



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

Happy Holidays from PACBA! We had another very successful annual conference in October at the Desmond Hotel. I would like to extend another big thank you to our Education Chair, Matt Urban, for putting together a great event. In case you missed it, there's a recap of the conference in this newsletter.

NEW PUBLIC ACCESS POLICY OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA

2017 was a big year for our industry. This time last year, we all wondered how the new Presidential administration would affect the Consumer Financial Protection Bureau. In short, not much until about a month ago when (now former) Director Richard Cordray announced his resignation and attempted to name his own successor. The Administration appointed Mick Mulvaney as Acting Director which spawned some interesting, but most likely non-consequential litigation regarding the current head of the Bureau. To date, Acting Director Mulvaney froze all regulatory action and rule-making for thirty (30) days. Although the Bureau did say it anticipated releasing proposed rules for the debt collection industry in February 2018, that date is now up in the air.

PACBA 2017 SEMINAR AND ANNUAL MEETING RECAP

Prior to end of the year excitement in Washington, D.C., however, the United States Supreme Court ruled on two cases with industry impact, both in the industry's favor.

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President's Message Continued...

In May, the Court held that filing proofs of claim in a bankruptcy that were otherwise beyond the statute of limitations was not an FDCPA. *Midland Funding v. Johnson*. Not quite even a month later, a unanimous Court parsed through one of the FDCPA definitions of “debt collector” in *Henson v. Santander*. In his first opinion for the Court, Associate Justice Neil Gorsuch appeared to have found a grey area where it was possible for an entity to be neither a “creditor” nor a “debt collector” as defined by the FDCPA. Similar arguments are now being made with varied success on behalf of debt buyers.

Looking ahead, 2018 is poised to be another year of changes for the industry. Recently, the firm Blatt, Hasenmiller, Leibsker & Moore, LLC, filed a petition for certiorari with the United States Supreme Court in the case *Oliva v. Blatt, Hasenmiller, Leibsker & Moore, LLC*. The underlying case comes out of the 7th Circuit and presents two issues for the Court: (1) Whether good faith reliance on controlling circuit precedent, prior to any retroactive change in that law, is an unintentional “bona fide error” and a procedure “reasonably adapted to avoid error” within the meaning of the “bona fide error” defense in the FDCPA; and (2) whether the due process clause prohibits punishment for conduct that was lawful when committed, but later prohibited by a retroactive change of law. (Synopsis provided by SCOTUSblog.com). At least two amicus briefs have been filed in support of the Court granting certiorari.

The National Creditors’ Bar Association was able to get its legislation re-introduced in the House of Representatives with bi-partisan support and is now referenced as H.R. 4550 The Practice of Law Technical Clarification Act of 2017. The National Creditors’ Bar Association has been successful in gathering the support of Rep. Vicente Gonzalez (D-TX.) as the bill’s sponsor, as well as, co-sponsorship by Rep. Alexander Mooney (R – WV). While the bill remains pending in the House Committee on Financial Services, the National Creditors’ Bar Association is hopeful that H.R. 4550 can make it into the next mark-up period in the January/February 2018 timeframe. The bill seeks to exempt attorneys from FDCPA liability when the attorney is “(i) serving, filing, or conveying formal legal pleadings, discovery requests, or other documents pursuant to the applicable rules of civil procedure; or (ii) communicating in connection with a legal action to collect a debt on behalf of a client in, or at the direction of, a court of law (including in depositions or settlement conferences) or in the enforcement of a judgment.” For more information about H.R. 4550 or if you have a relationship with your U.S. Senator or Member of Congress, please feel free to reach out to NARCA Federal Government Affairs Co-Chairs Nathan Willner (nathanw@ldvlaw.com) and Chip Stacy (bstacy@hoodandstacy.com).

With so much going on in the industry, it is a great time to be part of a state-level creditors’ bar association. If you would like to get more involved, please reach out as we welcome new ideas and opportunities for advancing the practice of law in the creditors’ rights area.

PACBA wishes everyone a Happy and Prosperous New Year!



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New Public Access Policy of the Unified Judicial System of Pennsylvania

Cote Stover | Shapiro Law Office, PC



The Pennsylvania Supreme Court has issued a new policy limiting public access to judicial records. This policy takes effect on January 6, 2018. The purpose of this policy is to make judicial information more accessible to the public statewide in a unified manner. It also restricts some information and changes the way confidential information is to be included in case filings. This process requires all confidential information to be disclosed on separate forms to allow the public to readily view the filings without the ability to view confidential information and documents. However, parties and attorneys on record will have access to the confidential information for that case. This creates two issues for attorneys. First, attorneys will be restricted from being able to view entire case records online, specifically confidential information on cases that they are not the attorney of record. Second, the new policy will create additional administrative and filing requirements for attorneys, and also create additional burdens on courts' administrative staff.

The Pennsylvania Supreme Court ordered the Administrative Office of Pennsylvania Courts (AOPC) to develop forms to be used for submitting confidential information and confidential documents. Instead of including confidential information or documents in the document being filed, they are to be filed separate but contemporaneously utilizing these forms.

[CLICK HERE TO READ FULL DOCUMENT](#)



Pennsylvania Creditors Bar Association

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

On October 6, 2017, PACBA held its annual seminar and meeting at the Desmond Hotel in Malvern, Pennsylvania. This year's conference saw creditor's rights attorneys from across Pennsylvania converge at the Desmond Hotel for a wide range and informative educational session that was approved for 5 continuing legal education credits (4 Substantive, 1 Ethics).

The day began with a full breakfast followed by our first speaker of the morning, Joann Needleman, who discussed the current state of the CFPB. Joann was followed by Nick Smyth, the new Assistant Attorney General in charge of Consumer Protection, who discussed the priorities and objectives of his office. Before lunch, Ashley Beach gave an excellent presentation on the In's and Out's of the SCRA. Following lunch, Jim Warmbrodt provided a bankruptcy update, followed by Rob Polas and Matt Urban's ethics presentation on proper collection practices.

As always the seminar could not have been a success without the support of PACBA's great sponsor, Tim Clark of ForSure Legal Services. I would also like to thank Steve Levy of Court Appearances Professionals for his generous donation to PACBA. On behalf of the Board of Directors of PACBA I want to thank our sponsors for their continued support and would encourage our members to reach out to them to learn more about the services they offer.

Thanks again to everyone who attended this year's seminar. We hope you found the speakers informative. Lastly, I would like to announce that the date for next year's seminar is Friday, October 12, 2018 at the Desmond Hotel. Please save the date!

The
Desmond
Hotel & Conference Center