportunity to confront witnesses, and no meaningful judicial supervision of the process establishing the judgment. In almost every situation, people subject to confessions only learn of the judgment after their wages or bank accounts have been garnished, or in some extreme situations, after a bench warrant has been issued based on a failure to appear for a debtor's exam.<sup>7</sup>

The primary reason that confessions of judgment are problematic is that they fail to understand the meaning of the document they are signing, even if they can read the words. The FTC found that:

The contractual waiver of one's right to due process is constitutionally permissible, provided that the waiver is made voluntarily, knowingly, and intelligently. Thus, in a commercial context, the use of confessions of judgment has been upheld where

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<sup>6</sup> For the purposes of this report, I will use a definition of “consumer” derived from the federal Fair Debt Collection Practices Act, 15 U.S.C. 1692a(3) & (5), i.e. a [natural person] with “an obligation... to pay money arising out of a transaction in which property, money, insurance, or services which are the subject of the transaction are primarily for personal, family, and household purposes, whether or not such obligation has been reduced to judgment.” Similar definitions appear in several Iowa and federal consumer protection statutes, e.g. Iowa Code 537.1301. The common understanding of “personal, family, and household purposes” is often defined by what those terms don't include – i.e. *business debts*. I believe this framework to be apt because jail fees are not business debts. More importantly, the people who owe jail fees have, in all meaningful respects, the same vulnerabilities as the longstanding conceptual grouping of “consumers.”

<sup>7</sup> A “debtor's exam” is the Iowa term for a post-judgment proceeding where a creditor may require a debtor to appear personally and answer questions under oath about assets and income that might be available to satisfy a judgment. Failure to appear at a debtor's exam usually results in issuance of a bench warrant.

the facts demonstrated that this standard had been met. A consumer who is unaware of the existence or meaning of a cognovit clause, however, cannot be said to have waived due process rights voluntarily, knowingly, and intelligently by signing a contract that includes such a clause.

Of the creditor remedies addressed by the rule, confessions of judgment are least likely to be understood by consumers. In many cases, consumers, especially low-income consumers, are not aware that cognovit clauses are in their contracts. To the extent that they are aware, consumers rarely understand the significance of these clauses because they are worded in obscure technical language and because the concept of judgment by confession conflicts with the common understanding of basic due process rights.

In my experience, these words ring just as true in Iowa circa 2024. It is difficult to even explain the concept of a confession of judgment to my clients, because the idea that they will have their “day in court” is so ingrained into our cultural understanding of civil justice. I find that, even if they have already been garnished, my clients are uniformly shocked to hear that a confession of judgment has been filed against them.

The concept of a confession is typically hard enough for a layperson to understand even if they are lucky enough to consult with competent counsel. However, the vast majority of consumers don’t have access to an attorney, certainly not before they sign the confession. The resulting information disparity in most contexts only ensures that people don’t understand the meaning of what they are signing even if they read the words.

This disparity is only enhanced when law enforcement itself acts as a debt collector, or requires that the document be signed at a time when the person is still technically confined or has not yet received their personal property from the jail. Adding in a statement that someone is signing “by their own voluntary act or deed” is not likely to change the realities of disparate bargaining power, lack of consideration, or frankly whether or not the average person understands what it means. Even those people who might be able to talk to an attorney given time, or even just take some time to think about what they are signing, will be at an even further disadvantage in a situation that has already been recognized for decades as inherently unfair for unsophisticated consumers.

### **C. Consequences of a Confession of Judgment**

The consequences of a confession of judgment are the same as any other civil judgment. The primary method of collecting judgments in Iowa is to garnish the debtor’s earnings or accounts. However, low-income people already have limited ability to cover rising costs for basic necessities, and these garnishments can create a cascading series of financial crises that can have devastating consequences for those families.

In Iowa, a certain amount of weekly earnings are protected by law, as shown in this table:

Debtor disposable earnings <sup>8</sup>	Creditor can garnish...
Under \$290.00	\$0
\$290.00 to 386.60	\$386.60 minus disposable earnings
> \$386.60	25% of disposable earnings

This wage protection formula is pegged to the federal minimum wage, which has not changed since 2009, and thus does not account for sharp increases in the cost of basic necessities over the years. One example of this growing mismatch is rising housing costs. Since 2009, a person working forty hours per week making federal minimum wage grosses \$1,160 every four weeks. However, between 2014 and 2024, HUD fair market rent (FMR) for a two-bedroom unit in Black Hawk County Iowa rose 31%, from \$720 to \$944. This means that, for a full-time minimum wage worker, the money left at the end of the month after paying FMR has shrunk from \$440 to \$216.

The combination of rising rent and stagnant earnings creates untenable situations even without the additional factor of garnishment. Even to the extent that moderately higher paying jobs are available, wage increases are at least partially nullified by an ongoing garnishment. Any pay increases to hourly rates less than \$9.65 are completely consumed by the garnishment. Increases above that level are at least partially consumed. For example, a person receiving a 25% hourly pay increase from \$7.25 to \$10.00 only realizes 9% of that increase due to the garnishment.

Face value wage <sup>9</sup>	Hours per week	Protected amount per week	Garnished amount per week	Effective hourly wage after garnishment	% of the wage increase actually realized after garnishment
\$ 7.25	40	\$290.00	\$0.00	<b>\$ 7.25</b>	--
\$10.00	40	\$300.00	\$100.00	<b>\$ 7.50</b>	<b>9%</b>
\$14.50	40	\$435.00	\$145.00	<b>\$10.88</b>	<b>50%</b>
\$20.00	40	\$600.00	\$200.00	<b>\$15.00</b>	<b>61%</b>

Eviction data suggests that over 90% of evictions in Iowa are based on nonpayment of rent. When this problem is exacerbated by earnings loss from garnishment, and the effect of pay raises are neutralized, low-income renters are that much more likely to end up in eviction court and at high risk of housing instability. It is no coincidence that the reason why I started taking court debt cases over fifteen years ago is because my client had received a three-day notice for nonpayment of rent, which was itself caused by a court debt garnishment. As is true for many people I have helped in eviction cases, I couldn't truly resolve her eviction without reducing or eliminating the garnishment.

<sup>8</sup> Derived from Iowa Code 537.5105.

<sup>9</sup> These wages assume no money is withheld for taxes, and so in the real world there would be even less available.



Of course, garnishment of earnings is only one negative consequence of a confession of judgment. Another is garnishment of bank accounts. When a bank account is garnished in Iowa, it may contain funds that are protected by law. However, to assert many of those legal protections, the debtor must file a motion to quash the garnishment in the case where the judgment lies. Their account remains frozen in the meantime. Given growing backlogs in state courts, it can often be weeks before a judge can hear the motion, and usually longer still to issue a decision. In the meantime, checks bounce, automatic payments are declined, fees are assessed, and critical bills remain unpaid.<sup>10</sup>

Other than garnishment, a confession of judgment carries many other negative consequences. Any property that is not exempt by law can be seized by the Sheriff and sold at execution sale to satisfy the debt. A confession also constitutes a passive lien against real property. Like any other judgment, a confession can negatively impact credit, which affects housing, employment, and other opportunities.

In some extreme cases, a confession can even lead to arrest. If a judgment remains unsatisfied after a garnishment or execution has been outstanding for 120 days, a creditor may request a “debtor’s exam.” As mentioned in the footnote above, a “debtor’s exam” is a post-judgment proceeding where a creditor may require a debtor to appear personally and answer questions under oath about assets and income that might be available to satisfy a judgment. Failure to appear at a debtor’s exam usually results in issuance of a bench warrant. In my experience, people who are subject to a confession are more likely to risk arrest, because they don’t understand the gravity of the debtor’s exam since they don’t comprehend there is a judgment against them.

#### **D. A few additional points about confessions**

There are a few other things that I think may be useful to consider about confessions of judgment in Iowa. First, there is some procedural variation in how courts tend to treat confessions of judgment in Iowa, judge-to-judge and county-to-county. In some counties, the judgments are simply entered upon filing by the Clerk of Court, as the statute directs. In others, there is a *pro forma* order entered by a judge, much like a default judgment, but still without any notice or opportunity to be heard. In these situations, the judge is still not reviewing any of the facts of the case.

Another problem that happens regularly with confessions of judgment is when some but not all the amount claimed to be due has been paid, but the adjusted amount is not clearly stated on the face of the document. This takes place when the confession is executed in the form of a payment plan. This is a problem because, even though the statute requires confessions to be for a “specified sum,” the sum changes over time because some of it has been paid. This also creates a

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<sup>10</sup> <https://www.cnn.com/2020/05/11/debt-collectors-are-leveraging-the-courts-more-than-ever-before.html> (example of how a confession of judgment based on a student loan led to severe downstream consequences in the height of the pandemic)

fact issue as to the true balance owed, but one that will never be tried because the confession precludes trial or any other process.

Finally, it's important to clear up common points of confusion about two situations that are often incorrectly conflated with the kind of confession of judgment at issue in this case. One is where there is already an action filed, and the form of a confession is simply used to reduce a settlement agreement to an enforceable judgment, even though any court order memorializing the agreement would suffice. The second is an *offer to confess judgment*,<sup>11</sup> which is a litigation tactic used to limit liability for costs to the extent that a settlement offer is not exceeded by the final judgment in a case. Neither of these situations present the problems that true out-of-court confessions pose, as they are supervised by the court, generally involve parties represented by counsel, and do not deprive litigants of basic due process protections.

#### **IV. Reimbursement for jail fees (“pay to stay”)**

Like many states across the country, Iowa allows for political subdivisions to charge fees for incarceration. These laws, often called “pay to stay,” are generally referred to in Iowa as “jail fees” or “room and board fees.”

Any explanation of how jail fees in Iowa have ‘normally’ been collected must take into account that there has always been considerable variation between counties, both before and after the changes brought by SF457 in 2020. Prior to 2020, jail fees were imposed and collected within the criminal case itself. Most of these were imposed as “restitution”<sup>12</sup> awards, i.e. collected in the same manner as other debt imposed in a criminal case. Restitution debt could be collected through a wider and harsher array of collection remedies (e.g. revocation of probation or work release), but on the other hand could be reduced based on the defendant’s ability-to-pay.

To get around ability-to-pay rights, some counties took the position that a sheriff could elect to have jail fee debt treated as civil or criminal debt. These counties took the position that jail fee debt categorized as “civil” when the reimbursement claim was raised avoided the requirement of an ability-to-pay analysis. In 2019, the Iowa Supreme Court approved this conceptualization, but pointed out how treating these debts as civil meant that a different set of protections rooted in consumer protection law would apply.<sup>13</sup> We saw this issue frequently, and in practice it was not always clear in real life how a sheriff had elected to proceed from the record. Many cases involved trying to decide from a very sparse record, maybe many years later, which path the Sheriff had meant to take and accordingly how civil debt protection law applied.

Before and after 2020, it was also common to see very long delays in jail fee filings. In my experience, this delay could be months, or even over a year after the sentencing in the underlying

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<sup>11</sup> See e.g. Iowa Code Chapter 677.

<sup>12</sup> “Restitution” is a term of art in Iowa that refers to many different types of debt imposed at time of sentencing in connection with a criminal conviction, and should not be confused with the narrower definition of “victim restitution” in the federal system. See Iowa Code Chapter 910.

<sup>13</sup> *State v. Gross*, 935 N.W.2d 695 (Iowa 2019).



criminal case. These delays were one of the reasons behind the issues ultimately addressed by the Iowa Supreme Court in *State v. Albright*<sup>14</sup> and *State v. Davis*,<sup>15</sup> We called this issue “Ability to Pay TBA.” In other words, it is difficult if not impossible for to determine what someone could actually pay when claims are submitted long after sentencing or other dispositional hearing, because someone who might be able to pay \$100 might not be able to pay \$1,000 without serious economic hardship. The other problem was that, given the amount of time that had passed, the defendant had changed addresses and was no longer in contact with their attorney from the criminal cases. In most situations, the later jail fee reimbursements were entered without meaningful participation of the defendant because no one could find them and there was no requirement for service.

Effective July 1, 2020, statutory changes introduced by Iowa S.F. 457 radically changed how jail fees were assessed and collected in Iowa by requiring them to be filed in separate civil actions, a concept discussed but not ruled upon in *State v. Gross*. On the one hand, the changes to the law removed jail fees from the ambit of right-to-counsel and the right to reduce the debt based on ability to pay. On the other, the institution of a separate civil action removed some of the more negative consequences of a jail fee award, like loss of driving privileges, revocation of supervised release, or bars to expungements. The new system also promised a higher degree of due process than previously available, ensuring for example that there would be personal service of the jail fees claim and opportunity for hearing at the time the fee claim was made, rather than simply relying on a criminal case where the sentencing may have taken place over a year before the jail fees claim was made. Of course, the use of confessions of judgment completely negates any protection this part of the new statute was intended to create.

While there were some aspects of the new law that were at least modest improvements, there were other aspects that caused serious concern. On a fundamental level, I worried about the inherent conflict between the sheriff’s role as both a creditor and also their duty as a neutral institutional actor in the civil justice system.

Outside of the civil reimbursement actions, a Sheriff is often the entity that carries out service of civil process for original notices, debtor’s exam notices, show cause orders, and other documents requiring personal service. The Sheriff also plays a central role in the collection of judgments. They carry out and oversee the actual garnishment process, after being directed to do so by a clerk of court. They serve garnishment interrogatories on employers and banks, conduct execution sales, and are entrusted with the safekeeping of seized funds or property until after a debtor has had the chance to fully litigate whether the property is exempt from being converted and applied to a judgment. The Sheriff can execute warrants for someone who purportedly failed to appear at a debtor’s exam.

Prior to 2020, Iowa Code 331.659 prohibited a Sheriff from participating as a party in a case. SF457 created an exception for jail fee civil reimbursement actions. For example, in general,

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<sup>14</sup> *State v. Albright*, 925 N.W.2d 144 (Iowa 2019).

<sup>15</sup> *State v. Davis*, 944 N.W.2d 641 (Iowa 2020).

a party to a civil action cannot themselves carry out personal service in a civil action.<sup>16</sup> Failure to adhere to this rule is frequently used to dismiss actions filed by pro se and even represented private parties. In garnishment actions, the Sheriff would have an interest in any funds they were holding during a pending motion to quash or other actions to recover property protected from collection by law. The Sheriff would have a direct pecuniary interest in property offered at an execution sale that they also presided over. There are many problems.

## V. Conclusions

Considering the forgoing, I see the following problems with the use of confessions of judgment to collect jail fees in this case.

- Unrepresented consumers like the ones described in this petition will not generally be capable of understanding the meaning of the confession of judgment, even if they understand the individual words.
- Any of the following aggravating factors would make it even less likely in my opinion that a confession of judgment would be executed knowingly, intelligently, and voluntarily:
  - No access to independent counsel.
  - There is not enough time to gather facts or make an informed decision.
  - The person asking them to sign works for a law enforcement agency.
  - They are still in custody, or it is not clear that they are free to leave.
  - They have not yet received property being held by the jail.
  - There are other problems with comprehension such as language ability, literacy, mental state, disability, etc.
- The standard form doesn't reduce the amount due in a way that takes into accounts payments made, and is not uniformly for a specified sum.
- There are inherent conflicts of interest between the Sheriff as a creditor and the Sheriff as a neutral institutional actor in the civil legal system.
- There are numerous issues of fact or law that could be tried if the reimbursement actions were filed as lawsuits, that are unavailable because they have precluded by the confessions.
- It would be difficult if not impossible to even gather information about the underlying debt because without a lawsuit, the debtor is not entitled to discovery or subpoena rights.
- The consequences of the confession of judgment are potentially devastating, both immediately and in the downstream effects caused by deprivation of survival income, and carry the potential for immediate harm that will often be compounded far beyond the actual amount subject to involuntary collection.

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<sup>16</sup> Iowa R. Civ. P. 1.302(4).