



## Pennsylvania Creditors Bar Association

THE LATEST NEWS AND UPDATES REGARDING CREDIT AND COLLECTION AND THE FINANCIAL SERVICES INDUSTRIES



## Welcome Message From The President

*by Brit J. Suttell*

### IN THIS ISSUE

#### **PRESIDENT'S WELCOME**

#### **PRACTICE OF LAW TECHNICAL CLARIFICATION ACT OF 2018**

#### **OFFER TO SETTLE TIME-BARRED DEBT FDCPA VIOLATION AND S.O.L RULE CHANGE**

Greetings from the Pennsylvania Creditors Bar Association! PACBA is supporting the National Creditors Bar Association's (NCBA) effort to amend the Fair Debt Collection Practices Act (FDCPA) to provide an exemption for attorneys providing legal collection services that fall under the supervision of their state bar. In other words – YOU!

The clarification only applies to attorneys engaged in legal activity such as filing, serving, conveying legal pleadings, discovery requests or any other document pursuant to the applicable rules of civil procedure.

continued...



## Pennsylvania Creditors Bar Association

### President's Message Continued...

The exemption also extends to communication about legal actions. However, the exemption would not cover any debt collection activity that occurs prior to, outside or beyond the scope of the litigation such as have debt collectors call the consumer or an initial demand letter; that activity would still be subject to the FDCPA.

While Pennsylvania's Fair Credit Extension Uniformity Act (FCEUA) currently provides a litigation exemption, the FDCPA does not. This amendment is needed to cure that deficiency. Additionally, the amendment is needed to avoid the inherent conflicts that arise between a state judiciary's regulation of its attorneys and the federal executive branch administrative agencies charged with FDCPA oversight, who might not fully appreciate the fiduciary responsibilities attorneys owe to their client or the ethical duties owed to opposing litigants and the court.

Please take a few moments out of your day to [CLICK ON THE LINK HERE](#) to urge your Member of the House of Representatives to support H.R. 5082 by Representative Alex Mooney (R-WV) that would enact the "Practice of Law Technical Clarification Act of 2018". The NCBA has made it incredibly easy and efficient to show your support!



## Pennsylvania Creditors Bar Association

**Practice of Law Technical Clarification Act of 2018**  
**Morris & Adelman, P.C. | Robert Morris**



### H.R. 5082 Practice of Law Technical Clarification Act of 2018

This bill exempts lawyers practicing law from the FDCPA and limits the authority of the CFPB from regulating law firms to the extent their activities are regulated by the supreme courts of the states where their members have licenses. All of the legislative progress data, including a link to the text, are in this link:

<https://www.congress.gov/bill/115th-congress/house-bill/5082/all-info>

This bill passed out of committee and may receive a vote of the full House. NOW is the time to write to your Representatives and ask for their support of this bill. Do not put this off. If we do not get this done now, we may never get another chance.



## Pennsylvania Creditors Bar Association

### **Offer to Settle Time-Barred Debt FDCPA Violation and S.O.L. Rule Change Cote Stover | Shapiro Law Office, PC**

#### A. "Offer to Settle" Time-barred debt FDCPA Violation

In *Tatis v. Allied Interstate, LLC*, 882 F.3d 422 (3d Cir. 2018) the United States Court of Appeals, Third Circuit determined that sending an offer to accept payment in "settlement of this debt" to a debtor was misleading and a violation of the FDCPA when it concerns a time-barred debt. In connection with a time-barred debt, a creditor sent a letter to a consumer debtor that the creditor was "willing to accept payment in settlement of this debt." The debtor brought suit under the FDCPA against the creditor alleging the word "settlement" implied that there was a legal obligation to repay the time-barred debt. Therefore the letter was misleading to the unsophisticated consumer.

The Third Circuit agreed with the consumer that such language did constitute a misleading statement under the FDCPA. It based its holding on three sister circuit court decisions. See *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010 (7th Cir. 2014), *Buchanan v. Northland Group, Inc.*, 776 F.3d 393, (6th Cir. 2015), *Daugherty v. Convergent Outsourcing, Inc.*, 836 F.3d 507 (5th Cir. 2016). The basic principle of these cases is that language that would mislead an unsophisticated consumer into believing a debt is legally enforceable is a violation of the FDCPA. The court reasoned that the least-sophisticated debtor could be misled into thinking that "settlement of debt" refers to the creditor's ability to legally enforce a debt rather than a mere invitation to settle the account. However, the court declined to hold that the use of the word "settlement" is misleading as a matter of law. Rather, the court reiterated that any settlement letters must not deceive or mislead the debtor into believing that she has a legal obligation to pay the time-barred debt.



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THE 2017 PACBA SEMINAR AND ANNUAL MEETING RECAP  
BY MATTHEW D. URBAN

### B. 20 Year Statute of Limitations for Documents under Seal in PA Ending Soon

Section 5525(a)(8) of the Judicial Code establishes a four-year statute of limitations for “an action upon a contract, obligation or liability founded upon a writing.” However, Section 5529(b) provides (1) notwithstanding Section 5525 [(a)(7)] an action upon an instrument in writing under seal must be commenced within 20 years and (2) this subsection shall expire on June 27, 2018. This date of expiration is quickly approaching so documents signed under seal will no longer be covered by the 20 years statute of limitations that they previously had. Any debt collector dealing with these contracts under seal will then be subject to the same four-year statute of limitations that all other contracts are subject to. If you have any cases that were signed under seal, be sure to file suit before the expiration date to ensure that the 20 year statute is applied and you are not filing a stale claim. For reference to the legality of documents under seal see *Osprey Portfolio, LLC v. Izett*, 67 A.3d

*The*  
**Desmond**  
*Hotel & Conference Center*

Save The Date

Friday, October 12, 2018

8:30am - 4:00pm

The Desmond Hotel  
Malvern, Pennsylvania

**Register [HERE!](#)**



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[www.AppearAnywhere.com](http://www.AppearAnywhere.com)

CAP was honored to attend the 2017 PACBA Conference and meet all who attended. We are pleased to assist and work with PACBA.

Please feel free to contact CAP at [www.appearanywhere.com](http://www.appearanywhere.com) for all your hearing needs in PA.

STEVE LEVY  
ATTORNEY AT LAW  
COURT APPEARANCE PROFESSIONALS  
Phone: 800-637-6922  
Fax: 800-637-6998  
10330 Pioneer Blvd., Suite 220  
Santa Fe Springs, CA 90670  
Email: [steve@appearanywhere.com](mailto:steve@appearanywhere.com)