



Pennsylvania Creditors Bar Association

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

WELCOME / A MESSAGE FROM THE PRESIDENT

Robert Polas, Portfolio Recovery Associated, LLC PACBA President



Greetings Members!

Welcome everyone to the PACBA Spring 2023 Newsletter. It's hard to believe that it is already Springtime. I have been asked several times to write up a Presidents Message for the newsletter. I am not much of a writer for fun given I am an attorney and do this all day, but I had no choice.

I am sure most everyone in the industry has received the lovely orders coming from Judge Gavin's chambers in Berks County. If not, you will. He has made it very tough to use local counsel in his court room. The hoops that you must jump through has tripled. In fact, a number of us have already been compelled to appear in his court. Judge Gavin is only 1 of 4 judges in this county. Your case may not get assigned to his court room. If it does ... look out.

If your case has been assigned to his court room Judge Gavin is issuing Mandatory Disclosure Orders and scheduling Pre-Trial Conferences for cases where he is assigned. It does not matter if a responsive pleading has been filed. The Discovery Order orders us to provide all our available evidentiary documents which we'd use at an arbitration hearing, as well as an Affidavit of Debt signed by a COR within 30-days of its entry of the order. The default judgment process can still move forward if an answer is not filed up until the time the pretrial is held. But those dates come fast so you have very little time to file your default judgment packet. Further, if and when, the pretrial is held a mandatory appearance is then required by the attorney assigned to the case. That means no local counsel. If local counsel is sent the case is continued by the court. A sanction/contempt hearing is then scheduled in its places against the attorney that failed to appear. There is no calling the chambers for a continuance. There is no calling to see if local counsel can appear. There is no ability to call in as the judge's chambers are not taking calls on this issue. I have tried. If you are not there his court will issue sanctions.

Long story short, please keep Berks County in mind when you are reviewing the incoming mail. If you see an Order from this court, please do not ignore.

There will be more to come on this issue as the PACBA Board has been discussing and attempting to come up with a plan to combat this judge created crises.

F.3d ____, 2021 U.S. App. LEXIS 11648, 2021 WL 1556060 (11th Cir. 2021), which held that use of letter vendors by a debt collector violates the FDCPA's prohibition on third-party disclosures. In a real show of industry camaraderie, almost 20 amicus curiae briefs have been filed in support of Preferred's Petition for Rehearing *En Banc*. Those 20 briefs represent the interest of over 60 different amici. PACBA joined in with 18 other state creditors' bar associations to file a brief as well. **It is this type of advocacy that continue to make membership in PACBA important as PACBA continues to advocate for attorney's involved in creditors' rights law.**



IN THIS ISSUE

PRESIDENT'S MESSAGE

TO SUE OR NOT TO SUE: THAT IS THE QUESTION

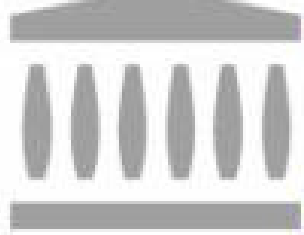
THE PENNSYLVANIA BAR ASSOCIATION PURSUES A STATEWIDE ELECTRONIC FILING AND RETRIEVAL SYSTEM

JOIN THE BOARD

PACBA BOARD MEMBERS

MEMBER COMMITTEES

Save the Date:
ANNUAL SEMINAR
October 6, 2023
The Desmond



TO SUE OR NOT TO SUE: THAT IS THE QUESTION

By: Michael A. Hynum, Esq.

On September 8, 2022, the CFPB issued Circular 2022-05 entitled “Debt collection and Consumer Reporting Practices involving invalid nursing home debts.” The main point of the circular was to put the industry on notice that under certain circumstances, debt collection and consumer reporting practices related to nursing home debt may violate the Fair Debt Collection Practices Act (FDCPA) and the Fair Credit Reporting Act (FCRA). The CFPB points to the 1997 Nursing Home Reform Act (NHRA) which among other things, prohibits a nursing facility that participates in Medicare or Medicaid from requesting or requiring a third-party guarantee of payment as a condition of admission, expedited admission, or continued stay in the facility. The CFPB admits it is not tasked with enforcing the NHRA or generally overseeing the activities of nursing homes. However it does stress its oversight in the areas of compliance with the FDCPA and the FCRA. This oversight may also extend to law firms and collection agencies alike.

On the same date that the CFPB issued the above-referenced circular, the Centers for Medicare and Medicaid services (CMS) issued a joint “Notification Letter” with the CFPB regarding nursing facility debt collection practices. CMS is a part of the federal government’s Department of Health and Human Services and provides oversight of skilled nursing facilities in conjunction with state Departments of Health by issuing and enforcing both federal and state regulations that ensure compliance by those facilities. The CMS Notification Letter reiterated and expanded upon the CFPB circular by discussing the NHRA, the FDCPA as well as the FCRA, and how debt collection practices can run afoul of these laws by wrongfully breaching resident admission agreements, and the improper pursuit of so-called guaranties by “responsible” or third parties. Without proper policies and contract preparation, it is arguably a violation of law to pursue such third parties for the payment of unpaid expenses related to resident care. Moreover, facilities should tread with extreme caution when seeking waivers that involve resident rights, or attempting to have pre-litigation arbitration requirements built in to their agreements.

As should have been expected, the American Healthcare Association issued an article related to the CFPB circular and HHS Notification on September 9. Three days later on September 12, McKnight’s Long Term Care News penned an article entitled “Nursing Homes fire back after CMS warning about “exploitative” debt-collection practices.” In the article, unnamed provider interests confirmed that they were in agreement that operators must follow all laws while indicating a level of resentment about what they deemed “an unnecessary spotlight on a relatively small faction of bad actors.” The article goes on to point out that while facilities may not be able to require third parties or family members to pay for care and services, there are issues such as social security income and other benefits beyond standard room and board. Family members may be receiving resident income they are obligated to turn over to the facility or for which they may otherwise be obligated.

The above examples do not account for issues such as the PA Duty to Support Law or voluntary offers to assist with payment and further highlights the importance of facilities attempting to ensure residents or potential residents elect a power of attorney or have guardians appointed to assist with their financial affairs. If history is any indication of where we are headed, government forays into the intersection of nursing home compliance and consumer finance is a small first step toward the intention to further migrate into and increase compliance efforts in many other aspects of health care.

So what is the bottom line?

For one, providers should be reviewing their admission contracts with counsel, or vice-versa, to ensure they are written in terms that do not run afoul of laws, regulations, or the NHRA. Then, there should be a review of collection policies and procedures to ensure compliance. This can be done as part of an overall compliance program, or during a separate, periodic review which will ensure the facility and any business associates and/or other subcontractors are conducting themselves in such a way as to pursue their right to lawfully collect debts, using the proper and allowable channels along with permissive tactics, no matter how aggressive.



THE PENNSYLVANIA BAR ASSOCIATION PURSUES A STATEWIDE ELECTRONIC FILING AND RETRIEVAL SYSTEM

By: Jay N. Silberblatt, PBA President

During the pandemic, we learned that our system of justice could continue remotely. We learned how to use Zoom and Teams and Webex to conduct depositions, engage with the court for motions and conferences. Some court proceedings even took place in a virtual environment. We learned to do more and more on our office computers and cell phones.

In many Pennsylvania jurisdictions, however, there are things that can only be accomplished in person or by mail. Only a handful of Pennsylvania's 60 judicial districts have online civil dockets. Fewer still provide for the online filing of civil documents. During the pandemic, this lack of an online filing system presented a huge obstacle to lawyers and litigants, particularly to pro se litigants and to those who were situated great distances from the court house.

As the pandemic began, the PBA formed a Taskforce on the Continuity of Delivery of Legal Services. Judge Thomas Vanaskie was appointed its Chair. The work of this Taskforce over the ensuing months culminated in the release of a comprehensive published report with numerous recommendations on maintaining our system of justice. One of its recommendations was that "a joint task force involving the legislature, the courts, the organized Bar, and the general public should be formed to find a way to establish a uniform electronic case filing system for Pennsylvania."

Public access to our court dockets is an essential part of our judicial system; our federal courts (and most state courts) realized that long ago. If you practice law in Texas or in Alabama, you can sit at your computer and have access to court dockets and file papers electronically. But if you are sitting in Westmoreland County, Pennsylvania you cannot access the court dockets in neighboring Fayette County.

In May 2022, another PBA Taskforce was created to study and develop a way that Pennsylvania might create a statewide electronic filing and retrieval system. This new PBA Taskforce is Co-Chaired by Past PBA President Sara Austin and the Honorable Carl Solano (ret). The Taskforce is comprised of lawyers, judges, prothonotaries, and county IT personnel from across the state. The AOPC has also appointed a liaison to the Taskforce.

The first initiative of the Taskforce was to gather information and data about existing court filing systems in all 60 of Pennsylvania's judicial districts. That months-long initiative was spearheaded by PBA Vice-President Nancy Conrad and President Judge of the Commonwealth Court, Renee Cohn Jubelirer.

Once the data was collected and organized, it was turned over to another group of Taskforce members led by Jennifer Ellis and Daniel Siegel, PBA lawyers with a deep knowledge of computer technology. The data that had been collected revealed that several counties have, at great expense, already developed electronic filing systems that are well-liked and extensively utilized. There was concern that trying to create a statewide system "from the top down" would pose local challenges.

After an extensive review of the data and consideration of the local obstacles, the group recommended that the Taskforce work on the creation of a statewide "overlay" system that would allow existing county electronic filing systems to continue in existence, but still provide a method by which locally filed documents would be available on a statewide system. The entire Taskforce recently met and adopted the "overlay" idea, which has now been passed on to the AOPC.

Soon, the AOPC, working in concert with the PBA Taskforce, will issue a Request for Information to court technology vendors in order to obtain additional design and implementation data on such an overlay.

The goal remains the same: a statewide system that will allow lawyers and litigants to have access to the civil dockets of all 60 judicial districts and allow for the filing and retrieval of court documents in a uniform way. The PBA Taskforce believes that the goal can be achieved without impairing existing filing systems or existing contracts with court filing vendors.

Creating a statewide electronic filing and retrieval system will allow courts to operate more efficiently, allow lawyers to have statewide access to court dockets, and will provide better access to justice for pro se litigants. The effort is ongoing and will likely take time to develop, but our eyes remain on the goal and we are resolute in our desire to see it through.



Pennsylvania
Creditors Bar
Association

GET INVOLVED!

JOIN THE PACBA BOARD

NOMINATION PROCESS

The nominating committee shall present a proposed slate of directors and officers to members of the Association at the annual meeting.

If you are interested in joining the board or would like to nominate a fellow member, please complete the nomination form and submit it to the committee for consideration **by September 1, 2023.**



BOARD ROLE DESCRIPTIONS

The affairs of the association shall be managed by or under the direction of its **BOARD OF DIRECTORS**. The number of directors shall be nine. Each director shall hold office until the next meeting for the election of directors following his or her election and until his or her successor shall have been elected and qualified. The board of directors meets once a month via conference call to discuss association business. If needed, additional meetings and board votes are conducted as directed by the board President.

The **OFFICERS** of the association shall be the executive vice-president, one or more vice-presidents (the number thereof

to be determined by the Board of Directors), a treasurer, a secretary, and such other officers as may be elected or appointed by the Board of Directors; Officers whose authority and duties are not prescribed in these By-Laws have the authority to perform the duties prescribed, from time to time, by the Board of Directors. Any two or more offices may be held by the same person.

The **PRESIDENT** is the principal executive officer of the Association and is subject to the Bylaws. The President supervises the management of the Association affairs and presides at all meetings of the Association and the Board of Directors. The President performs all other duties ordinarily incident to such office.

[View Bylaws Here](#)

BOARD ROLE DESCRIPTIONS

continued ...

The **EXECUTIVE VICE PRESIDENT** performs the duties of of the President during the absence or disability of the President. The VP assists the President in the performance of the President's duties and per-forms other duties as may be assigned by the President or Board of Directors.

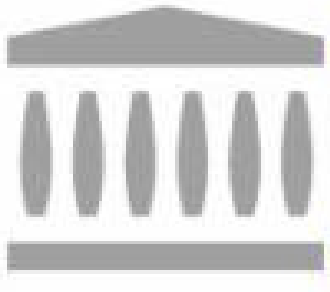
The **SECRETARY** keeps minutes of all the meetings of the Association and Board of Directors. The Secretary is the custodian of all such minutes, all minutes of committee meetings, and other records, documents and property of the Association and maintains a complete roll of members. The Secretary is responsible for the production/ dissemination of the PACBA Newsletter and has the option of appointing a sub-committee to assist in this duty.

The **SECRETARY** is responsible for sending notices of all Association and Board of Directors meetings and shall perform such other duties ordinarily incident to the Secretary's office or as may be assigned by the President.

The **TREASURER** has custody of all monies of the Association and collects and, subject to the direction of the Board of Directors, disburse all funds of the Association. The Treasurer shall:

- (a) Maintain accurate accounts of all financial transactions;
- (b) Maintain the Association's checking account records, including reconciling all monthly account statements;
- (c) Prepare for each Board of Directors meeting a monthly summary of all payments and receipts to the Association;
- (d) Prepare, at a minimum quarterly cumulative statements that summarize the amount and nature of the Association's payments and receipts.

The **TREASURER** submits at each annual meeting of the Association a suitably classified, written annual report of the Association's financial position including (1) all receipts and disbursements occurring during such period and (2) all obligations outstanding at the end of the period, with any comments as to current and prospective future financial position that the Treasurer may deem informative. The Treasurer shall make such additional Interim financial reports as the President or Board of Directors shall direct.



Pennsylvania
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INTERESTED IN JOINING A PACBA COMMITTEE?

Join a committee to share your experiences and expertise, connect with fellow members and collaborate with your peers on programs and initiatives to advance our profession - all while developing skills that will benefit you both personally and professionally. If you are interested, please contact the listed committee chair.

You must be a PACBA member to join a committee.



PACBA MEMBER COMMITTEES

ADMINISTRATION COMMITTEE

The Administration Committee, under the direction of the Secretary of the Association, is the custodian of record of all minutes, records, documents, and property of the Association. The Committee maintains the active roll of members, and is responsible for filing any required reports with regulatory authorities on behalf of the membership.

LEGISLATIVE COMMITTEE

The legislative committee monitors legislative changes and proposals. It suggests and drafts legislation or rules for the advancement of creditors' rights. The committee also assists other organizations /legislators that sponsor or promote creditors' rights or rule changes.

COURTS COMMITTEE

CONTACT [PACBA OFFICE](#)

The courts committee acts as the liaison with courts and court clerks throughout the state and monitors court rules changes.

EDUCATION COMMITTEE

The education committee works to educate attorneys and judges of recent changes in the creditors' rights laws.

MEMBERSHIP COMMITTEE

The membership committee generates new membership and oversees current membership issues. It publicizes Pennsylvania Creditors Bar Association activities, announcements, and seminars, both to members and non-members.





Pennsylvania
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PACBA BOARD

OFFICERS

<i>President</i>	Robert Polas, Portfolio Recovery Associates, LLC, Robert.Polas@portfoliorecovery.com
<i>Secretary</i>	Kenneth Shapiro, Shapiro Law Office, P.C., kshapiro@shapirolawpc.com
<i>Treasurer</i>	Robert Morris, Morris & Adelman, P.C., rmmorris@morrisadelman.com
<i>VP of Membership</i>	Vacant Position
<i>VP of Education</i>	Scott Best, Weltman, Weinberg & Reis Co., LPA, sjbest@weltman.com
<i>VP of Legislation</i>	Gregg Morris, Patenaude & Felix, APC, gmorris@pandf.us

DIRECTORS

David Schattenstein, Kiefer Law Firm, LLC, DSchattenstein@keiferlaw.com

William Mozlcan, Weltman, Weinberg & Reis Co., LPA, wmolczan@weltman.com

Michael McCrystal, McCrystal Law Office, McCrystalLaw@gmail.com

Mike Hynum, Hynum Law Services mhynum@hynumpc.com

Yale Weinstein, Burton Neil & Associates, P.C, yale@burt-law.com

Kim Scian, Apothaker Scian PC., kscian@apothaker.com

Matt Urban, Weltman, Weinberg & Reis Co., LPA, murban@weltman.com

INTERESTED IN GETTING MORE INVOLVED?

If you are looking to grow your professional network, we invite you to get involved in PACBA. Opportunities include running for the board, participating in committee work, contributing to the newsletter or presenting at the Annual Meeting.

Please contact Association Manager, Shawn Jezak, to learn more.

PACBA@CorpEvent.com