



PENNSYLVANIA CREDITORS BAR ASSOCIATION

SEMINAR & ANNUAL MEETING

FRIDAY, OCTOBER 8, 2021

8:00 AM - 3:30 PM

PACBAR.org

AGENDA

- 8:00 - 8:30 a.m. **Breakfast & Registration**
- 8:30 - 8:40 a.m. **Welcome**
Brit Suttell, Esquire, Barron & Newburger, P.C.
PACBA Board President
- 8:40 - 9:40 a.m. **Session One**
Regulation F: Are you Ready?
Joann Needleman, Esquire, Clark Hill, PLC
Member; Leader Consumer Financial Services & Regulatory Compliance Practice Group
- 9:40 - 9:45 a.m. **Break**
- 9:45 – 10:45 a.m. **Session Two**
A View from the Bench
The Hon. Alan R. Mège, Law Office of Alan Mege
- 10:45 – 11:00 a.m. **Break**
- 11:15 – 12:15 p.m. **Session Three**
A perspective from the Chapter 13 Trustee's office: Creditors' Chapter 13 bankruptcy practice in the Western District of Pennsylvania
James Warmbrodt, Esquire, Office of the Chapter 13 Trustee for the Western District of Pennsylvania
Staff Attorney
- 12:00 – 12:45 p.m. **Lunch Break**
- 12:45 – 1:45 p.m. **Session Four**
The Ins and Outs of Requesting and Presenting Remote Witnesses in the Covid-19 Era
Robert J. Polas, Esquire, Portfolio Recovery Associates, LLC
Associate Counsel Litigation Department (PA) (OH)

Bryan Polas, Esquire, Hayt, Hayt, & Landau, LLC
Associate Counsel (PA)

AGENDA

1:45 - 2:00 p.m. **Break**

2:00 - 3:00 p.m. **Session Five**

Current Trends in Debt Collection Litigation

*Matthew D. Urban, Esquire, Weltman, Weinberg & Reis, Co., L.P.A.
Shareholder*

*Thomas J. Michael, Esquire, Thomas J. Michael Associates, LLC
Principal*

3:00 – 3:30 p.m. **Vote of Board Slate**

JOIN
Today!



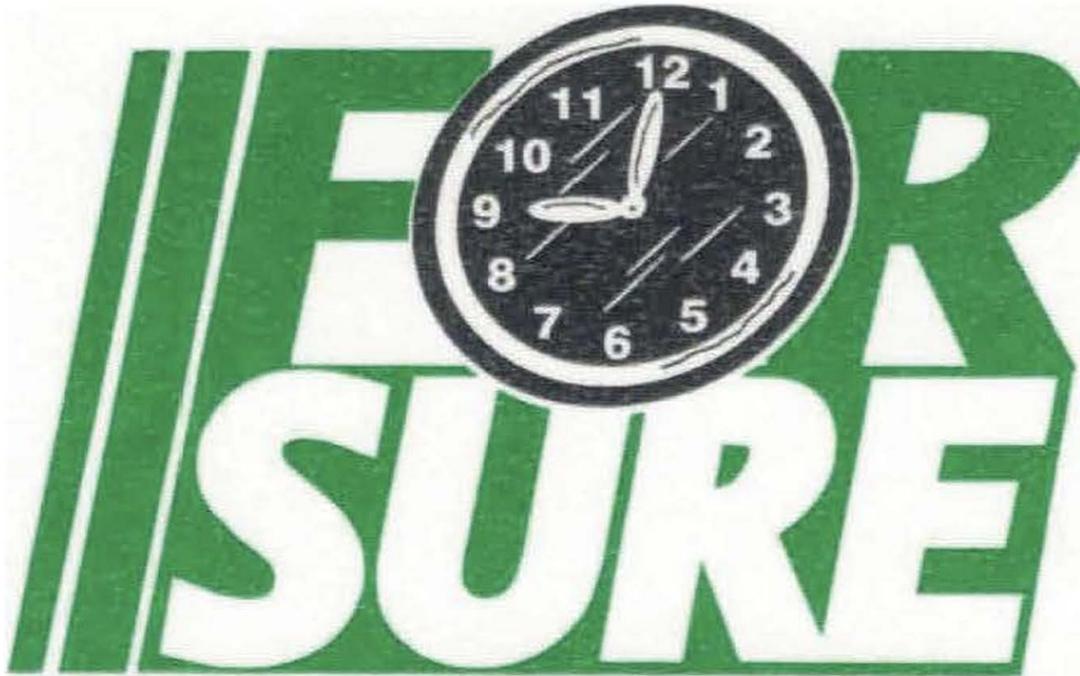
MEMBERSHIP

PACBA offers individual memberships and firm memberships. *New members are welcome to join at a discounted rate for attending the seminar.* Please contact Shawn at PACBA for more information - PACBA@corpevent.com or call 312-540-9300.

TABLE OF CONTENTS



- 2** Agenda
- 5** Sponsor Information
- 6** Speaker Biographies
- 10** Session One
Regulation F: Are you Ready?
- 62** Session Two
A View from the Bench
- 77** Session Three
A perspective from the Chapter 13 Trustee's office: Creditors'
Chapter 13 bankruptcy practice in the Western District of
Pennsylvania
- 91** Session Four
The Ins and Outs of Requesting and Presenting Remote Witnesses in
the Covid-19 Era
- 117** Session Five
Current Trends in Debt Collection Litigation
- 118** PACBA Board Member List and Slate Information
- 119** CLE Information & PACBA Office Contact Information



LEGAL SERVICES

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Where compliance, customer service and advanced technology remain the qualities that set us apart!

**PROUD
TO BE YOUR SPONSOR FOR THE
9TH STRAIGHT
YEAR**

SPEAKER BIOS

Joann Needleman, Esquire, Clark Hill, PLC

Member; Leader Consumer Financial Services Regulatory & Compliance Practice Group



Joann Needleman, Leader of the firm's Consumer Financial Services Regulatory & Compliance Practice Group, serves as a navigator to her clients seeking advice and guidance in the complex regulatory environment facing the financial services industry. She provides counsel, consultation, and litigation services to a wide array of financial institutions, law firms, credit reporting agencies, as well as venture capital firms looking to invest in the fin-tech space. A former member of the Consumer Financial Protection Bureau's (CFPB) Consumer Advisory Board. Joann is the host of the podcast "Credit Ecosystem to Go: Curbside Thought Leadership for Financial Services." She is frequently quoted in American Banker and the Wall Street Journal for her insight of the CFPB. Joann is the immediate past President of the Board of Directors of the National Creditors Bar Association (NCBA).

The Hon. Alan R. Mège, Esquire, Law Office of Alan Mege



Alan R. Mege has been the Magisterial District Judge for the Borough of Hellertown and Lower Saucon Township, Northampton County, since 2018. He is a 1994 graduate of The Pennsylvania State University and a 1997 graduate of The Dickinson School of Law. During law school, he was a judicial law clerk for the President Judge of Wayne County and after law school, a judicial law clerk for a judge in Lehigh County. After entering private practice, he worked for a few firms in the Lehigh Valley before starting his own office as well as being an Arbitrator for the Court of Common Pleas of Lehigh County, the Court of Common Pleas of Northampton

County and for the Better Business Bureau. He also serves as president of the Northampton County Magisterial District Judge Association and Vice-President of District X (Berks, Carbon, Lehigh, Monroe, Northampton, Schuylkill Counties) of the Special Court Judges Association of PA (SCJAP).

SPEAKER BIOS

***James Warmbrodt, Esquire, Office of the Chapter 13 Trustee for the Western District of Pennsylvania
Staff Attorney***



James C. Warmbrodt, Esq. is staff attorney in the Office of the Chapter 13 Trustee for the Western District of Pennsylvania. He has over 35 years of consumer bankruptcy experience representing both creditors and debtors. He has been a presenter on variety of topics impacting creditors' rights, including bankruptcy and consumer protection statutes. He is a graduate of Eastern Kentucky University and the University of Pittsburgh School of Law. He is a member of the Allegheny County Bar Association and is admitted to practice before the U.S. District Courts in the Eastern, Middle and Western Districts of Pennsylvania.

***Robert J. Polas, Esquire, Portfolio Recovery Associates, LLC
Associate Counsel Litigation Department (PA) (OH)***



Robert N. Polas Jr., Esq., is a graduate of Edinboro University of Pennsylvania (B.A., 2001) and Appalachian School of Law (J.D., 2004). Mr. Polas is admitted to practice in Pennsylvania (2005) including the Western, Middle and Eastern Federal District Courts; Ohio (2012); and District of Columbia (2018). A zealous advocate of creditors' remedies, Mr. Polas' practice focuses primarily on creditor representation, including the collection of retail and commercial accounts receivables, together with the defense of the Fair Debt Collection Practices Act (FDCPA) and other consumer protection statutes. For the past 10 years Mr. Polas has worked exclusively as Associate Counsel for Portfolio

Recovery Associates, LLC. in their In-House litigation department with responsibilities including all litigation activity, strategy, operational work flow, development and execution of initiatives supporting pre and post judgment collection activity. Mr. Polas serves as the legislation liaison for DBA International as well as Vice President of the Pennsylvania Creditor's Bar Association.

SPEAKER BIOS

Bryan Polas, Esquire, Hayt, Hayt, & Landau, LLC
Associate Counsel (PA)



Bryan J. Polas is an associate with the law firm of Hayt, Hayt, & Landau, LLC. His practice focuses on complex civil litigation and strategic counseling. Mr. Polas received his B.A. from Edinboro University and his J.D., cum laude, from the Appalachian School of Law, where he served as a staff editor for the Appalachian Natural Resources Law Review. During law school, Mr. Polas held several externship positions with the Office of Congressman Keith Rothfus and the Environmental Protection Agency in Washington, D.C. Prior to joining Hayt, Hayt, & Landau, Mr. Polas worked as an associate for Patenaude & Felix, A.P.C., and P.C. Law Associates. Mr. Polas has extensive experience practicing in both the Pennsylvania Magisterial District Justice Courts and Pennsylvania Courts of Common Pleas.

Matthew D. Urban, Esquire, Weltman, Weinberg & Reis, Co, L.P.A.
Shareholder



Matthew D. Urban, is a Shareholder who manages the Pittsburgh Local Law Office and oversees credit union work across Pennsylvania. In addition he practices in the area of Consumer Collections, focusing on a wide variety of collection and compliance matters. Matt regularly speaks on issues such FCRA compliance and the proper handling of writs of executions. Matt earned a B.A. magna cum laude in History from West Virginia University in 2000, and a J.D. from Duquesne University School of Law in 2003. He is licensed in Pennsylvania and is admitted to practice before the U.S. District Court for the Western and Middle Districts of Pennsylvania. He serves on the Board of Directors for the Pennsylvania Creditors' Bar Association.

SPEAKER BIOS

**Thomas J. Michael, Esquire, Thomas J. Michael Associates, LLC
Principal**



Tom Michael, Sr. has nearly thirty years of experience as a litigator. Mr. Michael attended the Duquesne University School of Law and joined the Pennsylvania bar in 1978 as a sole practitioner. During his legal career, Mr. Michael has been partner at two firms, Reiley & DeFalice (1988-1992) and the Law Offices of Arthur Blake (2002-2005), where he specialized in complex litigation and toxic tort. Mr. Michael founded Thomas J. Michael & Associates, LLC. in 2005 and has focused on creditors' rights ever since growth the collections appearance practice significantly since that time.

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 or call 312-540-9300

SESSION ONE

Regulation F: Are you Ready?

Joann Needleman

Member; Leader Consumer Financial Services &
Regulatory Compliance Practice Group
Clark Hill, PLC



Regulation F: Are you Ready?



Presented to: Pennsylvania Creditors Bar Association

Presented by: Joann Needleman

Presentation Date: October 8, 2021



AGENDA

- What you should be doing now.
- §1006.2 Definitions
- §1006.6 Communication in Connection with Debt Collection
 - The Use of Email & Text
 - Consumer Preference Management
- §1006.14 Harassing, Oppressive & Abusive Conduct (Call Frequency)
 - Why Consent Matters
- §1006.34 Model Validation Notice

Deadline for compliance is set.

November 30, 2021 is the confirmed deadline for compliance.

CFPB encourages industry to come into compliance earlier but safe harbors and/or rebuttable presumptions begin November 30, 2021.



• What should you be doing now?....
(no, its not too late).

Talk with Your
Highest Governing
Body of Your Firm.

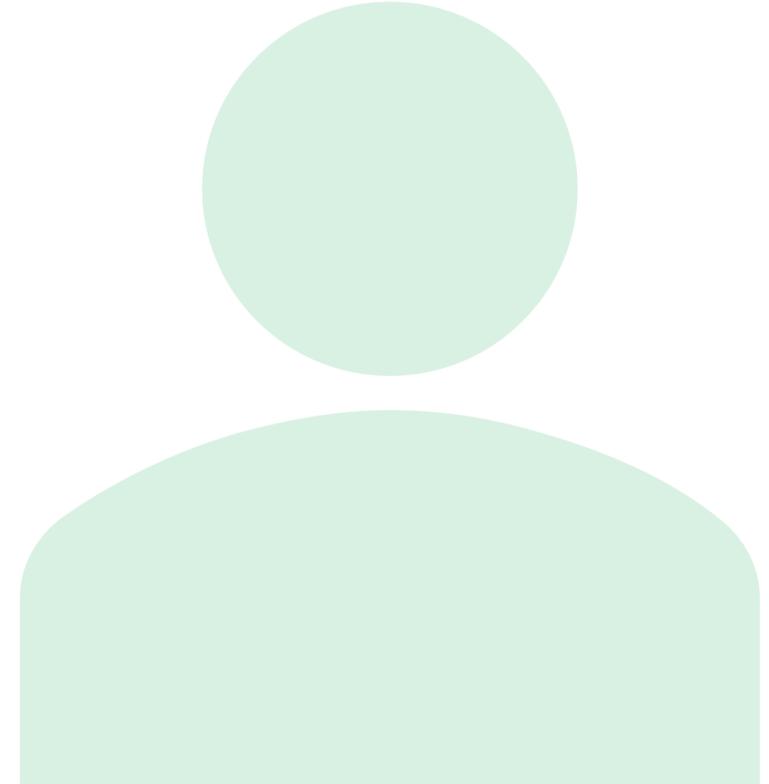
A green street sign with white text that reads "Board Of Directors". The sign is mounted on a metal pole and is set against a background of a blue sky with white clouds. The sign is slightly tilted and has a white border.

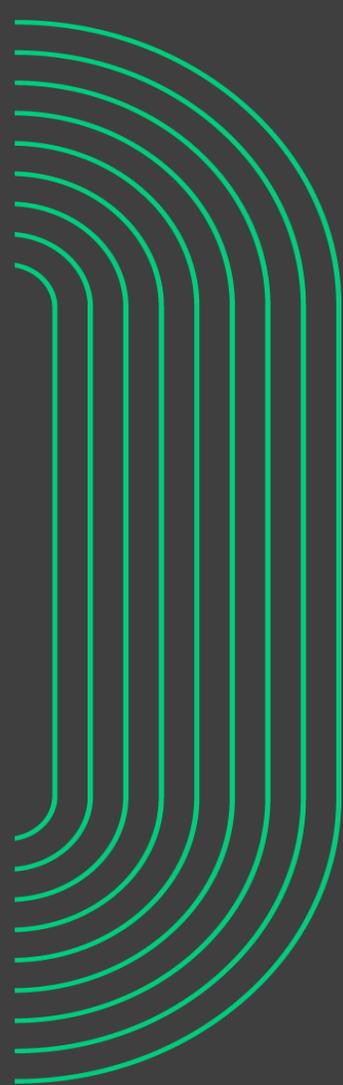
Speak with
your
Technology
Vendors





Update Consumer Information





Decisions about the Model Validation Notice



Will you Use the
“Limited Content
Message?”



The logo for Equifax, featuring the word "EQUIFAX" in a bold, red, sans-serif font with a registered trademark symbol.The logo for TransUnion, featuring a stylized grid of dots in shades of blue and green to the left of the word "TransUnion" in a blue, sans-serif font.The logo for Experian, featuring a stylized grid of dots in shades of blue and red to the left of the word "Experian" in a blue, sans-serif font.

Review Credit Reporting Policies



Staff Training and Assessments



Review Document Retention Program

Are you Compliant
with Call Frequency
Requirements and
Alternative Methods
of Communication?





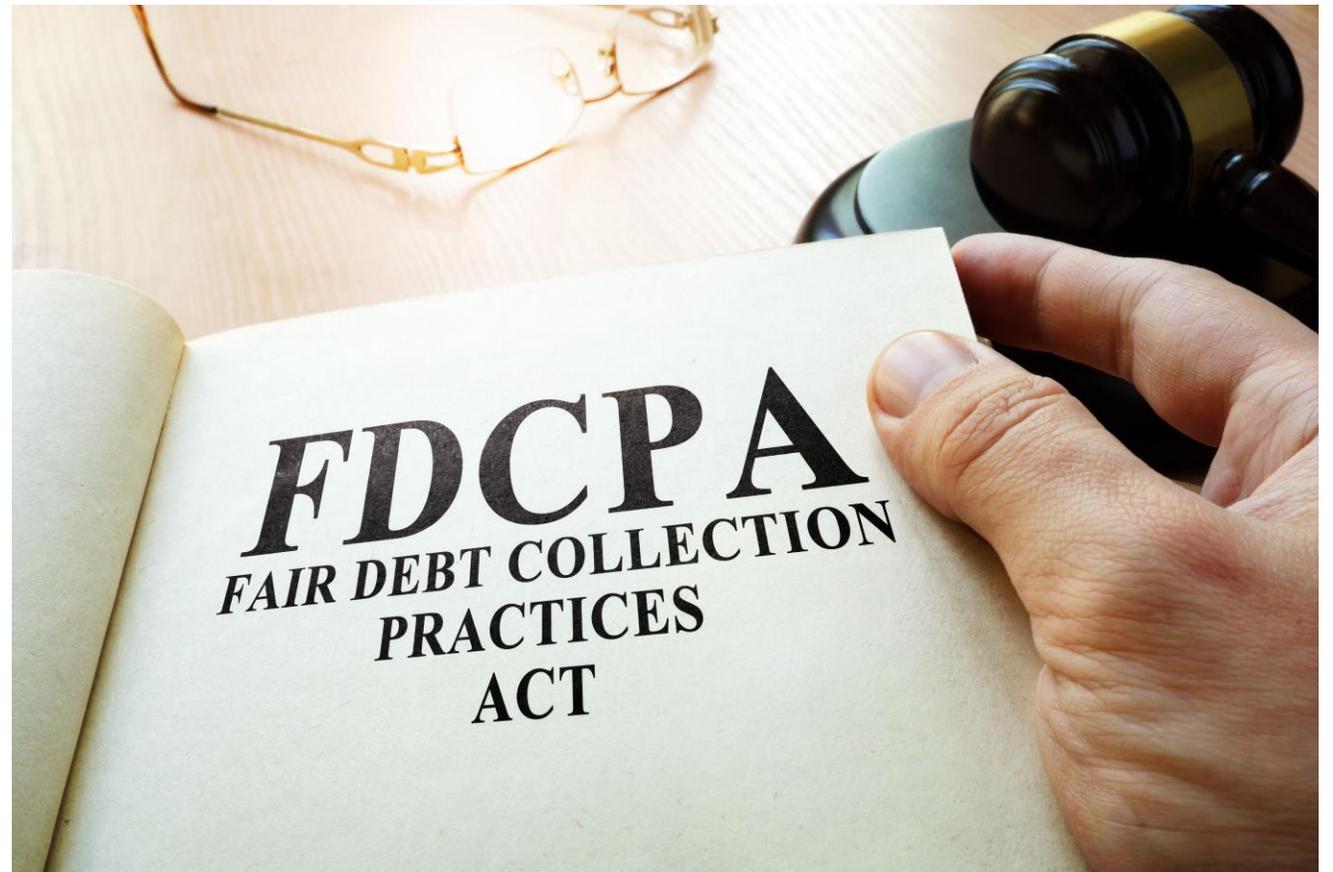
**Meet with your
Clients**

THE GOOD, THE BAD AND THE UGLY...



This Photo by Unknown Author is licensed under [CC BY-SA-NC](#)

- § 1006.2 - Definitions



A decorative graphic on the left side of the slide, consisting of several concentric, overlapping circles in various shades of green, creating a soft, glowing effect.

§ 1006.2(b) Attempt to Communicate

- Any act to initiate a communication or other contact about a debt through any medium
- Limited Content Message (LCM) is an attempted communication but it is not a communication
- **[Important note: although industry had requested it, the CFPB did not make the LCM formula for communicating available for email or text – only voicemails.]**
- Attempts apply to electronic communication, but not counted as part of call frequency.
- Guidance:
- **Ringling phone is an attempt to connect.**
- **Attempts can still be the basis of an FDCPA claims under §1692d, e or f.**

§ 1006.2(e) Consumer

- (e) Consumer means any natural person, whether living or deceased, obligated or allegedly obligated to pay any debt. For purposes of § 1006.6, the term “consumer” includes the persons described in § 1006.6(a).
- § 1006.6(e) – includes:
 - (1) a consumer’s spouse;
 - (2) a consumer’s parent if the consumer is a minor;
 - (3) a consumer’s legal guardian;
 - (4) the executor or administrator of the consumer’s estate if the consumer is deceased; and
 - (5) a confirmed successor in interest for as defined in Reg Z & X.

§ 1006.2(j) Limited Content Message

- A voice mail message that includes all required content and option content:
- **Required content:**
 - Business name (as long as the name does not suggest in debt collection business);
 - Request consumer reply to message;
 - The name of one or more natural persons to whom the consumer can reply at office of the debt collector; and
 - The telephone number to respond.
- **Optional Content:**
 - A salutation;
 - Date and time of the message;
 - Suggested dates and times for consumer to reply;
 - A statement if the consumer replies, the consumer can speak to any of the company's representatives or associates.
- *Unknown: If state law permits "aliases" for your "natural persons" could those aliases be the names left in the LCM.*

- § 1006.6 Communication in Connection with Debt Collection



§ 1006.6(d)(4) & (5) – Email and Texting are Permitted under Certain Restrictions

****For your purposes****

- You may email and text a consumer if they email or text you about the debt you are collecting or they verbally consent over the phone
- **RECOMMENDATION:** With every email or text response, confirm that you have consent to continue to email or text in the future.
- **RECOMMENDATION:** Refresh the training of any consumer facing employee to listen for (or if processing mail – read for) any communication preferences or revocations or changes of them.
- **EVERY EMAIL AND TEXT MUST INCLUDE AN OPT-OUT OR UNSUBSCRIBE AND YOU MUST ACT ON THAT REQUEST IMMEDIATELY.**

It's all about Preference Management

- Important: Contacting consumers at unusual places & times has taken on a whole new meaning.



Consumers' Communication Options under Reg F



Paper letters in snail mail



Telephone calls to mobile or land lines, including voicemails.



Electronic mail (email)



Rich content messages or SMS text messages



Live chats



Social media messaging (provided third parties cannot see/view)



IVR/artificial voice and IA/Machine bots

SUGGESTED GUIDANCE AND CONSIDERATIONS

- Consumer not required to use specific words or phrases to put collector on notice of inconvenience
- Collector may ask follow up questions to clarify consumer expression
- If consumer initiates a communication at a time that they previously said was inconvenient, the collector may contact the consumer once to confirm
- Email address and telephone numbers are not associated with “places” for purposes of determining inconvenience places.
- A visit to a debt collector’s website at the time/place restriction does not violate the rule, but inconvenience designation still applies.



SUGGESTED GUIDANCE AND CONSIDERATIONS

- Inconvenience restrictions apply to electronic communications as well as phone calls.
- For electronic communications, convenience is measured at time sent, not when scheduled or received.
- Email address and telephone numbers are not associated with “places” for purposes of determining inconvenience places.

PREFERRED

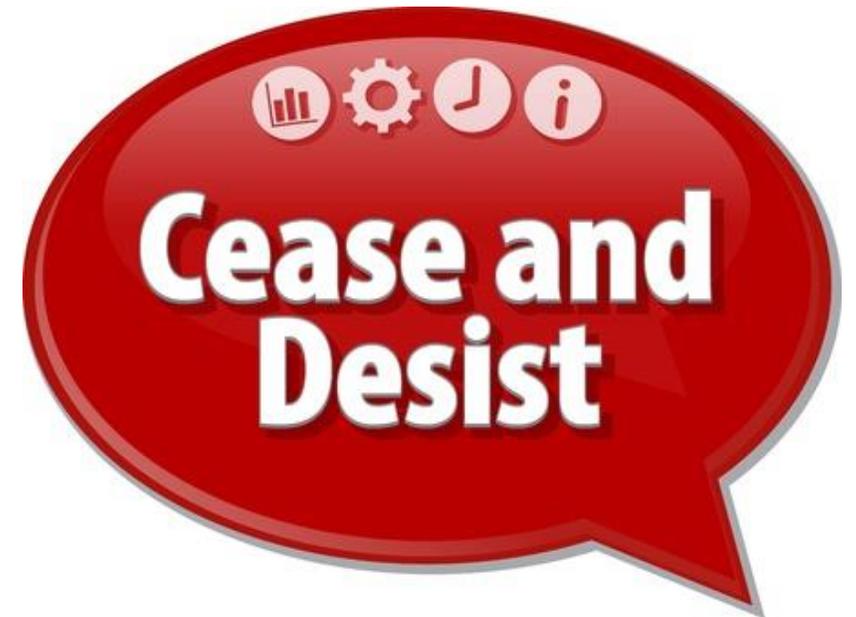
SUGGESTED GUIDANCE AND CONSIDERATIONS

- Collector may ask consumer follow up questions regarding the employer's prohibition or limitations.
- Prohibition includes using communication channels “associated with the POE” i.e. mail, landline phone, etc.
- If collector knows consumer works from 9am – 5pm then calling cell number during that time when collector knows consumer's employer does not allow personal calls would violate the rule.
- May not rely on consent give to creditor, but charged with creditor's knowledge if consumer prohibits communication at work.



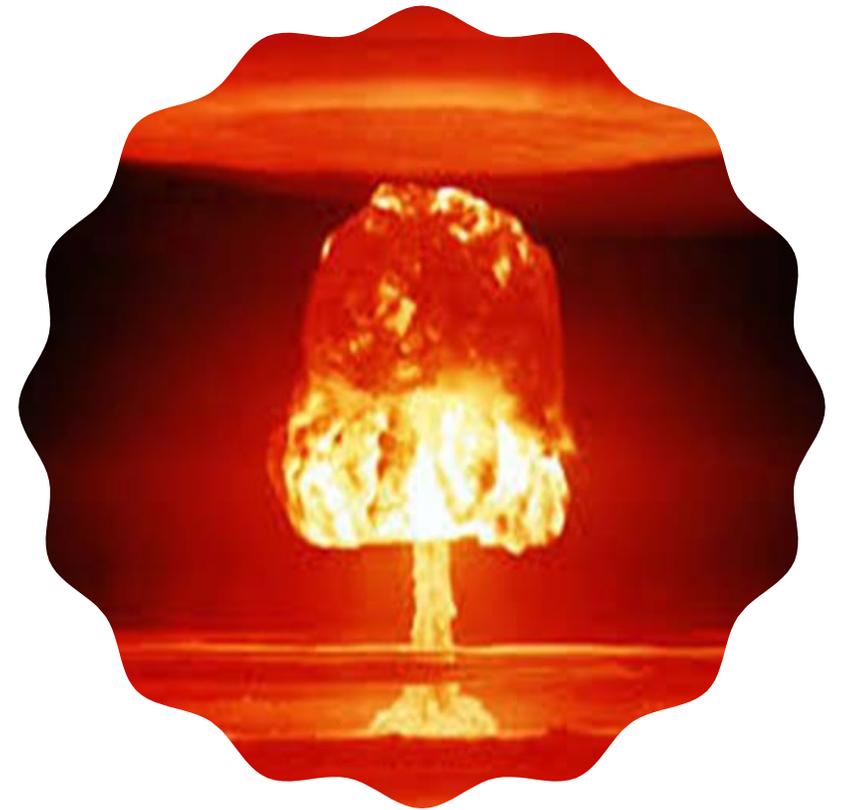
SUGGESTED GUIDANCE AND CONSIDERATIONS

- Oral request to “stop calling” is interpreted to be a preference that the consumer does not want telephone calls but it does not prohibit other forms of communication unless the consumer so states in writing.
- However, email or text satisfies the writing requirement for a C&D for that debt. (BUT BEWARE, OF OPT – OUT.



SUGGESTED GUIDANCE AND CONSIDERATIONS

- No “processing time” grace period dictated by rule.
- **Opt-out applies to all debts being collected by the collector, so broader than a C&D.**
- Opt-out is specific to the particular email address/phone number.
- Opt-out is not a general cease communication or blanket electronic communication Opt-out (unless specific language otherwise) for other numbers or emails.
- Opt-out is not an Opt-out for phone calls to that telephone number (because phone calls are not electronic communications)
- Can respond one-time in reply to opt-out as long as no debt information.



A hand is shown holding a variety of colorful icons related to communication and business. The icons include a dollar sign, a Euro symbol, a speech bubble, a green telephone handset, a pink envelope, a pink piggy bank, a document with a flowchart, a red heart, a glowing lightbulb, a globe, a blue briefcase, and several gears. The word "COMMUNICATION" is written in large, blue, outlined letters across the center of the image.

COMMUNICATION

- § 1006.14 - Communication in Connection with Debt Collection

§1006.14(b)(2) & (3) – Frequency Limits

Debt collector violates § 1692d(5) by placing a telephone call to a particular person in connection with the collection of a particular debt either:

- More than 7 times within 7 consecutive days; or
- Within a period of 7 consecutive days after having had a telephone conversation with the person in connection with the collection of such debt.

Exclusions:

- Consumer directly consents and collector calls within 7 days of the consent;
- Wrong number or call did not connect (but watch voice mail drop and ringless voicemail); and
- Persons that consumer gave consent to speak with.
- Rebuttable Presumptions
- All communications come into play

§1006.14(h) – More on Frequency Limits

- A debt collector must not communicate or attempt to communicate with a person through a medium of communication if the person has requested that the debt collector not use that medium.
- Exceptions:
 - If person opts-out, you can send one response confirming opt-out but no information about the debt.
 - If person initiates a communication through a medium that person had requested debt collector not use, can respond one time to that person using the same medium.
 - If otherwise required by law... (we do not see instances in debt collection where this consumer preference would be overridden)



- § 1006.34 - Model Validation Notice



Current Validation Notice Requirements under Section §1692g of the FDCPA

- Today, the FDCPA requires debt collectors to initiate debt collection by sending a “g” notice to consumers – or to subsequently send the notice within five (5) days after that initial communication.
- The “g” notice, which historically has parroted the language of the FDCPA, includes at a minimum this information:
 - The purpose of the communication (i.e., the Mini Miranda)
 - The name of the creditor to whom the debt is owed,
 - A consumer’s right to dispute and request verification of the debt and other information about the debt, and
 - The **amount of the debt**.

§1006.34 of Regulation F: Notice for Validation of Debts

- §1006.34(a) – sets forth general requirements of the validation notice;
- §1006.34(b) – sets forth definitions for purposes of the §1006.34(a);
- §1006.34(c) – sets forth the validation information that must be included;
- §1006.34(d) – sets forth the general requirement that the validation information be clear and conspicuous, provides a safe harbor for the use of the Model Form B-1, specified variation of the model notices or substantially similar form and optional disclosures

Requirement Regarding Amount of the Debt

- The Bureau interprets the phrase “amount of the debt” to mean that debt collectors must disclose the amount of the debt as of a particular “itemization date.”
- The Bureau believes these dates relate to notable events in the past account history on which a consumer may typically have received information from the creditor
- The Bureau defines itemization date as one of five reference dates for which a debt collector can ascertain the amount of the debt.
- The reference or “itemization dates” are as follows:
 - The last statement date,
 - The charge-off date,
 - The last payment date,
 - The transaction date, and
 - The judgment date (if applicable).

Itemization Date Options



Last statement date (date of last statement or invoice provided to a consumer by a creditor)



Charge off date (the date a creditor per its accounting practices “charged off” a debt)



Last payment date (the last date a payment was applied to an account)



Transaction Date (the transaction date is the date that a creditor provided, or made available, a good or service to a consumer)



Date of court judgment (the date of a final court judgment)



Importantly, in addition to providing a balance due as of the itemization date, we are now required to provide an itemization that reflects interest, fees, payments and credits, as applicable, since the itemization date so that it reconciles to the current amount due.

Validation Period and Itemization of the Debt:

- End date is 30 days plus 5 business days. Suggestion is to apply same for written and electronic communications.
- Calculated from date sent regardless if debt collector learns notice was received on a different date.
- Important accountability opportunities: if an outside service is used to send letters or electronic letters – (a) date letters are actually sent (recognizing any service standards and turnaround times an outside letter vendor may have); and (b) assure return mail communications are effective and processed timely
- Itemization can be on a separate page if referenced effectively on face of letter



“Safe Harbor” Guidance

- Use of the model form will only provide a safe harbor for requirements of §1006.34(c) (validation information) and §1006.34(d)(1)(clear and conspicuous).
- There is no mandate to use the model form, but any alternative form must be **substantially similar** to the model form.
- Use of the model form does not protect a debt collector from claims of false and misleading representations or unfair practices found in §1692e or §1692f of the FDCPA.
- Use of the model form “as is” does not provide a safe harbor under state laws
- **CAUTION! If a debt collector uses a different form, they should expect challenges to the term “substantially similar”.**
- Optional disclosures provide flexibility and greater opportunities for electronic communications.
- Clear and conspicuous is defined, stay consistent with font size; always opt for bigger over smaller



Itemization Date
1006.34(b)(3)

North South Group
P.O. Box 123456
Pasadena, CA 91111-2222
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.example.com

To: Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

Reference: 584-345

North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2017, you owed:		\$ 2,234.56
Between January 2, 2017 and today:		
You were charged this amount in interest:	+ \$	75.00
You were charged this amount in fees:	+ \$	25.00
You paid or were credited this amount toward the debt:	- \$	50.00
Total amount of the debt now:		\$ 2,284.56

How can you dispute the debt?

- Call or write to us by August 28, 2020, to dispute all or part of the debt. If you do not, we will assume that our information is correct.
- If you write to us by August 28, 2020, we must stop collection on any amount you dispute until we send you information that shows you owe the debt. You may use the form below or write to us without the form. You may also include supporting documents. We accept disputes electronically at www.example.com/dispute.

Validation End Date
1006.34(b)(5)

What else can you do?

- Write to ask for the name and address of the original creditor, if different from the current creditor. If you write by August 28, 2020, we must stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at www.example.com/request.
- Go to www.cfpb.gov/debt-collection to learn more about your rights under federal law. For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

Notice: See reverse side for important information.

of

Mail this form to:
North South Group
P.O. Box 123456
Pasadena, CA 91111-2222

Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

How do you want to respond?

Check all that apply:

- I want to dispute the debt because I think:
 - This is not my debt.
 - The amount is wrong.
 - Other (please describe on reverse or attach additional information).
- I want you to send me the name and address of the original creditor.
- I enclosed this amount: \$

Make your check payable to North South Group. Include the reference number 584-345.

- Quiero este formulario en español.





**Debt Collector Disclosure
1006.34(c)(1)**

North South Group
P.O. Box 123456
Pasadena, CA 91111-2222
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.example.com

To: Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

Reference: 584-345

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Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2017, you owed:	\$ 2,234.56
Between January 2, 2017 and today:	
You were charged this amount in interest:	+ \$ 75.00
You were charged this amount in fees:	+ \$ 25.00
You paid or were credited this amount toward the debt:	- \$ 50.00
Total amount of the debt now:	\$ 2,284.56

How can you dispute the debt?

- **Call or write to us by August 28, 2020, to dispute all or part of the debt.** If you do not, we will assume that our information is correct.
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- **Go to www.cfpb.gov/debt-collection to learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

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g

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- I want to dispute the debt because I think:**
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- I want you to send me the name and address of the original creditor.**
- I enclosed this amount:** \$

Make your check payable to *North South Group*. Include the reference number 584-345.

- Quiero este formulario en español.**





Information about the Debt 1006.34(c)(2)

North South Group
P.O. Box 123456
Pasadena, CA 91111-2222

(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.example.com

To: Person A
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You were charged this amount in fees:	+ \$ 25.00
You paid or were credited this amount toward the debt:	- \$ 50.00
Total amount of the debt now:	\$ 2,284.56

How can you dispute the debt?

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- Contact us about your payment options.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

Notice: See reverse side for important information.



Mail this form to:
North South Group
P.O. Box 123456
Pasadena, CA 91111-2222

Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

How do you want to respond?

Check all that apply:

- I want to dispute the debt because I think:
 - This is not my debt.
 - The amount is wrong.
 - Other (please describe on reverse or attach additional information).
- I want you to send me the name and address of the original creditor.
- I enclosed this amount: \$

Make your check payable to North South Group. Include the reference number 584-345.

- Quiero este formulario en español.





North South Group
 P.O. Box 123456
 Pasadena, CA 91111-2222
 (800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.example.com

To: Person A
 2323 Park Street
 Apartment 342
 Bethesda, MD 20815
 Reference: 584-345

North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2017, you owed:		\$ 2,234.56
Between January 2, 2017 and today:		
You were charged this amount in interest:	+ \$	75.00
You were charged this amount in fees:	+ \$	25.00
You paid or were credited this amount toward the debt:	- \$	50.00
Total amount of the debt now:		\$ 2,284.56

**Information about
 Consumer Protections
 1006.34(c)(3)**



Notice: See reverse side for important information.



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 Apartment 342
 Bethesda, MD 20815





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You were charged this amount in fees:	+ \$ 25.00
You paid or were credited this amount toward the debt:	- \$ 50.00
Total amount of the debt now:	\$ 2,284.56

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Consumer Response Information 1006.34(c)(4)

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Optional Disclosures
1006.34(d)(3)(i)-(iii)

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**Optional Disclosures
1006.34(d)(3)(v)**

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(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
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Website & email information and explanation of how to dispute electronically

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Person A
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Quiero este formulario en español.



Spanish language translation disclosure

CFPB under Rohit Chopra

Rohit Chopra, CFPB director – profile



COMMISSIONER, FEDERAL TRADE
COMMISSION
2018-2021

SPECIAL ADVISOR TO THE
SECRETARY, DEPARTMENT OF
EDUCATION
2016

HOME TOWN
Plainfield, NJ

BIRTH DATE
January 30th, 1982

EDUCATION
Harvard University, BA, 2004
University of Pennsylvania, MBA,
2009

BIOGRAPHY

President Biden nominated Chopra to lead the CFPB on Jan. 18th, 2021. In a 50-48 party-line vote, the Senate confirmed his appointment on Sep. 30th, 2021. Chopra is a career regulator who helped build the CFPB alongside Sen. Elizabeth Warren (D-MA); he's vocal on student debt issues and supports a broad range of government intervention in the financial, labor, and general consumer markets.

- Served as an Assistant Director and Student Loan Ombudsman from the Consumer Financial Protection Bureau's (CFPB) I
- Special Advisor to the Secretary of Education in 2016
- FTC Commissioner in 2018
 - Used his role on the FTC to advocate for consumer and employee protections for personal data;
 - supported the FTC's inquiries into Uber's employee data breaches,
 - Chopra called for the CFPB to accelerate the timeframe of the rights extended to delinquent borrowers, giving them protections related to delinquency penalties upon the late payment rather than after it was sent to collections.

Chopra's priorities for the CFPB

1 Address the financial impact of the pandemic

- Dave Uejio, who served as acting director of the agency from Jan. 2021 until Chopra's confirmation, has tried to ensure that people can stay in their homes
- As well as housing, Chopra will focus on the impact of the pandemic on auto finance, small-dollar lending, small business lending, and student finance markets

2 Regulate banking practices

- Chopra wants to use new digital investigate methods to regulate fintech
- He wants to ensure oversight on how finance companies secure personal data
- The new director also wants to stop banks from using online behavioral advertising in order to manipulate customers

3 Enforce fair lending

- Chopra has signaled that he wants to build on Uejio's fair lending efforts
- Under Chopra, the CFPB will explore the impact of policies that may appear neutral but produce unequal outcomes
- As FTC commissioner, Chopra praised such analysis, calling it "a critical tool to uncover hidden forms of discrimination"

4 Prevention is better than cure

- Chopra's first spell at the CFPB informed his rejection of "capture and capitulation" regulatory culture that sought to steer enforcement rather than prevention
- He cites the creation of the CFPB and the passage of the Dodd-Frank Wall Street reforms as a chance for government to move into preventative regulations

Contacts

Joann Needleman, Esq.

Member & Leader

- Consumer Financial Services
Regulatory & Compliance Group

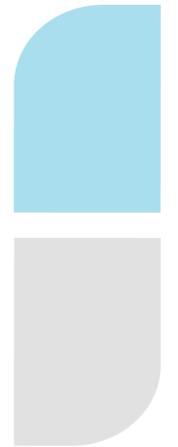
jneedleman@clarkhill.com





Legal Disclaimer

This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.



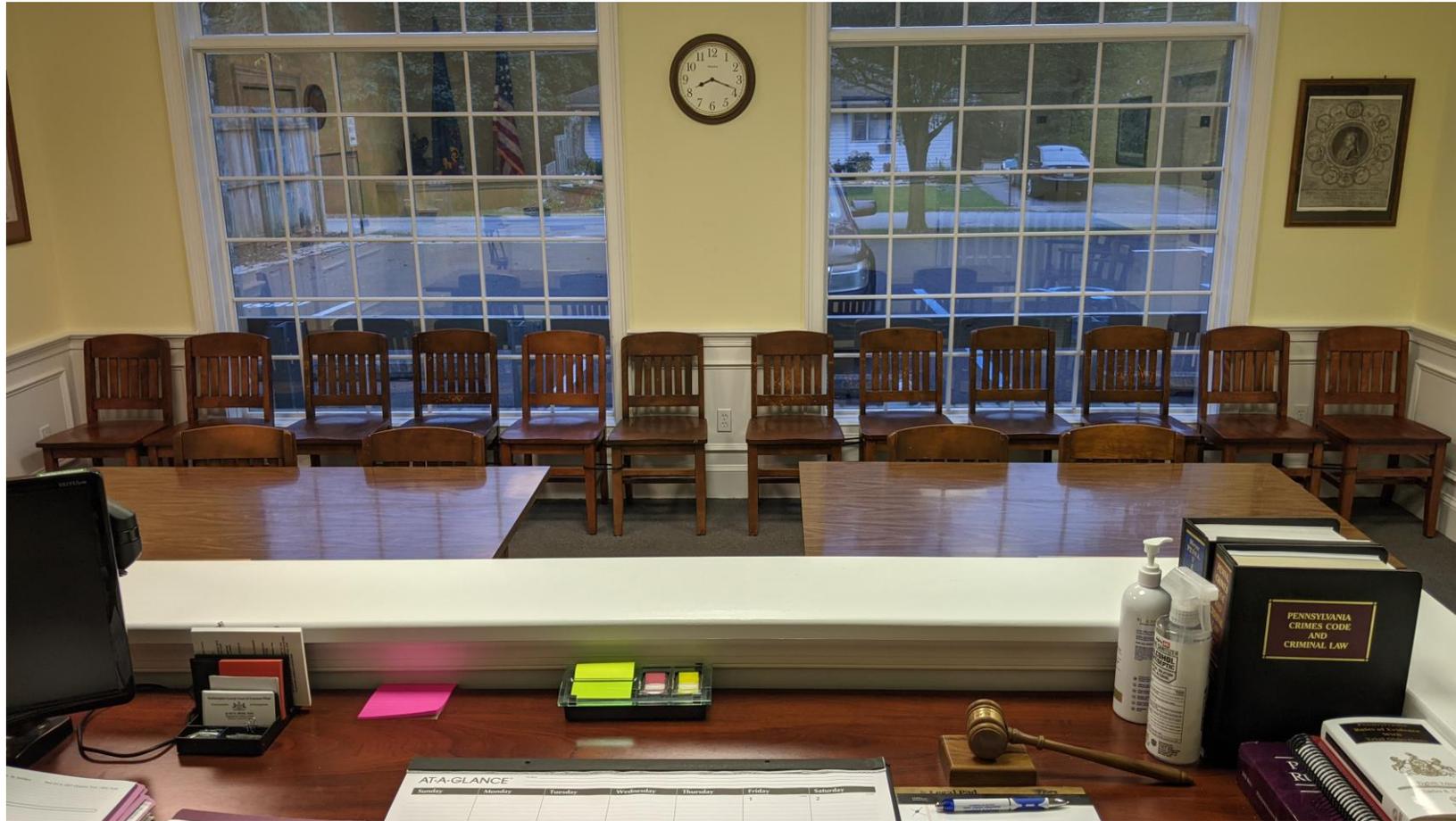
SESSION TWO

A View from the Bench

The Hon. Alan R. Mège

Law Office of Alan Mège





A VIEW FROM THE BENCH

THE PENNSYLVANIA
CREDITORS BAR ASSN.
FALL SEMINAR AND
ANNUAL MEETING
OCTOBER 8, 2021

LEGAL DISCLAIMER

This information is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to assure this information is up to date. However, it is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel. And of course, all characters and events mentioned in the presentation, even those allegedly based on real people and events, are entirely fictional. And finally, the opinion of this judge may not represent the opinion of any other judge, AOPC, or anyone else, human or alien.

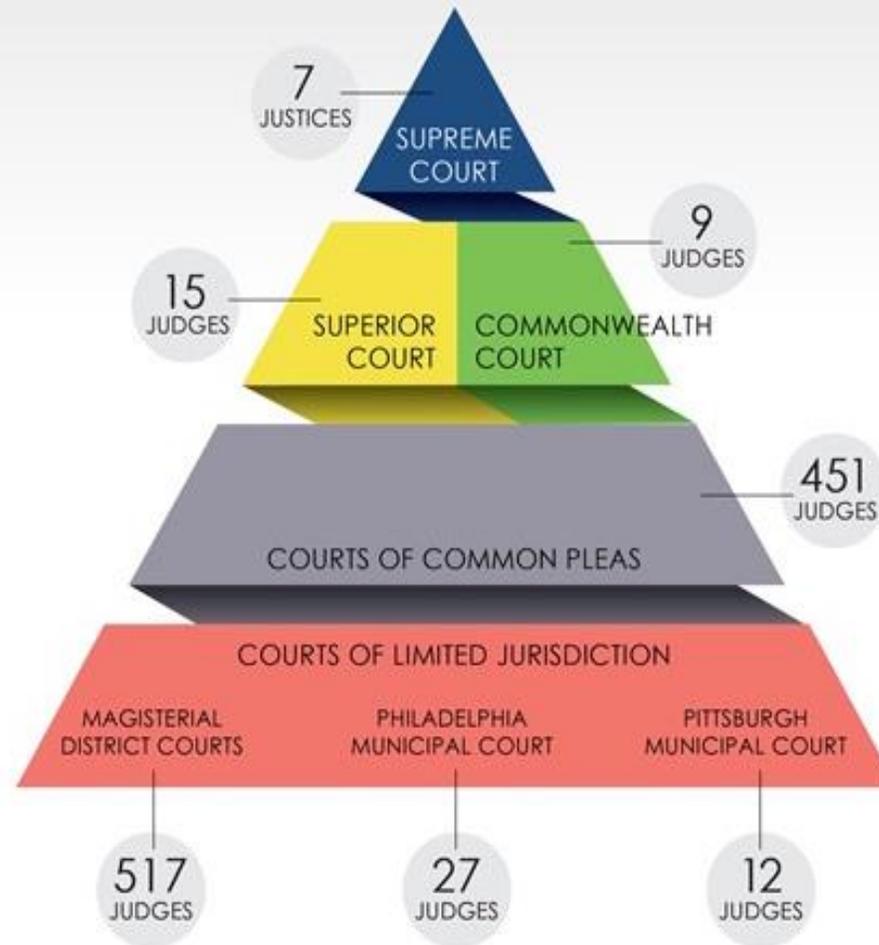
OVERVIEW

- 1. History
- 2. Unified Judicial System
- 3. District Court Practice
- 4. Ethic Issues
- 5. Comments / Suggestions
- 6. Things you can do

HISTORICAL BACKGROUND: 1682 – 2021

- Justices of the Peace in England
- Colonial America
- Constitutional changes
- Current system

UNIFIED JUDICIAL SYSTEM



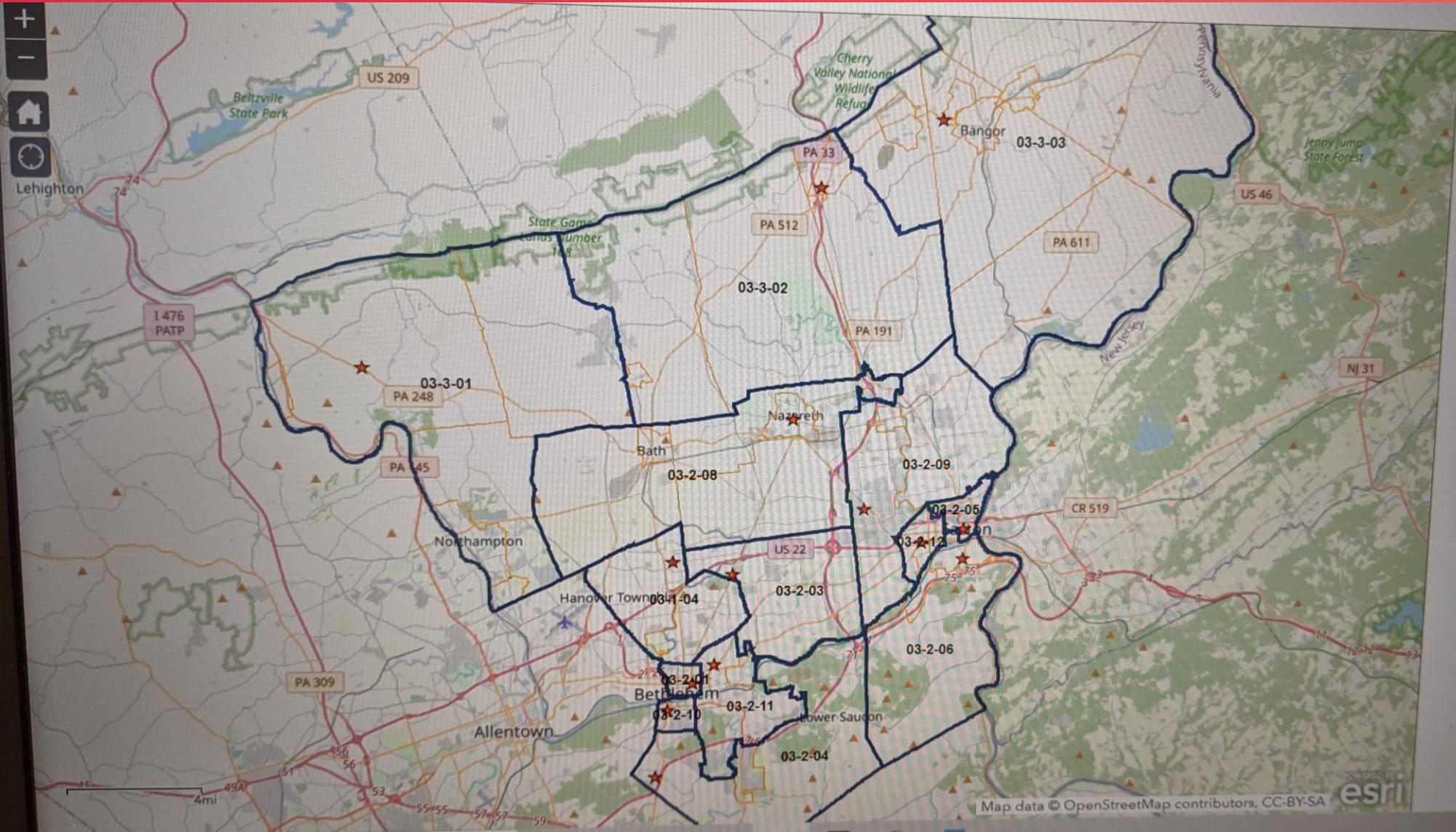
- 1968 Constitutional Convention
- Caseload
- “Unified”
- County, Court, Judge



DISTRICT COURT PRACTICE

- Jurisdiction
- Venue
- Forms
- Procedure

NB: As of 10/01/2021, Citation to rules is now "Pa.R.Civ.P.M.D.J."



Magisterial District Lookup

Search for an address or locate on map

ArcGIS World Geocoding Service

Type here to search



2:23 PM
10/5/20

 Confidential Information Form

 Confidential Document Form

Civil Complaint

 Civil Complaint

 Authorization Of Representative

 Guardian's Notice of Intent to Represent
Minor Party

 Service Members Civil Relief Affidavit

Note: The civil complaint form is for use in filing small claims. This form is also for use by tenants when filing complaints about landlords. You will need one copy of the civil complaint with original signature for the magisterial district judge. You will be charged filing costs and service costs when the complaint is filed at the district court. No changes may be made to the civil complaint form either in content or format.

Request for Order of Execution

 Request for Order of Execution

ETHICAL CONSIDERATION



- Rules of Professional Conduct

3.1, 3.2, 3.3, 3.4 , 3.5, 4.1, 4.3, 8.2, etc.

- Rules of Civil Procedure
- FDCPA / FCUEA / UDAP
- Common Sense
- Common Issues

COMMENTS / SUGGESTIONS

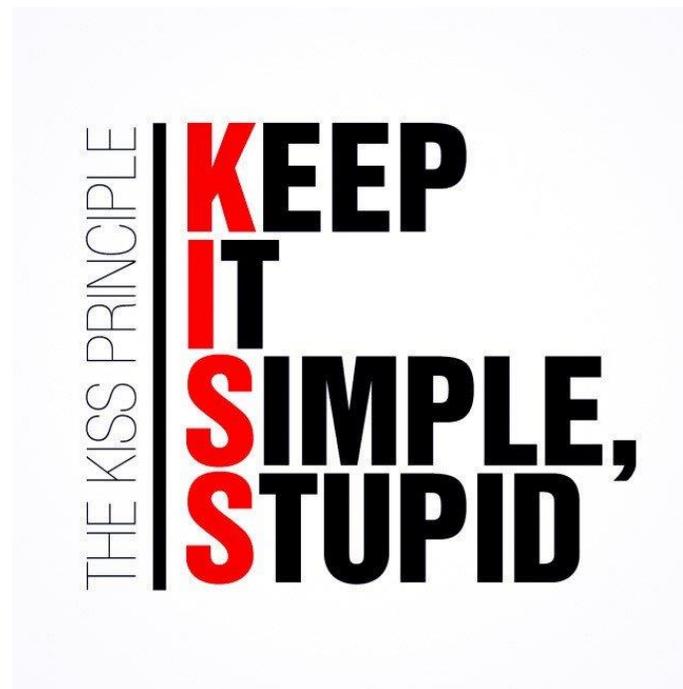
BRACE YOURSELF



THE PEANUT GALLERY IS HERE

memegenerator.net

- Be Prepared
- Be Prepared
- And Be Prepared
- Technology
- Copies
- Case Law
- Forms
- Security



THINGS YOU CAN DO

- SCJAP.org
- Education
- Committees
- AOPC

SESSION THREE

A perspective from the Chapter 13 Trustee's office: Creditors' Chapter 13 bankruptcy practice in the Western District of Pennsylvania

James Warmbrodt

Office of the Chapter 13 Trustee for the Western
District of Pennsylvania



Chapter 13 practice in the Western District of Pennsylvania

James C. Warmbrodt
Office of the Chapter 13 Trustee
600 Grant Street
Suite 3250 US Steel Tower
Pittsburgh, PA 15219

Chapter 13 Case filings

- 2021 652 (through 8/21)
- 2020 1,313
- 2019 2,339

Covid update

Plan confirmation

Proofs of Claim

Post-petition fee notices

FRBP 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence

(c) Notice of fees, expenses, and charges. The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.

Notice of Final Cure

Interim Notice of Cure

FRBP 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence

(g) Response to notice of final cure payment. Within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments **consistent with § 1322(b)(5) of the Code.** The statement shall itemize the required cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of claim and is not subject to Rule 3001(f).

Motions for relief from the
automatic stay

**W.PA.LBR 9013-3 MOTIONS SEEKING: (1) RELIEF
FROM THE AUTOMATIC STAY; (2) LIEN
AVOIDANCE; (3) ABANDONMENT; (4) SALE
APPROVAL; AND/OR (5) TO EXTEND/IMPOSE THE
AUTOMATIC STAY**

(a) All motions seeking relief from the automatic stay shall plead the following with particularity:

...

(3) the value of any affected property and the source of the valuation;

...

(6) the current balance (principal, interest, interest rate, charges, costs, fees, and accruing daily interest);

Direct Payments on secured claims

Transfer/Assignment of Claims

Forbearance

Loss Mitigation Program

Thank you!

Jwarmbrodt@chapter13trusteedpa.com

SESSION FOUR

The Ins and Outs of Requesting and Presenting Remote Witnesses in the Covid-19 Era

Robert J. Polas

Associate Counsel Litigation Department (PA) (OH)
Portfolio Recovery Associates, LLC

Bryan Polas

Associate Counsel (PA)
Hayt, Hayt, & Landau, LLC



Winning Contested Collection Cases in Allegheny County and The Magisterial District Courts

By
Robert N. Polas Jr
&
Bryan J. Polas

Mock Trial Fact Pattern

- ▶ Plaintiff, third party debt buyer, files a complaint alleging that Defendant owes an unpaid balance of \$1,000.00 on a credit card account purchased by Plaintiff from an original creditor.
- ▶ Defendant does not appear at the hearing, but Defendant is represented at the hearing by Josh Ward. Defendant does not appear. Notice to Attend was sent to the Defendant. Plaintiff filed 1305 documents and will have a witness appear via advanced communication technology. A 50% settlement offer was relayed to counsel and declined prior to the hearing.
- ▶ Case Facts: Account opened on December 25, 2010. Last payment made on November 23, 2018. Account purchased by Plaintiff on July 4, 2019. Complaint filed on July 4, 2020.
- ▶ Using a Witness and Rule 1305, Plaintiff wants to introduce the following documents into evidence: (1) bill of sale; (2) affidavit of sale; (3) data sheet (i.e., information containing Defendant's personal and account information); (4) cardmember agreement; and (5) 12 credit card statements that do not date back to a \$0.00 balance but show numerous payments and purchases made on account.

The case is going to Arbitration in Allegheny County. What do YOU need to Win?

Properly filed
1305 documents.

Notice to Attend
to Defendant
(discretionary)

A witness request
form to Allegheny
County.

Rule 1305 - Conduct of Hearing. Evidence

- ▶ **(a)** Except as prescribed by this rule, the rules of evidence shall be followed in all hearings before arbitrators. Rulings on objections to evidence or on other issues which arise during the hearing shall be made by a majority of the board.
- ▶ **(b)(1)** The following documents shall be admitted into evidence if at least twenty days' notice of the intention to offer them was given to every other party accompanied by a copy of each document to be offered:
 - ▶ **(i)** Bills or other documents evidencing charges incurred;
 - ▶ **(ii)** records of businesses, government departments, agencies or offices, subject to statutory restrictions, provided that these are records which would otherwise be admissible if authenticated by a custodian of records;
 - ▶ **(iii)** records and reports of hospitals and licensed health care providers;
 - ▶ **(iv)** expert reports and descriptions of expert qualifications;
 - ▶ **(v)** written estimates of value, damage to, cost of repair of or loss of property; and
 - ▶ **(vi)** reports of rate of earnings and time lost from work or lost compensation prepared by an employer.

1. Plaintiff is the current owner of, and successor to, the obligation sued upon, and was assigned all the rights, title and interest to Account Number [REDACTED] BANK account [REDACTED] (hereinafter "the account").

3. As a result of Plaintiff's purchase of the account, MCM acquired certain account records from the seller and incorporated those records into MCM's own permanent business records. Those acquired and incorporated records are kept by MCM in the regular course of business on behalf of Plaintiff.

4. The acquired and incorporated records are treated as trustworthy and accurate, and are relied upon by Plaintiff and MCM in purchasing and servicing this account because the original creditor was required to keep careful records of the account at issue in this case as required by law and/or suffer business loss.

5. I have access to and have reviewed the Pertinent Records (including pertinent electronic records) concerning the account maintained by MCM. The electronic records reviewed consist of data acquired from the seller when Plaintiff purchased the account, together with records generated by MCM in connection with servicing the account since the day the account was purchased by Plaintiff.

On or about [REDACTED], the account was sold from SY [REDACTED] to Plaintiff and its legal selling entity Synchrony Bank formerly known as GE Capital Retail Bank.

AFFIDAVIT OF KRISTI LANOUE - 1

BILL OF SALE AND ASSIGNMENT FROM FNBM, LLC TO PURCHASER

FNBM, LLC ("Seller"), for good and valuable consideration, the receipt of which is hereby acknowledged hereby transfers, sells, assigns, conveys, grants and delivers to Sherman Originator III LLC ("Purchaser"), without recourse, representation or warranty, all of its right, title and interest in and to (i) the Receivables Identified on an account level basis on the data file titled "CreditOne_Sherman_672015.xlsx" attached to this Agreement (the "Released Receivables"), and (ii) all claims arising out of or relating to each Released Receivable. Purchaser hereby agrees that it will not institute against Seller, or join any person in instituting against Seller, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding, or any other proceeding under any federal or state bankruptcy or similar law, until one year and one day after the date, following the Termination Date with respect to all Lenders, on which the Aggregate Unpaid has been paid in full.

Capitalized definitional terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Amended and Restated Transfer and Administration Agreement, dated as of November 25, 2009, as it may be amended, modified or restated from time to time (the "Financing Agreement"), among, *inter alia*, the Seller, the Conduit Lenders, the Committed Lenders, the Lender Agents, the Deal Agent and the Servicer.

Effective: July 13, 2015

FNBM, LLC
 [Signature]
 Rusty Kendall, Authorized Representative

Effective: July 13, 2015

SHERMAN ORIGINATOR III LLC
 [Signature]
 Jon Marshall, Director

Credit One Bank, N.A. hereby acknowledges the above referenced sale. The Receivables assigned under the terms of this Bill of Sale were originated or acquired by Credit One Bank, N.A. and have previously been assigned to FNBM, LLC pursuant to a series of self-executing agreements.

July 13, 2015

CREDIT ONE BANK, N.A.
 [Signature]

affiliate of Capital One Bank (N.A., "Buyer"), which owned the customer(s) named below under the account number specified. The account was subsequently sold, assigned and transferred to [REDACTED] ("Buyer") on or about November 17, 2016.

The statements in this affidavit are based on the computerized and/or hard copy books and records of the Seller, maintained in the ordinary course of business, the entries having been made by a regularly operated business. The affiant is authorized to make the statements and representations herein.

Customer(s): [REDACTED]
 Account Number: [REDACTED]

A computerized ending balance and charge off date were maintained on the Seller's database.

The end balance showing on the books and records of the Seller at the time of the assignment of the account to Buyer was \$2,554.78 on November 17, 2016.

The charge off date maintained on the Seller's database for this account is August 8, 2015.

Dated this 3 day of October Month 2017 Year.
 W. Charles
 NAME: Wandl Chamberlain
 State of VIRGINIA, County of CHESTERFIELD
 Sworn and subscribed before me on this 3 day of October, 2017.



CREDIT ONE BANK
 Account Number [REDACTED]
 February 14, 2014 to March [REDACTED]

SUMMARY OF ACCOUNT ACTIVITY		PAYMENTS	
Previous Balance	\$251.18	New Balance	\$260.92
Payments	\$130.00	Paid Due Amount	\$260.92
Other Credits	\$0.00	Minimum Payment Due	\$65.00
Purchases	\$52.35	Payment Due Date	03/13/14
Cash Advances	\$62.50	Late Payment Warning:	If you do not receive your minimum payment by the date listed you may have to pay a late fee up to \$35.
Fees Charged	\$38.25	Minimum Payment Warning:	If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance.
Interest Charged	\$3.84	For example:	
New Balance	\$260.92	If you make no additional charges, use your card and pay the minimum payment each month you pay:	
Credit Limit	\$200.00	Only the minimum payment	12 months
Available Credit	\$39.00	And you will avoid paying an annual fee	\$265.00
Statement Closing Date	03/13/14		
Days in Billing Cycle	28		

TRANSACTIONS

Release Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
7407193E100X7M4LA	05/20	05/20	PAYMENT THANK YOU (ARC) LAS VEGAS NV	50.00
7407193E100X7M4L6	05/23	05/23	PAYMENT THANK YOU (ARC) LAS VEGAS NV	50.00
7295938900051LAK	03/11	03/11	Cardvice COCARD E JEFF BUTLER PA	62.50
2486916EP00E5AZDE	03/11	03/11	BUNOCO C28490802 BUTLER PA	2.87
	03/13	03/13	CREDIT PROTECT 1 258 803 1745	2.48
			Fees	
F572700E8000Y8	02/28	02/28	REPLACEMENT FEE LAS VEGAS NV	25.00
	03/11	03/11	CASH ADVANCE FEE	5.00
F572700E8000Y8AC	03/13	03/13	ANNUAL FEE 04/14 THROUGH 04/14	8.25
			TOTAL FEES FOR THIS PERIOD	38.25
			Interest Charged	
	03/13	03/13	Interest Charge on Purchases	3.51
	03/13	03/13	Interest Charge on Cash Advances	0.13
			TOTAL INTEREST FOR THIS PERIOD	3.64
			2014 Totals Year-to-Date	
			Total fees charged in 2014	\$78.75
			Total interest charged in 2014	\$13.52

INTEREST CHARGE CALCULATION

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest	Interest Charge
Purchases	23.90%(v)	\$176.14	\$3.51
Cash Advances	23.90%(v)	\$6.69	\$0.13

(v) = Variable Rate

What records fall under rule 1305

385 .JH 001 7 13 1403 0 PAGE 1 of 1 2 0 572 906 M15 C00L586

Please return this portion with your payment, and with your account number on your check, made payable to CREDIT ONE BANK.

PAY YOUR BILL ONLINE at CreditOneBank.com
 Account Number: [REDACTED]
 New Balance: \$260.92
 Minimum Payment Due: \$65.00
 Payment Due Date: 04/09/14

AMOUNT ENCLOSED: \$ [REDACTED]

For address, telephone and email changes, please check the box and complete the reverse side. Or, update your contact information online at www.CreditOneBank.com.

CREDIT ONE BANK
 PO BOX 60000
 CITY OF INDUSTRY CA 91718-0000

SECTION I: RATES AND FEES TABLE
WALMART® MASTERCARD® ACCOUNT AGREEMENT

Information from Section of the Walmart MasterCard Account Agreement is provided in the accompanying Picking Information Addendum.

SECTION II: RATES, FEES AND PAYMENT INFORMATION
WALMART® MASTERCARD® ACCOUNT AGREEMENT

How We Calculate Interest	How We Calculate Interest
<p>How Interest is Calculated</p> <p>Your Interest Rate</p> <p>We use a daily rate to calculate the interest on the balance on your account each day. The daily rate is the applicable APR times 1/365. Interest will be imposed in amounts or at rates not in excess of those permitted by applicable law. See the accompanying Picking Information Addendum for your daily rate for purchases, quick cash advances, and cash advances and corresponding APR information.</p>	<p>When We Charge Interest</p> <p>Purchases. We charge interest on your purchases from the date you make the purchase until you pay the purchase in full. See exceptions below.</p> <ul style="list-style-type: none"> We will not charge you interest during a billing cycle on any purchases if: <ol style="list-style-type: none"> You had no balance at the start of the billing cycle; OR You had a balance at the start of the billing cycle and you paid that balance in full by the due date in that billing cycle. We will credit, as of the start of the billing cycle, any payment you make by the due date that we allocate to purchases if: <ol style="list-style-type: none"> You had no balance at the start of the previous billing cycle; OR You had a balance at the start of the previous billing cycle and you paid that balance in full by the due date in the previous billing cycle.
<p>How We Calculate Interest</p> <p>We figure the interest charge on your account separately for each balance type. We do this by applying the daily rate to the daily balance for each day in the billing cycle. A separate daily balance is calculated for the following balance types, as applicable: purchases, balance transfers, cash advances and balances subject to different interest rates, plans or special promotions. See below for how the works.</p> <ol style="list-style-type: none"> How to get the daily balance. We take the starting balance each day; add any new charges and fees, and subtract any payments or credits. This gives us the daily balance. We apply fees to balance types as follows: <ol style="list-style-type: none"> late payment fees are treated as new purchases; late cancellation fees are added proportionately to each balance; cash advance fees are added to the cash advance balance; and foreign transaction fees are added to the purchase balance. How to get the daily interest amount. We multiply each daily balance by the daily rate to get the daily interest. How to get the starting balance for the next day. We add the daily interest amount in step 2 to the daily balance from step 1. How to get the interest charge for the billing cycle. We add all the daily interest amounts that were charged during the billing cycle. <p>We charge a minimum interest in any billing cycle in which you owe interest. This charge is added proportionately to each balance.</p>	<p>Cash Advances. We charge interest on your cash advances, and their related fees, from the date you make the transaction until you pay them in full. You cannot avoid paying interest on cash advances or their related fees.</p>

**PENNSYLVANIA
RULES OF
EVIDENCE Pa.R.E.
803(6). Records of
a Regularly
Conducted Activity.**

(6) *Records of a Regularly Conducted Activity.* A record (which includes a memorandum, report, or data compilation in any form) of an act, event or condition if:

(A) the record was made at or near the time by - or from information transmitted by - someone with knowledge;

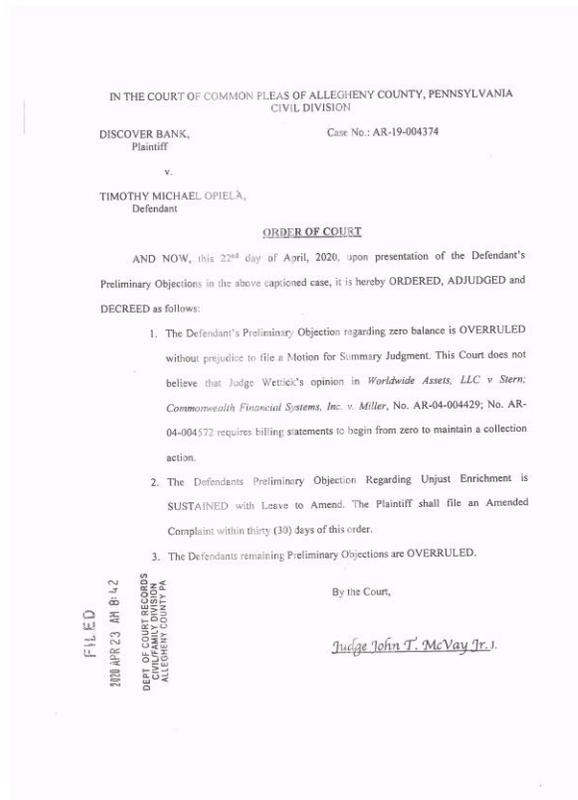
(B) the record was kept in the course of a regularly conducted activity of a “business”, which term includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

How many statements does a Creditor need to prevail at Arbitration?



- ▶ 12-24 months depending on age of account
- ▶ The complaint should contain **sufficient** documentation and allegations.
- ▶ **Sufficient specificity**

When to File your Notice to Attend

- ▶ RCP 234.5 b) If a party fails to comply with a subpoena, a notice to attend or a notice to produce, the court may enter any order imposing appropriate sanctions authorized by [Rule 4019\(c\)](#) and, if the failure to comply is for the purpose of delay or in bad faith, the court may impose on that party the reasonable expenses actually incurred by the opposing party by reason of such delay or bad faith, including attorney's fees. If the failure is wilful the court, after hearing, may adjudge the party to be in contempt.

IN THE COURT OF THE COMMON PLEAS OF ALLEGHENY COUNTY, PA
CIVIL ACTION-LAW

PORTFOLIO RECOVERY ASSOCIATES, LLC :
120 CORPORATE BLVD :
NORFOLK, VA 23502 :
Plaintiff : No. AR-20-003242

v. :
: :
KAREN L MITCHELL :
Defendant. :
: :
: :

NOTICE TO ATTEND

To: KAREN L MITCHELL, DEFENDANT, by and through.

(1) You are directed to come to the Arbitration Division Allegheny County, Seventh-Floor City County Building, 414 Grant Street, Pittsburgh, PA 15219 on November 3, 2021 at 9 a.m. to testify on behalf of Plaintiff in the above case, and to remain until excused.

(2) And bring with you any and all documents related to your Account with CITIBANK, N.A. / CITIBANK, N.A. / SEARS, but not limited to the monthly Statements of Account.

If you fail to attend or produce the documents or items required by this notice to attend, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure.

Dated: July 27, 2021 _____ /s/ Robert N. Polas, Jr., Esquire
Robert N. Polas, Jr., Esq., #201299
Carrie Gerding, Esq., #94055
Gregory J. Babcock, Esq., #205061
Christopher Titus, Esq., #315746
Portfolio Recovery Associates, LLC
120 Corporate Blvd
Norfolk, VA 23502
(T) 866/428-8102
(F) (757) 518-0860
Attorneys for Plaintiff

23403759



This communication is from a debt collector and is an attempt to collect a debt.
Any information obtained will be used for that purpose.

Scheduling a Witness in Allegheny County

- All parties must try to seek consent of all parties to have their compulsory arbitration case heard virtually. If all parties do not agree, the moving party must make a formal request for a partial remote hearing indicating which party will appear remotely. The request for a virtual hearing must be done at least fourteen (14) days before the hearing date by completing and sending a Virtual Arbitration Hearing Request Form (https://www.alleghenycourts.us/downloads/Civil/ArbitrationForms/Virtual_Arbitration_Hearing_Request_Form.pdf) via e-mail to **civilarbact@alleghenycourts.us**.
- You must indicate on the form if you are requesting a full or partial remote hearing. All counsel and self-represented parties must be included on this e-mail. If all parties are not copied on the request, the Court will not set up a Virtual Arbitration Hearing, and the case will remain scheduled for an in-person arbitration hearing. Further, when emailing the court, you must include the docket number, case caption, and date of arbitration hearing in both the subject line and the e-mail request. *Example: AR-21-001234, Creditor vs. Ward, 07-11-21*

Arbitration Form and Substance of Email



Allegheny County Court of Common Pleas

*Fill out form and save a copy to email to the Court with your request.
The filename of the form and subject line of your email should be
CASE # - SHORT CAPTION - HEARING DATE.*

Virtual Arbitration Hearing Request Form

Case Number:

Hearing Date:

Please check one box:

Fully remote hearing

- All parties consent to appearing remotely
with a remote panel

Partial remote hearing

- Name(s) of party/parties appearing remotely:

Plaintiff(s),

v.

-All remaining parties appear in person before
a panel at the City-County Building
Plaintiff/Counsel Contact Info:

Name:

Address:

Defendant(s).

Notes/Additional Party Contact Information:

E-Mail:

Phone Number:

**(Lawyers must include their support
staff's email if they want their staff to
access/download documents for them.)**

Defendant/Counsel Contact Info:

Name:

Address:

**EACH PARTY MUST HAVE THE TELEPHONE NUMBERS
OF ITS RESPECTIVE WITNESSES/CLIENTS TO
PROVIDE TO THE ARBITRATION PANEL**

E-Mail:

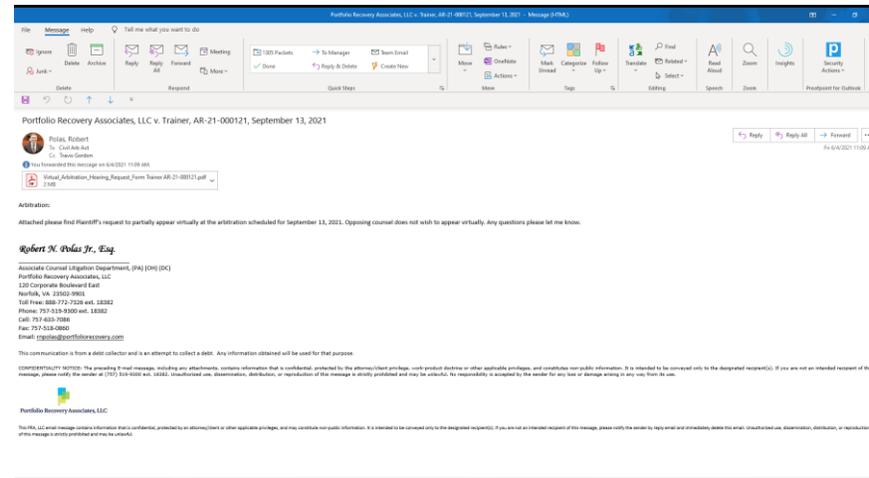
Phone Number:

Requests with incomplete information/no form WILL NOT BE HEARD.

All parties must be CC'd on the submission email.

Completed forms must be emailed to: civilarbact@alleghenycountys.us

You will be assigned a date, time, and instructions via a Microsoft Teams invitation.
The Court may change your hearing date/time with advance notice to all parties to
accommodate the remote hearing schedule.



Preparing your Witness for Arbitration

Is having a witness a slam dunk WIN?

- ▶ Study the documents yourself prior to reviewing with your witness
- ▶ Provide your witness with a general trial outline and go over that outline with them?
- ▶ Provide your witness with a general sense of what they are walking into
- ▶ Walk your witness through the individual documents
- ▶ Discuss various defense scenarios with your witness

Commonwealth
Financial
Systems, Inc v.
Smith, 15 A.3rd
492
(Pa.Super.,2011
)

- ▶ Court specifically discusses the admissibility of business records that were created by one business and subsequently assigned to another. Court held that “the plaintiff failed to satisfy the requirement that a business record be created ‘by, or from information transmitted by, a person with knowledge.’ Therefore, the chain of evidence presented did not adequately authenticate the computerized business records necessary to establish their trustworthiness and reliability sufficient to permit their admission into evidence.” *Id* at 3.

*Fed. Nat'l
Mortg. Co. v.
Dunleavy,*
No. 235 EDA
2016, 2017
WL 1400992
(Pa. Super.
Ct. Apr

- ▶ In similar factual circumstances to *Smith*, an employee [Foster] of a third-party testified to authenticate and prove trustworthy historical loan documents. The trial court in the case focused on “Foster's personal familiarity with the creation and maintenance of the records . . . and also his testimony regarding the procedure for the verification of the loan payment records created prior to [his company's viewing of the documents].” *Id* at 4. The trial court found that Foster testimony creditably established the trustworthiness of the documents. Despite similar factual circumstances to *Smith*, the Superior Court indicated that discrepancies in the testimony can be distinguished from that of *Dunleavy*. *Id*. Based on this, the Court affirmed the trial court's decision because “the trial court is ‘in the best position to determine the trustworthiness of ... the evidence.’” *Id*.

*Bayview Loan
Servicing, LLC v.
Wicker*, 163 A.3d
1039, 1048 (2017
Pa. Super. 149).

- Bayview prevailed as a 3rd party assignee/mortgagee. Court held that “it is not essential under the Uniform Business Records as Evidence Act to produce either the person who made the entries or the custodian of record at the time the entries were made and the law does not require that a witness qualifying business records even have a personal knowledge of the facts reported in the business record. As long as an authenticating witness can provide **sufficient** information relating to the preparation and maintenance of records to justify a presumption of trustworthiness for the business records of a company, a sufficient basis is provided to offset the hearsay character of evidence.”
- **Difficulties Remain:** Still no adoption of the federal incorporation rule. Standard remains subjective to the finder of fact. The decision is still up to the arbitration panel as to whether they think the trustworthiness of the documents has been established or even can be established. Pennsylvania continues not to follow the federal incorporation rule which still seems to be the defining factor to most panelists. Could this ever be changed?

Standard Objections / Defenses

- ▶ Hearsay
 - ▶ Affidavit of Sale
- ▶ Inadmissible Business Records
 - ▶ Sufficiency of the documents in totality.
 - ▶ Lack of incorporation by 3rd party of Business Records
 - ▶ Statements do not start with a zero balance
 - ▶ Terms and Conditions date / Multiple Terms / No Dates
- ▶ Improper foundation
 - ▶ Laying a proper foundation for your witness is just as important as your documents

Magisterial District Judges

▶ Mock Trial Fact Pattern

- ▶ Plaintiff, Original Creditor, files a complaint in District Court 49-3-03 alleging that Defendant owes an unpaid balance of \$1,000.00 on a credit card account.
- ▶ Service by certified mail was undeliverable and completed via constable hand delivery. Defendant files their Intent to Defend and is represented by Attorney Shane Weaver.
- ▶ What are the best options and how does your client succeed?
 - ▶ Costs of Litigation
 - ▶ Client guidelines (Covid-19 restrictions)
 - ▶ Local Counsel v. Remote Appearance
 - ▶ Simplified Rules of Civil Procedure - Pa. R.C.P.M.D.J. No. 201 - 1211
 - ▶ Does simplicity create complexity?
 - ▶ Pa R.C.P.M.D.J No. 207, 209, 215, & 321.

Rule 207. Representation in Magisterial District Court Proceedings.

Rule 207. Representation in Magisterial District Court Proceedings.

(A) In magisterial district court proceedings:

- (3) Corporations or similar entities and unincorporated associations may be represented by an attorney at law, by an officer of the corporation, entity, or association, or by an employee or authorized agent of the corporation, entity, or association with personal knowledge of the subject matter of the litigation and written authorization from an officer of the corporation, entity, or association to appear as its representative.

Party present at hearing through representation by attorney; therefore, attorney can introduce documents into evidence under Rule 321 without a representative of party appearing at hearing.

If representative of party was required, then Rule 321 would not exist because representative of party would be required to authenticate the documents that can be introduced into evidence without authentication under Rule 321.

Rule 209. Continuances and Stays

- Continuances may be granted for cause or by agreement.
- In most instances, courts are open to granting one continuance per side.
- Continuances are useful for two reasons:
 - Unavailability of the attorney of record or appearance counsel; or
 - Settlement
 - After an Intent to Defend is filed, requesting a continuance for the purposes of settlement is often a good approach when trying to resolve the underlying court action.
 - This approach gives ample time for the parties to contact one another.
 - Keep the request within sixty (60) days.
 - The aggregate of all continuances shall not extend the date of the hearing beyond 90 days from the date of filing.

Rule 215: Advanced Communication Technology

Magisterial district judges may authorize the use of advanced communication technology during any civil proceeding or action governed by the Rules of Civil Procedure for Magisterial District Judges.

Preferred method of requesting remote appearance?

Official Note

This rule was adopted in 2008 to specify that magisterial district judges may use advanced communication technology in their courtrooms during adversarial proceedings. In an *ex parte* proceeding, such as an action pursuant to the Protection From Abuse Act, 23 Pa.C.S. § § 6101–6122, or 42 Pa.C.S. § § 62A01–62A20 (providing for protection of victims of sexual violence or intimidation), magisterial district judges also may permit the use of advanced communication technology. Limited technology available in some magisterial district courts may preclude the use of certain advanced communication technology options. *Compare* Pa.R.Crim.P. 119.

LAW OFFICES OF
PATENAUDE & FELIX, A.P.C.
A PROFESSIONAL LAW CORPORATION
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TEL: (858) 244-7600 OR (800) 832-7675 | FAX: (858) 536-0318 | WEBSITE: WWW.PANDF.LIN

ARIZONA 3200 N. GILBERT ROAD, SUITE 400 SCOTTSDALE, AZ 85143 TEL: (480) 442-7875 FAX: (480) 442-7763	LOS ANGELES 10811 WILSHIRE BLVD, SUITE 400 CANTON, CA 90707 TEL: (818) 798-2388 FAX: (818) 798-2384	NEVADA 771 W. CHARLESTON LAS VEGAS, NV 89101 TEL: (702) 938-3032 FAX: (702) 938-3286	NEW MEXICO 3500 W. MARSH, SUITE 101 ALBUQUERQUE, NM 87102 TEL: (800) 832-7675 FAX: (505) 756-0516	OREGON 1010 SW 74th AVE, SUITE 200 PORTLAND, OR 97205 TEL: (503) 296-2075 FAX: (503) 296-2074	PENNSYLVANIA 501 CORPORATE DRIVE LITTLEBURG, PA 15116 TEL: (412) 425-3433 FAX: (412) 425-3434	WASHINGTON 1800 4th AVE., W-251 LYNNWOOD, WA 98036 TEL: (425) 388-1345 FAX: (425) 388-1100
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August 12, 2019

San Diego Civil Division
The Honorable
330 West Broadway
San Diego California 92101

Re.: TEST CLIENT 2 v. JOHN F. SMITH, et. al.
Docket No. 542
Our File No.: 4.1

Dear Judge :

The Rules provide that Magisterial District Judges may authorize the use of advanced communication technology during civil proceedings. Pa.R.C.P.M.D.J. 215. Plaintiff would like to present testimony using advanced communication technology at the upcoming hearing and is providing Defendant with notice of the same via this correspondence.

Should you have any questions or concerns, please contact me at the above listed telephone listing. Thank you.

Sincerely yours,

GREGG L. MORRIS, ESQUIRE
BRYAN J. POLAS, ESQUIRE

Enclosure

cc: John E Smith

THIS COMMUNICATION IS FROM A DEBT COLLECTOR
This is an attempt to collect a debt, and any information obtained will be used for that purpose.

Proven ideas to get your remote request approved and the preferred digital platforms

- ▶ The simplicity of the rules must be utilized to your clients advantage.
 - ▶ Create your own forms!
 - ▶ Due to the simplicity and lack of guidance from MDJ courts, all too often is the attorney required to create their own form for the given request.
 - ▶ Give the MDJ the power to decide while making it easy for them to respond.
 - ▶ Site the rules!
 - ▶ Consent between the parties for remote appearance.
 - ▶ Send a letter to the Defendant requesting consent to appear remotely.
 - ▶ Side note, this is also a great time to slip in a settlement offer!
 - ▶ If the parties agree, why won't the court?
- ▶ Remember, in those instances where the attorney's remote appearance was denied, it doesn't mean your client's remote appearance request will be denied as well!
 - ▶ What's your experience been like?

- ▶ Zoom
- ▶ Microsoft Teams
- ▶ Blue Jeans by Verizon
- ▶ Skype
- ▶ Polycom (accessible in most MDJ's)

- ▶ What's your preferred platform?

Rule 321. Hearings and Evidence

- ▶ The magisterial district judge shall be bound by the rules of evidence, except that a bill, estimate, receipt or statement of account which appears to have been made in the regular course of business may be introduced into evidence by any **party** without affidavit or other evidence of its truth, accuracy or authenticity.
- ▶ **This rule is every collections attorney go-to rule when practicing in any Magisterial District Justice Court.**
- ▶ **Party present at hearing through representation by attorney; therefore, attorney can introduce documents into evidence under Rule 321 without a representative of party appearing at hearing.**
- ▶ **Official Note: The exception was deemed necessary because the items of evidence made admissible thereby are probably the proofs most commonly used in minor judiciary proceedings!**

Rule 321 and beyond!

- ▶ Draw your comparisons.
- ▶ Just as the MDJ follows Pa. R.C.P.M.D.J. 321:
 - ▶ The Common Pleas Courts follow Pa R.C.P. 1305 and Pa R.C.P. 1311.1
- ▶ Walk the court through the rules and give them something to think about!
- ▶ Site case law when necessary.
- ▶ These rules were created with judicial efficiency in mind.
- ▶ Favorite quote “Its not like my client is trying to railroad the court!”

Remote Witness Testimony and the MDJ

- ▶ Just like the rules, keep things simple!
- ▶ Authenticate your witness and move forward. Don't over complicate. In my experience, MDJ's like things short, sweet, and to the point.
 - ▶ The Rocket Docket at the MDJ!
- ▶ Key points to remember:
 - ▶ Witness qualifications
 - ▶ Were these documents created at or near the time of the events recorded therein?
 - ▶ Were the documents maintained in the usual course of business?
- ▶ Again, laying the proper foundation is just as important as your documents!



Rule 319. Failure of a Party to Appear at the Hearing.

- A. If a plaintiff who has been given notice of the defendant's intention to defend does not appear at the hearing, but the defendant does appear, the magisterial district judge shall enter judgment for the defendant or continue the case for cause. If the plaintiff does not appear at the hearing and the defendant does, but the plaintiff has not been given notice of the defendant's intention to defend, the case shall be continued.
- B. If the defendant does not appear at the hearing, the magisterial district judge shall, whether or not the plaintiff appears, enter judgment for the plaintiff or continue the case for cause. If judgment is entered for the plaintiff, the magisterial district judge shall assess damages for the amount to which the plaintiff is entitled if it is for a sum certain or which can be made certain by computation, but if it is not, the damages shall be assessed by the magisterial district judge at a hearing at which the issues shall be limited to the amount of the damages. If such a hearing is to be held, the magisterial district judge shall give the defendant written notice of the time and date of the hearing, which shall be not less than ten (10) days from the date of the notice.

▶ **Plaintiff Does Not Appear - Defendant Appears**

Judgment for Defendant or Case Continued for Cause

▶ **Plaintiff Appears or Does Not Appear - Defendant Does Not Appear**

Judgment for Plaintiff or Case Continued for Cause

Damages Assessed for Amount that Plaintiff is Entitled if for Sum Certain or can be made Certain by Computation

Final Comments on Winning Contested Arbitrations and Magisterial District Court Hearings



SESSION FIVE

Current Trends in Debt Collection Litigation

Matthew D. Urban

Shareholder

Weltman, Weinberg & Reis, Co, L.P.A.

Thomas J. Michael

Thomas J. Michael Associates, LLC





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

BOARD NOMINATION PROCESS

February - Nominating Committee formed

April - Nominations for the Board accepted, those interested complete application

June - Interviews with interested nominees conducted

October - Board slate presented and members vote at Annual Meeting

THANK YOU

CLE INFORMATION

Please allow up to 4 weeks to process your CLE certificate. Thank you!

ASSOCIATION CONTACT INFORMATION

Association Manager: Shawn Jezak

Email: PACBA@corpevent.com

Phone: 312-540-9300

Fax: 312-540-9900

website: www.pacbar.org

