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STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
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Denver, Colorado 80203
Phone (720) 508-6000

Consumer Protection Section
Consumer Credit Unit

July 2, 2018

Honorable Bob Gardner, Chairman (via email)
Senate Judiciary Committee
200 E. Colfax, Room
Denver, CO 80203.

Honorable Pete Lee, Chairman (via email)
House Judiciary Committee
200 E. Colfax, Room 307
Denver, CO 80203

RE: Bi-Annual Report on Colorado Fair Debt Collection Practices Act

Dear Senator Gardner and Representative Lee:

In accordance with SB 17-216, which amended § 5-16-117(5) of the Colorado Fair Debt Collection Practices Act ("CFDCPA"), I am pleased to submit the Administrator's first bi-annual report accounting for the efficient discharge of all responsibilities assigned by law and the general administration of the collection agency licensing program within the Colorado Department of Law.

For the most part, this bi-annual report covers the period of January 1, 2018 (the effective date of this section of SB 17-216) through June 30, 2018. This report will follow the order set out in § 5-16-117(5).

Enforcement Actions

1. Lawsuits

- a. *SBG Acquisitions, LLC, Scott McCune, and Robert Barry*, Case No. 2017CV31951 (Denver). The sole claim is unlicensed lending. The matter is pending with a trial starting October 1, 2018.
- b. *Platinum Holdings Group, LLC; Premium Asset Services, LLC; and Premium Receivables, LLC*, Case No. 2018CV31059 (Denver). The claims include unlicensed lending, false and deceptive collections, and failure to issue required disclosures to consumers. The matter is pending with a trial starting on November 13, 2018.

- c. *Account Management Receivables, LLC and Jeni Hall*, Case No. 2018CV30522 (Denver). The claims included unlicensed collections, false and deceptive collections, and failure to issue required disclosures to consumers. The matter was resolved via a Consent Judgment on May 3, 2018 (permanent injunction/\$5,000 penealty).
- d. *Colorado v. Hopp*, Colorado Court of Appeals Case No. 2018CA69. This is an enforcement action against foreclosure law firm The Hopp Law Firm, LLC and related entities. The action asserts claims under the CFDCPA and other Colorado laws. It alleges that the defendants violated C.R.S. §§ 5-16-107(1)(b)(I) and 5-16-108(1)(a) when pursuing foreclosure actions against Colorado homeowners. The trial court entered a judgment in favor of the Administrator on the CFDCPA claims and the Colorado Court of Appeals affirmed the judgment in a May 17, 2018 Opinion. The Court of Appeals Opinion addresses the statute of limitations applicable to the CFDCPA and the award of penalties under the CFDCPA. It is unknown at this time whether certiorari will be filed.
- e. *Colorado v. Castle Law Group, et al.*, Colorado Court of Appeals Case No. 2017CA923. This is an enforcement action against foreclosure law firm the Castle Law Group, LLC and related entities. The action asserts claims under the CFDCPA and other Colorado laws. It alleges that the defendants violated C.R.S. §§ 5-16-107(1)(b)(I) and 5-16-108(1)(a) when pursuing foreclosure actions against Colorado homeowners. The trial court entered an order dated November 1, 2017 dismissing the Administrator's CFDCPA claims. The Administrator appealed the dismissal and the appeal is currently pending in the Colorado Court of Appeals.

2. Administrative Enforcement

- a. Stipulations & Final Agency Orders¹
 - i. United Debt Holding LLC, \$178,500 (with \$24,250 suspended);
 - ii. Northwood Asset Management, \$12,995 (unlicensed collection activity);
 - iii. Columbia Debt Recovery, \$3,000 (unlicensed collection activity);
 - iv. Collection Management Company, \$14,670 (unlicensed collection activity and non-disclosure of disciplinary action);
 - v. Kinum, \$1,500 (Failure to disclose to consumer local Colorado office location on communications);

¹ None of these enforcement actions were appealed or otherwise challenged.

- vi. Perfection Collection, \$7,000 (unlicensed collection activity, unfair practices, unlawful acts);
 - vii. Cawley & Bergmann, \$3,000 (unlicensed collection activity);
 - viii. Allied Collection Services, \$1,500 (non-disclosure of disciplinary action);
 - ix. Everest Receivable Services, \$7,500 (non-disclosure of disciplinary action); and
 - x. Alpha Recovery, \$12,500 (harassment/abuse).
- b. License Denials²
- i. Dynamic Legal Recovery/Yes On-line (unlicensed collection activity and non-disclosure of prior disciplinary action); and
 - ii. Rhojo/Orion Recovery (multiple CFDCPA violations found on examination).
- c. License Revocations³
- i. Revive Debt Collection (non-remittance); and
 - ii. Stellar Recovery (CFDCPA violations, stipulation sent but never signed, firm went out of business, and Administrator revoked license).

Complaints

1. Since January 1, 2018, the Consumer Credit Unit has received 312 complaints.
2. Of the 312 complaints filed, 210 are against licensed collection agencies, 79 are against unlicensed collection agencies, and 23 complaints are against attorneys.⁴

Complaint Outcomes:

1. 15 complaints have been resolved;
2. 7 complaints against non-lawyer collection agencies have been referred to other agencies;
3. 50 complaints resulted in No Action, either because of a lack of jurisdiction, no allegation of a violation of the CFDCPA, or similar deficiencies;
4. 22 Cease & Desist orders have been issued to unlicensed agencies;

² Neither of these denials have been appealed.

³ Neither of these revocations have been appealed.

⁴ All complaints against attorneys were referred to the Office of Attorney Regulation Counsel.

5. 2 Advisory Letters have been issued;
6. one Letter of Admonition has been issued; and
7. The remaining complaints are still open and under investigation.

Statutory Changes to Collection Agency Licensing Program

1. *Debt Buyer Definition:* The CFDCPA adds a new definition of “debt buyer.” This section became effective on January 1, 2018.
2. *Legal action requirements:* The CFDCPA created new requirements for legal actions filed by debt collectors or collection agencies on debts owned by debt buyers. This section became effective on January 1, 2018.
3. *Administrator duties:* The Administrator has additional duties, which include reporting requirements, attending meetings of industry groups and advocacy organization and hosting meetings each year for consumer advocacy organizations and industry groups. The Administrator’s duties became effective on January 1, 2018.

Significant Legal Filings—Amicus Brief

1. *Ybarra v. Greenberg & Sada, P.C.*, Colorado Supreme Court Case No. 2016SC721. The issue on appeal in this case is whether the CFDCPA applies to a subrogation claim for damages arising from a tortious act. The Colorado Court of Appeals determined that the CFDCPA does not apply. The Colorado Supreme Court held oral argument in the case on December 6, 2017, but has not issued an opinion. The Administrator filed an amicus curiae brief expressing the view that the CFDCPA applies to a subrogation claim for damages arising from a tortious act.

Summary of New Regulations

1. No new regulations adopted since January 1, 2018.

Legal Developments

1. While these developments occurred prior to January 1, 2018, their impact is relevant today:
 - a. The U.S. Supreme Court decided *Henson v. Santander Consumer USA Inc.*, 137 S.Ct. 1718 (2017), which held that the federal Fair Debt Collection Practices Act’s definition of debt collector as someone who “regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another” did not cover debt buyers. Typically, where the federal FDCPA and Colorado Fair Debt Collections Practices Act contain similar language, our courts may look

to federal precedent to interpret our statute. In this instance, the General Assembly (SB 17-216) the CFDCPA, effective January 1, 2018, to expressly define debt buyers as collection agencies. Therefore, *Santander's* potential relevance to the interpretation of Colorado law would be limited to the CFDCPA as it existed prior to January 1, 2018.

- b. The other Supreme Court opinion issued in 2017 that involves the federal Fair Debt Collection Practices Act was *Midland Funding, LLC v. Johnson*, 137 S.Ct. 1407 (2017). There, the Court held that filing a time-barred claim in bankruptcy proceedings does not qualify as a "false, deceptive, or misleading act" under the FDCPA. The statute of limitations is an affirmative defense that does not *per se* make a debt invalid or void; rather, it merely prevents enforcement. Bankruptcy law allows claims, even if the claim would not be enforceable in a court of law. Similarly, the Court held that the filing of time-barred claims in bankruptcy was not unconscionable, given that the bankruptcy code allows for it and to hold otherwise would greatly complicate bankruptcy proceedings. Again, this case is relevant because our courts have used precedents under the federal FDCPA to interpret similar language in the CFDCPA.

Matters to be Addressed at the Request of the Regulated Community or the Public

While there have been no formal requests from the public to the Administrator to address specific issues under the CFDCPA, interested persons at the January 23, 2018 meeting raised the following issues:

1. Need for clarification of the types of documents that must be submitted along with a complaint filed by a debt buyer under new § 5-16-111(2) and (3);
2. Private attorneys representing debtors are interested in collecting county court-specific information regarding debt collection practices in order to identify other potential issues/problems;
3. Potential violations of the CFDCPA in the collection of medical debt, especially where such debts are referred to a collection agency before a final determination has been made by an insurance company regarding which medical expenses will be covered;
4. Need for further clarification regarding the collection of treble damages under the check statute (§ 13-21-109);
5. Charging of pre-set amount of attorney fees on every case filed, regardless of whether there are actual fees incurred; and

6. The need to examine the number of default judgments filed by certain law firms in order to evaluate whether there is improper or non-existent service of process.

Conferences

1. **Groups that represent clients of collection agencies.** We attended the National Creditors Bar Association conference on May 16th through May 18th, 2018, and participated on a panel titled "Meet the State Regulators: Are Old Regulators the New Sheriffs in Town"? The discussion centered on trends in state enforcement of debt collection statutes. The presentation was approximately one hour and was well received. Conference organizers did not prepare a transcript of these proceedings. *See Attachment 1 (Agenda).*
2. **Conference of collection agencies.** We did not receive an invitation to participate in either a national or local meeting/conference of collection agencies, or any other collection agency trade association.
3. **Meeting of relevant consumer advocacy associations or other interested persons.** The Administrator convened this meeting, as required by § 5-2-117(7) on Tuesday, January 23, 2018. The 30-day notice was provided directly (via email) to a list of consumer agencies, debtor's attorneys and other interested persons compiled by the Administrator. *See Attachment 2 (Transcript).*
4. **Meeting of licensees, industry groups, client groups, and other interested parties.** This meeting is scheduled for July 30, 2018 at 1:30 PM at the Ralph L. Carr Colorado Judicial Center, 1300 Broadway, Denver CO 80203. The direct 30-day notice (via e-mail) was provided to all CFDCPA licensees and to a list of other interested parties compiled by the Administrator.

Please feel free to contact me if you would like further information.

Respectfully submitted,

FOR THE ATTORNEY GENERAL


JAN MICHAEL ZAVISLAN
Interim Administrator, UCCC
Jan.zavislan@coag.gov
720-508-6206

Bi-Annual Report

July 2, 2018

Page 7

Cc: Members of the Senate Judiciary Committee (via email)
Members of House Judiciary Committee (via email)

Attachments

ATTACHMENT 1

Agenda of National Creditors Bar Association 2018 Spring Conference

May 16-18, 2018

Wednesday, May 16

11:30 a.m. - 7 p.m.
Grand Ballroom Foyer
Level 4

Registration Desk open

Noon - 5 p.m.

Client Individual Meetings (By invitation only)

12:00 - 4:30 p.m.
Rooms 402, 403
Level 4

National Creditors Bar Association Board of Directors Meeting
(All National Creditors Bar Association Members welcome)

4:30 - 5:30 p.m.
East Foyer
Level 4

National Creditors Bar Association First Timer & New Member Wine & Cheese Reception
First time attendees and "new" National Creditors Bar Association members are encouraged to socialize at this exciting and beneficial networking event. Join your colleagues for wine, cheese and lively conversation. Don't forget to bring your business cards!

5:30 - 7 p.m.
Congress Avenue
Terrace
Level 5

Welcome Reception
Sponsored by the Defense Bar
Before you head out for dinner with your colleagues and clients, join your fellow National Creditors Bar Association members for this casual mixer with cocktails and light appetizers. It's a great opportunity to reconnect with colleagues you haven't seen in a while and make new friends.

6:30 - 7:30 p.m.
Room 502
Level 5

Professional Women in the Collection Industry "PWCI" Cocktail Social
Sponsored by Ballard Spahr LLP
PWCI is a fast growing network of professional women in the credit, collection and call center industry. Please join PWCI for their conference social.

Thursday, May 17

7 a.m. - 6:30 p.m.
Grand Ballroom Foyer
Level 4

Registration Desk open

7 - 8 a.m.
Room 404
Level 4

Group Yoga Class
From beginners to advanced, the instructor will personalize the class to your needs. This class will improve your strength, flexibility and concentration through breathing, transition and relaxation. Sign up at the Conference Registration Desk.

7:30 - 9:10 a.m.
Rooms 402, 403
Level 4

Client Group Meeting: American Express
(By invitation only.)

8 a.m. - noon
Grand Ballroom Foyer
Level 4

Barron & Newburger's Espresso Sidebar
You may approach the bench! The barrister, er, barista is here all morning to pour you a custom espresso drink to start your morning.

8 a.m. - 5 p.m.

Client Individual Meetings
(By invitation only.)

8:30 - 9:00 a.m.
Grand Ballroom 1,2
Level 4

Client Group Meeting: AACANet, Inc.
(By invitation only.)

8:45 - 9:45 a.m.
Grand Ballroom 7
Level 4

Does Having a Competent Attorney Help or Hurt?
When and how can the competent attorney standard be successfully asserted as a defense? This session surveys the circuits regarding the competent attorney standard and how it can affect the least sophisticated consumer. The presentation will also include a discussion on how the various federal circuits have addressed the standard as applied to the different subsets of the Fair Debt Collection Practices Act.
Andrew D. Parker, Parker Daniels Kibort LLC

Agenda subject to change.

Thursday, May 17 (continued)

9:10 - 10:10 a.m. Grand Ballroom 3,4 Level 4	Client Group Meeting: Encore Capital Group (By invitation only.)
10 - 11 a.m. Grand Ballroom 7 Level 4	<i>We Don't Know Where We Are, But We Are Making Really Good Time: Keeping Up With Ever-Changing Technology & The Legal Conundrums It Presents</i> In the first part of this session, presenters will discuss the latest technological and social media developments in the collection industry, including a discussion of the advantages and potential problems with these technological advances. In the second part of the session, recent administrative and judicial decisions addressing recent technological advances in the collection industry - including ringless voicemail - will be discussed. The third part of the presentation will be a discussion of best business practices to avoid liability when using the latest technology. Thomas B. Carter, Federal Trade Commission Stephen Turner, Lewis Brisbois Bisgaard & Smith Danielle M. Vugrinovich, Marshall Dennehy Warner Coleman & Goggin, P.C.
10:10 - 10:40 a.m. Rooms 402, 403 Level 4	Client Group Meeting: Sandia Resolution Company, LLC (OPEN meeting.)
10:20 - 11 a.m. Grand Ballroom 1,2 Level 4	Client Group Meeting: Capital One (By invitation only.)
11 a.m. - 6:30 p.m. Grand Ballroom 5,6 Level 4	Exhibit Hall open
11:10 a.m. - 12:10 p.m. Grand Ballroom 3,4 Level 4	Client Group Meeting: Collins Asset Group (By invitation only.)
11:15 a.m. - 12:15 p.m. Grand Ballroom 8 Level 4	<i>Ask the Attorneys: The Healthcare Edition</i> Our panel of well-known credit and collection industry attorneys will lead a lively and interactive discussion of healthcare collections and the regulations and case law that swirl around it. Leslie Bender, BCA Financial Services, Inc. David M. Schultz, Hinshaw & Culbertson, LLP
11:30 a.m. - 12:30 p.m. Grand Ballroom 7 Level 4	Client Group Meeting: LOGS Network (OPEN meeting.)
12:15 - 1:30 p.m. Grand Ballroom 5,6 Level 4	Lunch in the Exhibit Hall <i>Sponsored by Pressler, Felt & Warshaw, LLP</i>
12:15 - 1:30 p.m. Rooms 402, 403 Level 4	First Timer & New Member Luncheon (RSVP required.) First Time Attendees and "new" National Creditors Bar Association members will enjoy lunch on us, network opportunities and leave with tips on how to make National Creditors Bar Association work for you! Veteran National Creditors Bar Association members will share their insights on how National Creditors Bar Association contributed to the success of their practice and profession. RSVP required, please contact membership@creditorsbar.org.
12:25 - 12:55 p.m. Grand Ballroom 1,2 Level 4	Client Group Meeting: TD Bank (By invitation only.)
12:30 - 1:00 p.m. Grand Ballroom 3,4 Level 4	Client Group Meeting: Choice Recovery (OPEN meeting.)
12:55 - 1:25 p.m. Grand Ballroom 1,2 Level 4	Client Group Meeting: TD Bank (OPEN meeting.)

Agenda (cont'd)

Thursday, May 17 (continued)

1:30 - 2 p.m.
Grand Ballroom 3,4
Level 4

Client Group Meeting: Bank of America
(By invitation only.)

1:30 - 2 p.m.
Grand Ballroom 7
Level 4

Client Group Meeting: Pharus Funding, LLC
(OPEN meeting.)

1:30 - 2:30 p.m.
Grand Ballroom 8
Level 4

Robo-Dispute Letters from Consumer Attorneys and Credit Repair Companies - and How to Combat Them
There's a new scam to be on the watch for: credit repair agencies are churning out robo-dispute letters. In the majority of the cases, these letters are made to look like they are coming directly from the consumer when in fact, they are not. The consumer may not even know that the dispute submitted on their behalf, and in some cases, may have already paid the debt in full. Our panel will explain how the scam works, the characteristics of these letters, how you can identify them, how to combat it and how to ultimately put an end to it.
Rick Berlin, Consumer Protection Division, Office of the Texas Attorney General
Thomas B. Carter, Federal Trade Commission
Andrew M. Schwartz, Marshall Dennehey Warner Coleman & Goggin, P.C.

2:10 - 2:40 p.m.
Grand Ballroom 1,2
Level 4

Client Group Meeting: Mavrides, Moyal, Packman and Sadkin, LLP
(OPEN meeting.)

2:40 - 3:40 p.m.
Grand Ballroom 7
Level 4

Client Group Meeting: Alliant Credit Union
(OPEN meeting.)

2:40 - 3:40 p.m.
Grand Ballroom 8
Level 4

Ch-ch-ch-changes in Your Career Path
No matter where you are in your career path, you will not want to miss this session about the many changes that you are sure to encounter. Owners and management of small to mid-sized firms will learn how to create a succession plan for continuation of the firm after the departure of its founders, as well as the ethical requirements for having a plan in case of disbarment, death, or other incapacity that prevents the practice of law. Associate level attorneys will learn how to ethically change firms, and how management should properly deal with possible loss of business due to the separation. Management will learn how to handle conflicts when bringing in new attorneys with portable business.
Crystal M. Duplay, Law Offices of Timothy M. Sullivan
Justin M. Penn, Hinshaw & Culbertson LLP
Jason Wehrle, Mintzer Sarowitz Zeris Ledva & Meyers LLP

2:50 - 3:50 p.m.
Grand Ballroom 3,4
Level 4

Client Group Meeting: Discover
(By invitation only.)

3:40 - 4 p.m.
Grand Ballroom 5,6
Level 4

Refreshment Break in the Exhibit Hall
Sponsored by KnovaOne and ARMGuard

4 - 4:30 p.m.
Grand Ballroom 1,2
Level 4

Client Group Meeting: WWR National Attorney Network
(By invitation only.)

4 - 5 p.m.
Grand Ballroom 8
Level 4

Anchoring Against the Slippery Slope
Sponsored by ProVest
A former federal defendant shares the experiences that led her on a particular career path, and the circumstances and decisions that took her on a different journey than she had expected. Now, this brave woman speaks, sharing her insight and exploring the psychology behind ethical and unethical decision-making. In this talk, she will identify inflection points where questions, interventions, knowledge, or relationships can help you make better, informed and ethical decisions. She is spreading her mission of Ethical Vigilance in everything we do.
Special guest speaker Rashmi Airan, Ethics Integrated

Agenda subject to change.

Thursday, May 17 (continued)

4:30 - 5:30 p.m.
Rooms 402, 403
Level 4

The Client to Client Hour
Hosted by the National Creditors Bar Association Client Advisory Committee
Credit grantors and clients are cordially invited to attend this invitation-only client gathering. After a long day of meetings, enjoy drinks and pre-dinner hors d'oeuvres with your fellow client colleagues. It's the perfect end to a productive day of meetings. (Registered Full Conference Credit Grantor/Client Attendees only, please.)

4:35 - 5:05 p.m.
Grand Ballroom 3,4
Level 4

Client Group Meeting: A.R.S.I.
(By invitation only.)

4:35 - 5:05 p.m.
Grand Ballroom 7
Level 4

Client Group Meeting: LCS Financial
(OPEN meeting.)

5 - 6:30 p.m.
Grand Ballroom 5,6
Level 4

Reception in the National Creditors Bar Association Exhibit Hall
Sponsored by LOGS Network
It's time for cocktails and hors d'oeuvres in the Exhibit Hall. Mingle with fellow National Creditors Bar Association members, attendees and those who provide products, services and materials that benefit your practice.

6 - 7 p.m.
Presidential Suite,
Room 3301

Bankruptcy Practitioner Reception
Get acquainted with your fellow bankruptcy colleagues before tomorrow's outstanding creditor-focused bankruptcy educational sessions.

7 - 8:30 p.m.
Cooper's
217 Congress Avenue

First Timer & New Member "Dutch Treat" Dinner at Cooper's
Ready to have casual conversation and great food in a funky setting? Your first glass of wine or beer is on us, and you get to pick your plateful of delicious and famous BBQ. It's a "Dutch Treat" dinner, but RSVPs are required to membership@creditorsbar.org or sign up at the Conference Registration Desk. Be sure to invite a new friend!

8:30 - 10:30 p.m.
Cooper's
217 Congress Avenue

Nightcaps & Networking
Co-Sponsored by National Creditors Bar Association's Young Professionals Committee and Carlson & Messer LLP
All conference attendees are invited to stop by Cooper's for a free glass of wine or a beer, compliments of Carlson & Messer LLP and the Young Professionals Committee. That's right, your first drink is on us! Meet with friends new and old and take in one of Austin's beloved hot spots. No need for a cab or Uber - Cooper's is adjacent to the hotel.

Friday, May 18

7 - 8 a.m.
Room 404
Level 4

Group Yoga Class
From beginners to advanced, the instructor will personalize the class to your needs. This class will improve your strength, flexibility and concentration through breathing, transition and relaxation. Sign up at the Conference Registration Desk.

7:45 a.m. - 5:15 p.m.
Grand Ballroom Foyer
Level 4

Registration Desk open

7:45 a.m. - 2 p.m.
Grand Ballroom 5,6
Level 4

Exhibit Hall open

7:45 - 8:30 a.m.
Grand Ballroom 5,6
Level 4

Breakfast in the Exhibit Hall

8 a.m. - noon
Grand Ballroom 5,6
Level 4

Barron & Newburger's Espresso Sidebar
You may approach the bench! The barrister, er, barista is here all morning to pour you a custom espresso drink to start your morning.

Agenda (cont'd)

Friday, May 18 (continued)

8:30 - 9:30 a.m.
Grand Ballroom 8
Level 4

Regulatory and Enforcement Update: Where We Are and Where We May Be Headed and What You Should Be Doing to Prepare

Our panel examines the recent significant enforcement actions taken by state Attorneys General, state licensing divisions, the Consumer Financial Protection Bureau (CFPB) and plaintiff's lawyers against law firms engaged in debt collection. The panelists will also discuss the issues related to protection of privilege in responding to government inquiries and the enhanced expectations regulators have developed in connection with compliance management programs for debt collection law firms.

Joann Needleman, Clark Hill PLC
Ashley L. Taylor, Jr., Troutman Sanders LLP

9:40 - 10:40 a.m.
Grand Ballroom 8
Level 4

Meet the State Regulators: Are Old Regulators the New Sheriffs in Town?

No CLE Credit is offered for this session. A panel of representatives from Attorneys General offices from around the nation will discuss recent consumer protection enforcement actions on the state level and other issues of interest to creditors rights attorneys.

Rick Berlin, Consumer Protection Division, Office of the Texas Attorney General
Manuel Newburger, Barron & Newburger, PC
Dave Shaw, Colorado Department of Law
Max Weinstein, Office of Attorney General Maura Healey

10:40 - 11:10 a.m.
Grand Ballroom 5,6
Level 4

Refreshment Break in the Exhibit Hall

Sponsored by KnovaOne and ARMGuard

11 a.m. - 12:30 p.m.
Grand Ballroom 8
Level 4

Get Your Bounce Back: Using Resiliency to Preserve Your Fitness to Practice

Chris Ritter with the Texas Lawyers' Assistance Program will provide information on how to face the stress and adversity of law practice with resiliency, ensuring your best self in life and the law. He will present on how well-being is essential to a lawyer's fitness to practice and duty of competence and will include review of Rules 1.1 (competence), 1.3 (diligence) and fitness to practice.

Special Guest Speaker Chris Ritter, Texas Lawyers' Assistance Program, State Bar of Texas

12:30 - 1:40 p.m.
Grand Ballroom 5,6
Level 4

Lunch in the Exhibit Hall

Sponsored by TransUnion

12:30 - 1:40 p.m.
Room 404
Level 4

In-House Counsel Roundtable Luncheon

Working lunch; please RSVP to mark@creditorsbar.org.

12:30 - 1:40 p.m.
Rooms 402, 403
Level 4

SCBA Forum Meeting & Luncheon

Working lunch; please RSVP to scba@creditorsbar.org.

1:40 - 2:40 p.m.
Grand Ballroom 1,2
Level 4

Zen and the Art of Managing Multi-State Collection Firms

Managing a multi-state practice is difficult. As more and more collection firms branch out into other states, it's worth dedicating time and energy to learning the unique art of managing the practices of remote legal collection offices. How do you effectively manage an attorney in a state you're not licensed in? How do you keep attorneys, paralegals and support staff engaged when they are a long way away? How do you train and ensure the compliance of staff in one state who work on litigation in a remote state? Our panel will give you practical advice from years of experience on welding your practice into a happy family that can litigate in a foreign jurisdiction. The audience will learn to recognize the unique challenges they face, and how to cope with them:

- Remote attorney management: how to set goals and review performance
- Morale maintenance and improvement: keeping remote employees engaged and avoiding employee turnover
- Leadership and vision: create an environment where people want to come to work
- Multi-state production teams: keeping them compliant and knowledgeable

Jessica D. Lamoreux, Keith D. Weiner & Associates Co., LPA
Scott Morris, Stephen Einstein & Associates, P.C.
Craig Noack, Noack Law Firm, PLLC

Agenda subject to change.

Friday, May 18 (continued)

1:40 - 2:40 p.m.
Grand Ballroom 3,4
Level 4

Prepping for Payments: Recent EFTA Rulemaking, Enforcement Actions, and Litigation
Increasingly over the past few years, Regulation E, which implements the Electronic Fund Transfer Act, has been the increased subject of rulemaking, enforcement actions and class action complaints. This session will provide an overview of relevant EFTA requirements for debt collectors, cover recent rulemaking and enforcement actions, and provide practical compliance solutions for attendees. Learn what you need to know to ensure your payment processing is not the next cautionary tale.
Lauren Burnette, Barron & Newburger, P.C.
Nicole M. Strickler, Messer Strickler, Ltd.

1:40 - 2:40 p.m.
Grand Ballroom 7
Level 4

The 25 Bankruptcy Words You Should Know But Probably Don't
There are a number of terms often used in the insolvency, restructuring and bankruptcy arena which non-practitioners should know, but often don't. For example, bankruptcy practitioners will often refer to questioning at a "341 meeting," request a "2004 exam," or seek to "cram down" a class of creditors. Most attorneys who practice in this arena will immediately understand these terms and their implications. But attorneys who do not regularly practice in this arena may be completely unfamiliar with these terms and, perhaps worse, their potential consequences. While not meant to be an in-depth analysis of these terms and all of their potential ramifications, this session is designed instead to simply expose attendees to a number of often used bankruptcy terms so that the attendee is at least familiar with the terms and can identify them and conduct further due diligence on the topic as needed.
William S. Hackney, SmithAmundsen LLC

2 p.m. **Exhibit Hall closes**

2:50 - 3:50 p.m.
Grand Ballroom 1,2
Level 4

Demystifying Cyber Liability and Other Insurance for Collection Firms
Creditors and healthcare providers almost always require their collection partners to maintain various types of insurance coverage. Cyber liability, errors & omissions, and crime/theft are examples of the types of coverage typically required. Our panel will discuss the various types of insurance coverage available, and what losses are usually covered, and NOT covered, under these policies. Attendees will get a basic handle on the major components of the various types of insurance, know what to expect when comparing options, and know what questions to ask their insurance agent before buying the coverage.
John Bedard, Jr., Bedard Law Group, P.C.
Andrew C. Hall, Estate Information Services, LLC
Ben Johnson, Cornerstone Support, Inc.

2:50 - 3:50 p.m.
Grand Ballroom 3,4
Level 4

Are "Safe" Harbors Safe?
In recent years more and more court decisions enunciate specific language with a "promise" that use of this lingo in collection letters or voicemails will shield the collection attorney from liability. Content and context is vital. This panel presentation will 1) look at the leading judicial Safe Harbors and ask whether they have in fact shielded collection attorneys from liability, 2) look at lessons learned where Safe Harbors have not worked, 3) consider possible improved safe harbor language based on existing case law and 4) based on lessons learned, explore what Safe Harbors should be proposed by the CFPB in the upcoming FDCPA rule-making.
Barbara Nilsen, Blitt & Gaines P.C.
David Olefsky, Blitt & Gaines P.C.
Adam Olshan, Rubin & Rothman, LLC
Jason Sims, Buckles & Buckles, PLC

2:50 - 3:50 p.m.
Grand Ballroom 7
Level 4

CAR WARS: Replevin, Repossession & Break Orders
Great, you got an Order for Possession! Now what? This session will present a survey of the initial personal property foreclosure process across the majority of the United States, select service of process issues and possible resolutions. Gain valuable tips and tools for successfully executing the Order/Writ of Possession and Break Orders.
Vanessa A. Leo, Shapiro Pendergast & Hasty, LLP

3:40 - 4 p.m.
Grand Ballroom Foyer
Level 4

Refreshment Break
Sponsored by KnovaOne and ARMGuard

Friday, May 18 (continued)

4 -5 p.m.
Grand Ballroom 3,4
Level 4

Supreme Court Cases Impacting Consumer Debt Collection and Rule 68 Offers in the Aftermath of Campbell-Ewald v. Gomez

Although most observers think about profound constitutional matters when the "Supreme Court" is mentioned, a number of rulings from this nation's highest court, some of which pre-date the FDCPA, have changed the way that lawyers litigate consumer debts. Our panel will examine:

- How Supreme Court rulings impacted and changed consumer debt litigation in the 20th century up to today
- How and why debt collection cases reach the Supreme Court
- The 2016 Supreme Court decision in *Campbell-Ewald v. Gomez* addressing Rule 68 offers, why Rule 68 offers are important in defending FDCPA and consumer protection actions, and how to effectively leverage a Rule 68 offer post *Gomez*.

Ronald S. Canter, The Law Offices of Ronald S. Canter, LLC
Rachel VanHorn, Glasser and Glasser, P.L.C.

4 -5 p.m.
Grand Ballroom 7
Level 4

Trending Now: The Latest Issues in Bankruptcy

Join your Bankruptcy Chairs in the clean-up round. Tom and Alane, along with some creditor participants, will provide an update on the latest hot issues in bankruptcy law and compliance, including how the new Official Form for Chapter 13 plans is working.

Alane Becket, Becket & Lee, LLP
Tom Canary, Jr., Reimer Law Co.

7 - 10 p.m.
Brazos Hall
204 East 4th Street

Friday Night Special Event: 80s House Party - Dancin' & Chillin'

Sponsored by:
Barron & Newburger, P.C.
Simmonds & Narita LLP

Musical guests - The Spazmatics • Dinner - Stubb's Bar-B-Q

Are you a die hard 80s music fan? Downstairs, The Spazmatics will be playing everyone's fave dance party songs from the 80s, with a nerdy twist. Get your homeboys and homegirls together and hit the dance floor! If you prefer to chill out instead, head upstairs to the open-air deck. And it wouldn't be a National Creditors Bar Association party without great food and drinks, so we have Stubb's bringing Austin's best bar-b-q!

So crimp your hair, pop your collar, roll your sleeves, peg your jeans and wear your sunglasses at night, because it's gonna be awesome, I kid you not!

This event is complimentary for all full conference registrants. Guest tickets may be purchased in advance by contacting registration@creditorsbar.org. Dress is business casual. Name badges and photo ID are required for admittance. Badges are not transferable.

The 80s are back for one more nerdy night!
You're invited to the Friday Night Special Event:

80s House Party
Dancin' & Chillin'

Friday, May 18, 2018 • 7:00 - 10:00 p.m.
Brazos Hall, 204 East 4th Street
Musical guests The Spazmatics • Dinner by Stubb's Bar-B-Q

Are you a die hard 80s music fan? Downstairs, The Spazmatics will be playing everyone's fave dance party songs from the 80s, with a nerdy twist. Get your homeboys and homegirls together and hit the dance floor! If you prefer to chill out instead, head upstairs to the open-air deck. And it wouldn't be a NARCA party without great food and drinks, so we have Stubb's bringing Austin's best bar-b-q!

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Sponsored by:

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SIMMONDS & NARITA LLP

Saturday, May 19

8 - 8:30 a.m. Grand Ballroom 5 Level 4	Buffet Breakfast
8 a.m. - noon Grand Ballroom Foyer Level 4	Barron & Newburger's Espresso Sidebar You may approach the bench! The barrister, er, barista is here all morning to pour you a custom espresso drink to start your morning.
8 a.m. - 12:15 p.m. Grand Ballroom Foyer Level 4	Registration Desk open
8:30 - 9:30 a.m. Grand Ballroom 3,4 Level 4	<i>Mistakes to Avoid in Background Investigations & Screening Trends</i> In part one, learn the truth about what is really in a criminal record and the source of the information for employment screening. Our panel will explore overlapping tools in screening to conduct the best search to avoid negligent screening, and will review cases of missed criminal records that could have provided a negative consequence. There are many trending resources to gather information about an applicant, which can sometimes cloud the basic screening tools. In part 2, find out about the renewed basic screening tools for 2018, such as Consent-Based Social Security Verification searches, Nationwide with Alias Names Included searches, and Social Media searches. Learn the new trends on the old searches, obtain insight to resources providing trending searches, and understand how new trends strengthen compliance in screening. Pat Elsberry, AmericanChecked, Inc. Christopher Onstott, Kronick Moskovitz Tiedemann & Girard
9:40 - 10:40 a.m. Grand Ballroom 3,4 Level 4	<i>Collection Letter Litigation Against Attorneys And Their Clients</i> Consumers attorneys continue to target collection attorneys and the clients who retain them in actions under the FDCPA and related statutes governing the collection process. This past year has seen a marked increase in claims challenging collection letters under a wide range of theories relating to interest, out of statute disclosures, creditor identity and attorney meaningful involvement. Collection letters are easy targets for consumer attorneys and letters often give rise to class action claims. In this session, two experienced defense attorneys and an in-house attorney for a major debt buyer will discuss the latest cases in this area and will share insights on how to navigate and avoid collection letter litigation. Tomio B. Narita, Simmonds & Narita LLP Jeff Pilgrim, Pilgrim Christakis LLP
10:50 - 11:50 a.m. Grand Ballroom 3,4 Level 4	<i>Trends In Debt Collection Litigation Risk</i> The past decade has seen several changes in the legal landscape of debt collection, and 2017 was no exception at the state or federal level. Recent developments include two debt collection cases before the U.S. Supreme Court, several federal court opinions interpreting the TCPA, FDCPA, and FCRA, state-level regulation and enforcement activity of debt collection law firms, aggressive and creative tactics from the consumer plaintiff's bar, and the potential for CFPB debt collection rulemaking and enforcement activity under a new director. Our panel will examine the legal trends we are experiencing and the potential impact of such trends on the business practices and litigation and regulatory risks of creditors rights attorneys. Daniel L. Delnero, Ballard Spahr LLP Stefanie H. Jackman, Ballard Spahr LLP
11:50 a.m.	National Creditors Bar Association Conference adjourns

ATTACHMENT 2

Transcript of Meeting of Consumer Advocacy Associations and Other Interested
Parties

January 23, 2018

1 STATE OF COLORADO DEPARTMENT OF LAW

2 CFDCPA Consumer Group
3 And Administrator of the Uniform Consumer Credit Code
4 Public Hearing

4 TRANSCRIPT OF PROCEEDINGS
5 January 23, 2018

6
7 Proceedings had on Tuesday, January 23, 2018,
8 at Ralph L. Carr Colorado Judicial Center,
9 1300 Broadway, Room 1E, Denver, Colorado 80203,
10 commencing at the hour of 1:35 p.m., before JULIE
11 MEADE, Administrator; and Invited Members of the
12 Public.

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1 P R O C E E D I N G S

2 JULIE MEADE: Good afternoon. Welcome to the
3 first CFDPCA Consumer Group meeting. Per the sunset
4 bill that just went through last session, this is the
5 first meeting I'm holding per statute in January.

6 And the purpose and the form for this meeting
7 is for consumer groups to have a forum and an
8 opportunity to discuss with me as the Administrator
9 issues around the Fair Debt Collection Practices Act.

10 With that, I thought I, to give it some
11 structure, would give some opening thoughts and remarks
12 and then really open it up and engage in discussion
13 with the consumer groups that are here today. Okay?

14 So really, to start this -- the hope is that
15 this type of meeting will provide an open discussion
16 where I'm on the receiving end of as much information
17 as possible from you all and I answer questions or am
18 visible to provide information for you in the arena of
19 debt collection.

20 With that, I thought I would start with the
21 sunset review and the changes that came through the
22 legislature.

23 So we have started fielding questions through
24 our various e-mails and answers. But in case
25 everybody's not aware of all the substantive sort of

1 changes, the first biggest change was adding a
2 definition of debt buyer.

3 And we have, in fact, a received a lot of
4 questions around what does "engage in the business of
5 purchasing" mean? What does "delinquent or defaulted"
6 mean?

7 Questions around servicers, and a question
8 that came in whether the instate office requirement
9 under the Fair Debt Collection Practices Act applies to
10 debt buyers. So we've started looking at the language
11 that was just -- just became effective and are going to
12 try and figure how to administer that new definition of
13 debt buyer.

14 A quick note, it was always our position in
15 interpreting the Colorado Fair Debt Collection
16 Practices Act that debt buyers were subject to the
17 Colorado Fair Debt Collection Practices Act even prior
18 to the new definition of debt buyer.

19 The other obviously substantive additions
20 were creating new requirements when binding legal
21 actions on debt held by debt buyers. And that also
22 became effective January 1st, 2016.

23 There was some clarification that a bond
24 would not be required for a debt buyer, but I think
25 that was just a clarification that was -- already

1 seemed to be spelled out in the prior version of the
2 act.

3 Another substantive change from our
4 perspective is the institution of a two-year statute of
5 limitations within which the Administrator may bring
6 enforcement actions.

7 That is going to be something we're looking
8 at and trying to figure out how to administer
9 responsibly.

10 And then adding duties -- sunseting the
11 advisory board but adding to me -- or to the
12 Administrator of which this meeting is formed.

13 And then, of course, relocating the statute
14 into Title V. So those are sort of the substantive
15 changes to the sunset.

16 And I thought I would stop and see what kind
17 of discussion there was or if there are any thoughts
18 from the consumer groups around those items.

19 T.A. TAYLOR: One of the -- I'm sorry. My
20 name is T.A. Taylor. I'm an attorney in private
21 practice, and I'm the state chair for the National
22 Association of Consumer Advocates.

23 And one of our concerns initially, and it's
24 probably something that we'll have to address, is
25 educating consumers about the changes and how it

1 impacts them.

2 Generally, you all cite in some pretty good
3 information for consumers. It's just sort of kind of
4 dense for them to get through.

5 And so I was wondering if perhaps you'd
6 consider a highlight section just for a short period of
7 time, saying these are new rules effective the first of
8 January, here's how it might impact you. If you have
9 questions, talk to us.

10 JULIE MEADE: Do you have any particular
11 items that you think need to be clarified for
12 consumers?

13 T.A. TAYLOR: I think the main one is the
14 change requiring additional documentation for the
15 complaint. That's a big one. Refining that some
16 people, the minute they get served, they aren't going
17 to the site to see what they do now.

18 JULIE MEADE: Any other thoughts or
19 suggestions on -- or issues on the changes to the act?

20 DAN BECKER: I'm Dan Becker. I'm also an
21 attorney in private practice and also a member of NACA.
22 But I do not speak for NACA. I'm on behalf of myself.

23 You know, the question I would have and that
24 I think would be valuable to consumers is it's often
25 difficult for consumers to understand when somebody is

1 acting as a debt buyer and owns the debt, versus
2 somebody who is acting as an assignee for collection
3 purposes.

4 And so having some guidance around that so
5 that people can understand, and I think it probably
6 would be valuable even for practitioners, probably
7 useful for industry folks too, to understand very
8 clearly what is considered a debt buyer and whether the
9 different types of assignments fall within the scope of
10 a debt buyer.

11 And then the second part of that would be too
12 would be to -- that oftentimes consumers don't know,
13 and so they may not know the documentation that comes
14 with the summons and complaint is inadequate under the
15 CFDCPA.

16 And so unless somebody tells them that that
17 information should have been required and also is able
18 to tell them that the collection agency is actually
19 considered a debt buyer, they don't know that they're
20 missing the documentation that they should now be given
21 as part of this.

22 JULIE MEADE: And so your suggestion is
23 provide clarification on our website in some manner for
24 that?

25 DAN BECKER: I don't know necessarily if that

1 would be the best way to do it. I think that if there
2 were education on it to consumers so that they can
3 understand, in this circumstance, you're sued by
4 Collection Agency A, and this collection agency happens
5 to be a purchaser of defaulted debts, if you're sued by
6 them, then they're required to give you the chain of
7 assignment and the other things that are required under
8 the revisions to the act.

9 That way, they can have a better sense of it,
10 and perhaps educating them about the difference between
11 somebody who's acting as a debt buyer, versus somebody
12 acting solely as a collection agency collecting on
13 behalf of the creditor that doesn't outright own the
14 debt.

15 The second thing that I think would be kind
16 of useful to identify these issues is what -- is
17 clarification on whether the debt buyer has to identify
18 itself as being a debt buyer when it files a complaint.

19 And I don't -- I don't know if that's within
20 the Administrator's authority to create rules or
21 guidelines around, but it certainly would be helpful if
22 the agency is saying, "We are a debt buyer," so that
23 people can know because these are often very opaque
24 types of arrangements between collection agencies and
25 the creditors for whom they collect .

1 JULIE MEADE: Okay. Thank you. Rich.

2 RICH JONES: I guess from our -- this is Rich
3 Jones, Policy Center. We very much were supportive of
4 the changes and I think are wanting to see, again, how
5 it begins to play out and particularly around the
6 required documentation.

7 I'm not sure if -- if you -- if the agency or
8 you as the Administrator collect any sort of data on
9 the numbers of complaints filed or, you know, something
10 like that, and/or if that's something that the courts
11 would collect so that we can begin to see a little bit
12 about what the effects are on the -- of the --
13 particularly changes in the amount and type of
14 documentation that's needed.

15 JULIE MEADE: Well, I can tell you, we don't
16 collect data on lawsuits because we're usually unaware
17 of them unless we get a complaint from a consumer and
18 we're apprised of that through assessing that consumer
19 complaint. So we don't track that.

20 Some of our more in-depth examinations and
21 investigations have required us to see and pull a
22 number of lawsuits for particular agencies and -- but
23 that's an ad hoc basis. It's not something that we
24 have the process or capabilities at this point to track
25 complaints that are filed in court.

1 We do track complaints -- consumer complaints
2 that are filed with us. But I'm not sure that's what
3 you're looking for.

4 RICH JONES: Right.

5 DAN BECKER: I would add to that as well and
6 why I think that would be useful thing to do is that it
7 would be nice to know on, sort of, an aggregate level
8 without having to identify a bad actor, but how big
9 some of the problems that, as consumer attorneys, we
10 see every single day in debt collection lawsuits,
11 whether it's a lawsuit that's filed with improper
12 service, it's a lawsuit filed on a debt that is out of
13 statute, or whether it's a lawsuit that doesn't comply
14 with the new requirements under the act.

15 And so I think that from, you know, a policy
16 standpoint, it would good to have that data to
17 understand what percentage, you know, what number, what
18 volume of lawsuits are getting filed by collection
19 agencies, and of those, how many of them simply end up
20 in default, how many of them end up with somebody, you
21 know, raising a defense, how many end up in
22 stipulations.

23 And that would, I think, give the
24 Administrator a sense of, you know, where the problems
25 areas are. And if you're approaching it from a

1 rulemaking approach or an enforcement approach, you
2 would understand what the biggest problems are from
3 there because the information we have is really, sort
4 of, anecdotal and, you know, you can sort of see what
5 you see every day, and you may just be seeing the
6 problems, but you see the same ones.

7 And so it appears sometimes larger in your
8 minds, in that there's a problem when it may be
9 isolated. And I think that would be helpful for
10 everyone all around.

11 JULIE MEADE: Any other thoughts on the new
12 provisions for the sunset? Okay. I thought I would
13 throw out, sort of, maybe some trends and issues that
14 we're sort of looking at and trying to analyze and get
15 some ideas on how to administer or how to handle it.

16 But first, around the collection of the
17 medical debt -- and there are myriad of issues with
18 this sort of topic that I would welcome input and ideas
19 from you all on.

20 T.A. TAYLOR: One of the bigger issues I
21 think we're seeing in terms of medical debt is the
22 speed at which a collection agency goes to get this
23 from the consumer while the debt is still working its
24 way through the insurance process because we're seeing
25 insurance companies take six months or longer to get it

1 settled, particularly when they're seniors, because it
2 has to go through Medicare and then go through their
3 gap insurance coverage.

4 But they get to the three months' point, and
5 they're getting notices from a collection agency before
6 that. Try as we might to contact them, and say we're
7 still going through the insurance, it doesn't work
8 because as far as they're concerned, well, we have this
9 bill, and it hasn't been paid.

10 Well, there's no way we're going to be able
11 to have the client pay it. There's not enough money to
12 pay it. We're not about to have them pay any portion
13 of it until it's worked its way through the insurance
14 process.

15 And I -- I don't expect that you can fix
16 that. But it is a problem, in terms of, you know, some
17 sort of timeline or some acceptance for the collection
18 agency is that an insurance issue with medical debt
19 ought not to be accelerated when you know that's an
20 insurance issue, which in most cases there's an
21 insurance issue. So . . .

22 It's just becoming a bigger problem.

23 JULIE MEADE: That is one of the issues,
24 obviously, that's more around the creditor sort of
25 sending that off prematurely, I'm guessing.

1 T.A. TAYLOR: I think that's it. So it's
2 actually more the creditor issuing, at this point,
3 unless we're ever able to set aside medical debt
4 separately, under statute, how successful we'll be.
5 You know? One can always dream.

6 But, so yes, I guess the medical debt is
7 two-sided. It is a creditor issue and there's no
8 distinguishing it from collection debt.

9 DAN BECKER: I agree that that's a problem.
10 What we see typically is that there's a 90-day window
11 after a bill is incurred and not paid in which the
12 original creditor -- and it's a hospital or some other
13 provider, in which they attempt their own collection
14 efforts and then ship it off to the collection agency
15 after the 90th day, or some others have different
16 windows.

17 But, you know, I think where there's an
18 opportunity to deal with this issue, which is in those
19 90 days, the consumer will probably have a discussion
20 with the hospital and say, "Oh, you know, insurance
21 should have paid for this."

22 Well, even if insurance is slow in getting
23 back to the hospital or the hospital is slow in
24 rebilling insurance, those 90 days still continue to
25 run.

1 So even though that's not resolved, then
2 there is a -- you know, there's a problem where it gets
3 to the collection agency when that hasn't been resolved
4 yet.

5 And then when the consumer really steps up
6 their fight to not have to pay it because it should
7 have been paid by insurance is usually when they get
8 their notification from the collection agency that is
9 has been sent to the collection agency, and maybe it's
10 going to be reported to credit.

11 And at that point is when usually the patient
12 or consumer steps in and starts having contacts with
13 the collection agency. And that will usually then, you
14 know, trigger them disputing with them, saying it had
15 to be done with the collection agency.

16 And I think where there's opportunity maybe
17 under the Administrator's authority would be to require
18 a little bit more thorough investigation of disputed
19 claims when the collection agency does receive a
20 dispute notification.

21 I don't know the provision under the state
22 act, but, you know, it's the 1692(G) notice and
23 verification requirements under the federal act.

24 And so if, you know, if the agency is
25 required to do more to investigate the dispute prior to

1 commencing litigation to collect the debt, then that's
2 something that would benefit the consumer and perhaps
3 prevent or, you know, help the collection agency from
4 filing a lawsuit where ultimately they shouldn't
5 prevail and so they don't have to incur that type of
6 cost in doing so.

7 But at the end of the day, you know, it's the
8 information that gets shared back and forth between the
9 collection agency and the original creditor that is
10 really important to know whether the billing has been
11 done, the billing has been done appropriately, if it's
12 been denied, if it's been denied appropriately, if
13 there's any appeal rights, sort of increasing the share
14 of that information back to the consumer when they do
15 dispute a medical debt.

16 JULIE MEADE: What other issues are you all
17 seeing with medical debt or consumer?

18 PUBLIC SPEAKER: Medicaid. I see some
19 collections on Medicaid debts that shouldn't be
20 collectible.

21 T.A. TAYLOR: I'm not sure what could be done
22 about this, but this relates to the Medicare debt as
23 well. We're also seeing it move to a point where there
24 is a lawsuit, there's a default judgment, the
25 Interrogatories are sent out to a consumer, and then

1 garnishment is attached -- is executed, but it's
2 executed on an account that is the senior's Social
3 Security.

4 Well, when they have -- when these
5 conversations are had that the creditors say that I
6 don't have any money, all I get is my Social Security,
7 somewhere between all I have is my Social Security and
8 execution of a writ, something's missing because I had
9 to go back -- and I'm not the only one -- and unwind
10 this to get the funds back.

11 In the meantime, the impact on the senior is
12 devastating. And I'm saying senior because I do a lot
13 of work with seniors. It could be anyone who's on
14 Medicaid, et cetera, or receives exempt payments.

15 JULIE MEADE: Any other thoughts or ideas on
16 medical debt?

17 (No response.)

18 JULIE MEADE: The other issue we've been
19 looking at recently is the collection of treble damages
20 and the check statute 13-21-109. And that's becoming
21 increasingly difficult for us to administer and handle.

22 I'm wondering if you all are seeing that out
23 there and what exactly your thoughts are.

24 DAN BECKER: What's the challenge in
25 administering it?

1 JULIE MEADE: Well, it's not written in the
2 clearest way. And when and how those troubled damages
3 are being collected, and sort of -- I'm sorry. Go
4 ahead, T.A.

5 T.A. TAYLOR: The only area that I'm seeing
6 it is when they're not actually able to be collected
7 because as soon as the consumer realizes that someone
8 is attempting to collect a debt, they simply close
9 their account.

10 The problem from that is then we have some
11 unbanked people (inaudible) lenders. There are no --
12 I guess when they're collecting the treble damages,
13 it's still that part of taking that money from accounts
14 that they shouldn't be allowed to take any money from.
15 That's one.

16 The other piece is notification because I'm
17 finding that consumers, they have no idea that they're
18 going to be subject to treble -- treble damages. They
19 don't know what that means in terms of how much they
20 stand to lose.

21 JULIE MEADE: I guess sort of tying into that
22 is the general sort of issue that we've seen cropping
23 up in dealing with more and more through complaints is,
24 sort of, adding up interest and adding up other fees
25 during the collection, which the treble damages kind of

1 ties into that.

2 And I'm wondering what you all are seeing or
3 think or thoughts on the addition of interest and fees
4 on top of the underlying debt through the collection
5 practices.

6 T.A. TAYLOR: Well, we've definitely seen the
7 interest and fees. And fees, some of the fees are
8 actually not (inaudible). And that goes back to the
9 medical debt as well.

10 The addition of fees, when the consumer
11 believes the insurance company is going to pay for
12 this, but the fees are being adding to it. So fees and
13 interest added, and then when it is cleared through
14 insurance, there's still an amount owing.

15 But there's no way in the world there should
16 be an amount owing. And even when you have a consumer
17 who can deal with treble damages, that doesn't tell me
18 that also I'm going to have to pay a \$150 fee because
19 it was 30 days, and I'm going to have to pay the
20 80 percent interest.

21 So it's like it's a trap. And that's one of
22 the reasons that there's a walkaway factor. It's like,
23 there's no way. I can barely manage the treble damages
24 on their own. Now you're talking another \$150, \$200.

25 So I don't know how -- I don't know how we

1 fix it (inaudible) easier just because it should not be
2 allowed to add fees and interest while something is
3 working its way through the insurance process. But on
4 this point, I certainly (inaudible.)

5 DAN BECKER: I would add to that not
6 necessarily in the treble damages statute, but under --
7 I can't think of the name is it. So under the
8 U-triple-C, the maximum allowable attorney fee on a
9 consumer obligation is, like, 15 percent.

10 I'm probably being inartful in how I'm
11 describing that 15 percent. But in the payday loan
12 statute, it's much higher. And so what I typically see
13 is, you know, lawsuits basically filed en masse on
14 payday loans.

15 And so there will be an attorney going to a
16 return date in county court for 30, 40, 50 lawsuits all
17 on the same day. And on each and every single one of
18 the lawsuits, the same amount of attorneys' fees is
19 added to the lawsuit.

20 So you start with somebody who has a payday
21 loan of \$575. Then you add to it the fees that the
22 payday lender is allowed to add to it.

23 You add to it, you know, the 45 percent
24 interest for however long it's been outstanding, and
25 then you add to it attorneys' fees of \$250 or \$300 or

1 \$400, even though there's no way really for that
2 attorney to justify charging that amount of money for
3 what essentially amounts to a boilerplate complaint,
4 where the only thing that's different is the name of
5 the creditor and the name of the debtor and the
6 amounts.

7 And these are, you know, highly computerized
8 and automated systems that don't require a lot of
9 attorney intervention or attorney time to review.

10 So you have somebody going to a return
11 hearing, which can last three, four hours, depending on
12 number of people that show up, and basically
13 collecting, you know -- you know, 40 times 400 on all
14 of these different things, which is not a reasonable
15 attorneys' fee.

16 And so -- but on the individual level, the
17 consumer goes from receiving a payday loan of \$500. A
18 \$75 fee gets added to that. All the collection fees.
19 They could walk out of court that day, or never even
20 walk into that court, with a judgment against them of
21 11 or \$1,200 for the \$500 that they borrowed six,
22 seven, eight months ago.

23 And so the fees and interest that get added
24 to these things, while they're permitted, they end up
25 putting people into debt traps.

1 And if there's a judgment against the person,
2 then they're going to need to end up in, you know,
3 having garnishments done, and that's just a one-way
4 ticket to bankruptcy protection.

5 JULIE MEADE: And let me clarify. I'm
6 talking about fees and costs and interest that are
7 added once it's in default and in the collection
8 process, not at the credit or oranges level.

9 T.A. TAYLOR: Well, even after it's going
10 specifically to after the process is over, that's one
11 of the other challenges because fees are still being
12 added.

13 And it's not just that they're being added.
14 It's that they're unknown fees going through the
15 process, even though those fees aren't reasonable, you
16 know what they're allowed to charge, except for the
17 attorneys' fees, which I agree.

18 We're not allowed to do that in real life
19 because it's against rules. But afterwards, when a
20 person, let's say they do become a leader, and so
21 they're going to try to enter into some sort of
22 agreement, but they really don't, they're chasing a
23 bone because fees continue to be added, and the
24 consumer has no way of knowing where that ends.

25 You know, the collection agencies will say,

1 this is -- you're going to have to keep paying interest
2 at this percentage, okay? So you can calculate that.

3 But it just says, you're going to have to pay
4 interest at this percentage and fees. And those fees,
5 they're just unknown.

6 I mean, half the time I can't find out what
7 those fees are. Well, we just calculate those on a
8 monthly basis, or we calculate those based on the
9 remaining amount of the debt.

10 But there has to be some way for things to be
11 definitive or it's not possible for the consumer to
12 work their way through. And the whole point of this is
13 for them to eventually be able to get out of debt with
14 this particular collection agency.

15 And I don't know how they do it right now. I
16 know that they're not doing it because they can't.
17 Here's an example. One was going to go borrow money
18 from a family member to get out from under it.

19 Could not find out how much was required.
20 You can call and get a payoff for your mortgage or
21 something, well, it depends, okay, fine, if we pay it
22 within this amount of time, two weeks, we give you
23 money, how much is it going to be? Well, we won't
24 know. You'll have to pay this part and then we
25 calculate.

1 Well, you know that's untenable. And what's
2 a consumer to do when that happens, when I'm making the
3 call, so what happens when the consumer is trying to
4 find out?

5 They get an amount, they think they're done.
6 And they're not. They get another bill, which, oh, by
7 the way, continues to accrue interest.

8 JULIE MEADE: So you're suggesting one of the
9 bigger problems is not knowing what those fees are or
10 how they're calculated?

11 T.A. TAYLOR: That's correct.

12 JULIE MEADE: And, Dan, yours was the sort of
13 set attorneys' fees just being plopped on?

14 DAN BECKER: Right. So sort of, I mean, the
15 whole filing of lawsuits that all have the exact same
16 amount of attorneys' fees set, and, you know, the defer
17 deposit loan act states that the maximum that we can
18 charge for the attorneys' fees is a certain percentage
19 of the original loan balance.

20 I mean, that's a -- that's a cap, not a
21 floor, but it's treated as a floor. So, you know,
22 based upon the amount of work, you know, it always says
23 "reasonable attorneys' fees."

24 But is it reasonable for one lawyer to file
25 40 lawsuits, go to one return hearing, spend four hours

1 and bill \$250 on each account for each of those 40
2 people? I would say -- suggest that it's not. That's
3 just one man's opinion.

4 JULIE MEADE: Any other thoughts or comments
5 or questions regarding fees? Those were kind of some
6 of the things that I wanted to throw out there.

7 Now I'd like to open it up and see if there
8 are any trends or issues you would specifically like to
9 raise with me.

10 T.A. TAYLOR: Does this need to be in the
11 area of these collection efforts, or can we talk for a
12 minute about pure defaults?

13 Default judgments, what I want to button down
14 is we all know there's a massive problem with faults.
15 That was one of the reasons why we did this issue.

16 Do you all ever track or get involved in
17 whether one particular collection agency is responsible
18 for 100 defaults in a given time period, or do you not
19 engage that at all?

20 JULIE MEADE: I would say generally if we are
21 seeing a trend or -- of complaints coming in, and the
22 issues center around defaults, we will look at those.
23 And we will go pull court records and start analyzing
24 those.

25 But again, it's based on seeing what the

1 consumer complaints are coming in and identifying it
2 from the consumer complaints. We don't necessarily
3 have any other mechanism to identify that there's --
4 there's an issue.

5 That would take some kind of monitoring of
6 court filings. And I'm not quite sure how that
7 would -- how we would do that.

8 T.A. TAYLOR: What if we were able to have
9 someone monitor these filings and report that
10 information to you? It wouldn't be coming directly
11 from the consumer, but it would be a compilation of
12 these events that have impacted consumers. We can do
13 that.

14 JULIE MEADE: Sure. Absolutely. So consumer
15 complaints are one way in which, sort of, a flag is
16 raised for us to investigate or examine. It's not the
17 only way.

18 And certainly, if you brought some
19 highlighted issue, we would entertain taking a look at
20 that.

21 Anything else on trends or issues?

22 (No response.)

23 JULIE MEADE: So, obviously, the next sort of
24 thing I thought to provide some structure is talk about
25 potential rulemaking. And obviously, there may be

1 areas, given the sunset and the changes to the act,
2 that would precipitate rulemaking.

3 And so I wanted to begin to explore what
4 issues and ideas are out there from your perspective on
5 potential areas that you think would provide
6 clarification or be of benefit in the rulemaking arena.
7 I'm just going to throw it out there to you all.

8 DAN BECKER: I think the biggest benefit from
9 the sunset bill was the addition of the debt buyer
10 requirements.

11 And I think that having clarification on what
12 is required to prove a chain of assignment and to prove
13 all the information that needs to be submitted with the
14 summons and complaint would be extremely valuable.

15 I think that's probably valuable for both
16 sides of the equation, and, sort of, spelling out what
17 the Administrator considers to be meeting the
18 collection agency or debt buyers' burden under that
19 would be, I think, extremely useful.

20 JULIE MEADE: Anything else?

21 T.A. TAYLOR: That really is it. The thought
22 was clarified, and everyone knew it would make it --
23 well, it wouldn't make it really good, but it would --
24 it would at least make sure we're all operating from
25 the baseline.

1 And then that would avoid us having to engage
2 with what you know this is what it is supposed to mean.
3 That never works. So -- and we could have this in
4 place.

5 I would answer, it would benefit us as well
6 as the industry. Clarity always helps even it's not
7 exactly (inaudible).

8 JULIE MEADE: What are your thoughts on -- we
9 obviously looked at that and know we need to do it.
10 But the question is do we need some experience in
11 what's coming through before developing an idea of how
12 to clarify something?

13 T.A. TAYLOR: Well, you know, I actually
14 thought about that, and I was discussing that with some
15 other people. And the only way it seems reasonable to
16 wait is if we're actually able to engage in some
17 monitoring, which is really difficult.

18 It's hard enough for us to get someone to sit
19 in court and just monitor what's happening. And then
20 that would then put us in the position of having to
21 look at all of the complaints to see if an appropriate
22 documentation was available, and I don't think we could
23 do that in a short order.

24 DAN BECKER: I do think there probably is
25 information that you could look at in advance, so

1 rather than looking at maybe rule-breaking -- or
2 rulemaking after seeing what rule-breaking has
3 occurred, or whatever, you could look at county court
4 filings for collection lawsuits, and you can identify
5 who the debt buyers are, usually by name.

6 And some have included it in the past.
7 Others haven't included it in the past. And you can
8 see, sort of, what the current practice is to see
9 whether that measures up to what is required under the
10 statute.

11 This happens to be fresh in my mind just
12 because I met with somebody yesterday who had a debt
13 buyer sue him, and in the original -- the complaint was
14 filed before January 1st, so it didn't have it.

15 And then after he filed an answer, they filed
16 a motion for judgment on the pleadings and attached all
17 of the information.

18 And so I got to the chance to look through
19 those things, which would have been, you know, this is
20 why I like the statute so much is that it's better to
21 look at that stuff before you file an answer because
22 then you're not wasting your time.

23 But you can tell what information they're
24 going to have based upon what they've presented in the
25 past.

1 T.A. TAYLOR: (Inaudible). You definitely
2 don't want to do rulemaking in a vacuum, and then it
3 doesn't meet the objectives. And so (Inaudible)
4 factor, so, in this case, since -- so he started
5 getting it a big answer (inaudible).

6 You know, I would think in a couple of
7 months, we could -- by the end of March, we should, and
8 since these things don't slow down, we should be able
9 to get some idea of whether things are catchable by
10 monitoring and then be able to get that information
11 back to you, just to let you know what it looks like
12 one way or the other.

13 RICH JONES: And that would be my sense, I
14 think, to look and see how it's beginning to play out
15 and how it's working at least over the short term.

16 Because we've had -- I think, not in this
17 business, other than the policy side of it, but I
18 thought it was pretty clear that we're basing the
19 statute on some other state that had success with it.

20 I'm hopeful that that will work. But I think
21 we need to look at it and see what has been the
22 experience, what's been the practice, particularly
23 working with the attorneys who have clients and perhaps
24 some experience with what's happening, you know, on the
25 ground and then be able to come back and say, this

1 seems to work, this seems -- doesn't, or there's, you
2 know, questions about this particular provision or not,
3 and be able to bring those back to you.

4 I think it would be helpful. And the other
5 thing is, T.A. raised, and the form of the question is
6 begin to look at some of the data and see what the
7 volume of filings and types of filings and see, you
8 know, if things are getting better from our perspective
9 or not.

10 But it may be a, you know, a little bit.
11 We've had, what, 20 days of it so far, you know.

12 JULIE MEADE: Right.

13 DAN BECKER: There's probably already \$10,000
14 lawsuits filed.

15 T.A. TAYLOR: Twenty times a hundred. But
16 no, I think we will be able to come back to you. And
17 we'll have an opportunity to come back to you end of
18 March, end of April, we should have something
19 reasonably good down.

20 JULIE MEADE: So potentially rulemaking,
21 obviously, in -- in trying to figure out how to
22 implement, sort of, the new provisions of the sunset is
23 obviously going to be on our mind this year and trying
24 to figure out when and how to do that.

25 Other than around these new requirements for

1 debt buyers, are there areas that you think we should
2 be looking at?

3 As you know, we're required to publish a
4 regulatory agenda for the upcoming year, which we did
5 in November, and put in there a general, sort of,
6 section saying -- implementing the new provisions,
7 rules around implementing the new provisions on the
8 sunset.

9 There were also other sort of administrative
10 cleanup -- let's see -- around our requirements for
11 abbreviated applications. A lot of these were more
12 geared toward administering the licensing, sort of, end
13 of things and cleaning some of this stuff up.

14 But if we're going to be in rulemaking, and I
15 throw it out there, if there are issues or provisions
16 that are currently in there or current rules that you
17 think can be clarified or changed, this was partly a
18 forum for you to start getting that on our thought
19 process -- in our thought process for potential
20 rulemaking.

21 DAN BECKER: So, I mean, this is something
22 that, you know, we would have an opportunity to sort of
23 maybe not formally petition for rulemaking but
24 certainly send you thoughts and concerns that we have
25 surrounding existing provisions on the act?

1 JULIE MEADE: Yes.

2 DAN BECKER: Okay.

3 JULIE MEADE: And then the idea would be, so
4 this is the Consumer Group meeting. There's an
5 industrial-related meeting in July. The idea would be
6 at some point after that, start thinking about engaging
7 in a rulemaking process.

8 T.A. TAYLOR: And is the industry meeting in
9 July? Do you know?

10 JULIE MEADE: I haven't set it yet. It just
11 says July. Sometime in July.

12 DAN BECKER: How's the -- how's -- how are
13 you distributing notices of these meetings? You know,
14 I think Kate and I found out just because we're
15 involved with other folks that were planning on
16 attending.

17 JULIE MEADE: So for this one, it says, "Give
18 direct notice to consumer groups." So we spent some
19 time just trying to reach out to people and compile a
20 list of consumer groups in Colorado, and nationally,
21 frankly.

22 And came up with a list of about 53, maybe a
23 little bit more. But obviously, asked them to pass it
24 along. And so that's what we'll be doing in July.

25 It will be direct notice. We always, though,

1 also publish on our website. So in this case, it was
2 direct notice to consumer groups we had identified,
3 with the idea if you know other consumer groups that
4 are not included, please pass those along.

5 DAN BECKER: I was just wondering where
6 there's any sort of direct e-mail sign-up. 'Cause I
7 need more e-mail. So . . .

8 JULIE MEADE: We do have what was started
9 as -- it was called an interested parties list. But
10 that generally was made up of our licensees and
11 industry-related folks, which we get licensing
12 information and renewal information and things like
13 that.

14 And so for this kind of -- the rulemaking,
15 obviously, will be sending it to all of the contact
16 lists we have, both consumer and advocacy.

17 If we're going into rulemaking, that will be
18 a much more proactive publication of notices for those
19 types of things. Did that answer your question?

20 DAN BECKER: Yes.

21 JULIE MEADE: Okay. Any other ideas or
22 questions around the rulemaking?

23 RICH JONES: Did you guys have some sense of
24 the rules that you may need to address in the act now?

25 JULIE MEADE: Yeah. I mean, some that we've

1 identified that just need to clarify, change of
2 ownership requirements, the abbreviated application.

3 Let's see. There's sort of an interpretation
4 problem between trust requirements and liquid assets
5 requirements and how we're requiring disclosures on the
6 application. So we want to clarify that for
7 business -- for licensees.

8 Let's see. What else are we sort of throwing
9 out there? An idea around requirements before a
10 collection agency may utilize ACH or other electronic
11 payment methods in the collection of a debt is one we
12 put out there.

13 Clarifying -- amending a current rule to
14 clarify what we're going to require or accept for
15 financial responsibility, the bonding requirements,
16 those kinds of things.

17 T.A. TAYLOR: So we can give some input
18 specifically on the rule surrounding the ACH
19 collection?

20 JULIE MEADE: Yes.

21 T.A. TAYLOR: Because we've had some
22 challenges with collectors maintaining access to a
23 consumer's accounts when the consumer has requested
24 that they cease taking from their account.

25 Some of the -- some of it, I think, is just

1 pure bad actors. Some of it is rather onerous
2 requirements for terminating the initial permission to
3 access, such as you must give written notice to this
4 address, which isn't in Colorado, 30 days before you
5 want it to stop, which is never going to coincide with
6 the next date for taking the funds.

7 And even if you give us this notice, it's not
8 retroactive. It's only prospective. So that means
9 that a consumer has had money taken out when they
10 thought, well, we told you not to take anymore. So we
11 would (inaudible) to be able to weigh in.

12 JULIE MEADE: Well, so the reason I wanted to
13 get this discussion going is because once we sort of
14 get an idea of what rules we need to implement, which
15 ones we need to clarify, which we need to appeal, then
16 we'll know go into the formal process, where there's a
17 public hearing, and we're receiving written comments
18 throughout the rulemaking process.

19 Now is sort of saying we've got some ideas.
20 We obviously have heard from almost everybody that we
21 may need to be doing some rulemaking around the new
22 provisions.

23 And so I'm throwing it out there so you start
24 thinking about rulemaking. When we -- we will go
25 through a formal -- yeah, a formal hearing process.

1 I'd like to start getting some basis and
2 structure of what kinds of rules we're going to be
3 looking at.

4 Anything else on rulemaking?

5 (No response.)

6 JULIE MEADE: So then the last thing is just
7 other business to open it up. And again, because you
8 all are so quiet, I thought I might have a few things
9 to throw out there.

10 It's obviously, the legislature is in
11 session, and so I just wanted to highlight a few things
12 that we're watching. We're not -- we're not putting
13 forth anything.

14 But there are some bills out there related to
15 our administration of the Fair Debt Collection
16 Practices Act here in Colorado that we're watching.

17 And I would say the first one is actually an
18 amendment in -- an amendment to the Fair Debt
19 Collection Practices Act that we're watching, and it's
20 called the Practice of Law Technical Clarification.
21 And it's House Bill 450-- 4550.

22 And this is an exemption of attorneys and law
23 firms from the federal Fair Debt Collection Practices
24 Act. And so we are watching that to see what happens
25 with that and what, if anything, that would influence

1 here in Colorado with the Colorado Fair Debt Collection
2 Practices Act.

3 And local, there are a couple of bills
4 related to this area. House Bill 1057, this is a bill
5 that allows a judgment creditor to seek a motion from
6 the court to compel the Department of Labor to disclose
7 information about a judgment debtor.

8 It also has a provision that allows a
9 collector collecting on behalf of the State to add all
10 fees, costs, costs of collecting, including contractual
11 costs and attorneys' fees, whether it's been reduced to
12 a judgment. So we're sort of watching House Bill 1057.

13 We are looking at House Bill 1063, which
14 amends the Colorado Credit Reporting Act. It amends
15 that act by giving consumers right to control the
16 information that a credit reporting agency has. So
17 we're watching that one.

18 And the other one we're watching is House
19 Bill 1090. This is another one that amends the
20 Colorado Credit Reporting Act. And this act provisions
21 for security freezes for consumers who are underage or
22 under the charge of a guardian.

23 So those are some legislative things that
24 we're kind of looking at keeping our eye on. And with
25 that, I'll sort of open it up to any other questions,

1 comments.

2 DAN BECKER: Do you anticipate that you'll
3 take a position on 1063 or 1090? Or . . .

4 JULIE MEADE: I don't know. It wouldn't be
5 me taking a position. It would be the attorney
6 general. So I don't know at this point.

7 DAN SPEAKER: You said intent. I was more
8 curious about -- I was going to suggest a position.

9 JULIE MEADE: I can certainly take that back
10 to the attorney general.

11 DAN SPEAKER: I'm against it.

12 T.A. TAYLOR: Our position is we're against
13 it.

14 JULIE MEADE: I do not -- I think this has
15 been introduced in prior years.

16 T.A. TAYLOR: It has been.

17 JULIE MEADE: And I don't think our office
18 has taken a position in prior years, so I'm guessing
19 that we would not take a position this one. But I
20 don't -- I don't know.

21 T.A. TAYLOR: This is totally (inaudible.)
22 We keep talking every year about trying to license
23 process servers. And, I mean, there are places that
24 have done it. We think that part of our problem with
25 default judgments is that anyone 18 or over can serve

1 it.

2 And they often do, and they don't, but they
3 actually report that they have. And it's easy to say,
4 well, they have to sign an affidavit.

5 Well, that's true, but I have had process
6 servers -- and I know I'm not the only one -- I've had
7 clients where there was an affidavit filed saying that
8 they served this person, and then most the egregious
9 example, they served -- they said they served the
10 person, and she hadn't been living in Colorado for two
11 years.

12 They served the individual who was at her
13 apartment complex, in the same apartment, who happened
14 to be the manager of the apartment building, and then
15 because she had, in their opinion, a Latino-sounding
16 last name, the description was 54, brown hair.

17 It wasn't her. Okay? That was clear. So I
18 contacted the county attorney. Yes, they're sort of
19 aware of it, but they don't have the resources to do
20 anything about it.

21 Several others where they served a
22 professional, they didn't know he was a professional, I
23 guess, because they completed an affidavit that said
24 this person was served at this time. Well, at that
25 time, this professional happened to be meeting with a

1 client, so it couldn't have been. He didn't serve that
2 person.

3 I just think it's from that to who knows
4 where the documents go, to people finding the documents
5 in courtyards in their apartments. I'm not saying that
6 that's the majority of process servers, but it is an
7 issue.

8 And it's uncontrolled. There's no
9 accountability, and we can't get a county to take the
10 issue seriously. And I understand why. They don't
11 have the resources.

12 But it is a violation to file a false
13 affidavit of service. And we've taken that information
14 to them. And, you know, no action.

15 JULIE MEADE: If I recall, during the last
16 session there was a push for a sunrise around process
17 servers, but I don't know whatever happened to that. I
18 know they called to get some data from us, but I'm not
19 sure what happened with that.

20 T.A. TAYLOR: We shall keep trying.

21 DAN BECKER: I would agree with that. And, I
22 mean, the stories around process servers are
23 frightening and entertaining. I had a guy show up to
24 testify that he served somebody, and it was a different
25 guy than signed the affidavit.

1 And so not only did somebody sign a false
2 affidavit, somebody also perjured themselves in court.
3 And so, you know, it's a -- it's a really big problem.

4 And, you know, we've seen over time, you
5 know, every time I see somebody with bad service, I
6 make a note of it and try to make everyone aware that
7 uses that particular process server that this guy's not
8 your guy.

9 But licensing would be -- would be great
10 'cause there needs to be some sort of oversight because
11 it's near impossible to enforce the CFDPCA or the FDCPA
12 against process servers because they're exempt and only
13 a few courts have said that, under certain
14 circumstances, they're not exempt.

15 And so that's -- that's a really big
16 challenge. There's no private remedy for it, and
17 unless your district attorney really has it out for
18 process servers, there's really not a whole lot that
19 can be done to curtail it.

20 T.A. TAYLOR: I brought it to the attention
21 of the attorney in this one case. And he said -- he
22 didn't say, that didn't happen. He didn't. I was just
23 amazed.

24 He said, "Okay. Well, when would you like us
25 to serve him? Want us to serve him at your office, or

1 will you accept it?" It just totally blew past the
2 fact that he knowingly accepted this, when I'm telling
3 you this was an error with the process server that you,
4 an attorney, are using.

5 "Okay. Well, when do you want us to serve?
6 When you will be there?" What if -- what about people
7 who don't have an attorney? They're just -- so we need
8 to find us a sponsor to address the issue.

9 DAN BECKER: I just have general questions
10 about any enforcement actions that the Administrator
11 intends on taking this year and whether there's
12 anything -- none of a personal concern -- and suggest
13 an area that's ripe for enforcement that makes it
14 really difficult for private attorneys to enforce, and
15 that's -- there's just so many scams out there.

16 And the original intent of the CFDCPA was
17 that legitimate and good-acting collection agencies
18 would not be put at a competitive disadvantage based
19 upon unscrupulous collection agencies.

20 And the most common thing that we see
21 probably on a weekly or semiweekly basis is somebody
22 who gets called up, usually from an out-of-state phone
23 number, and is told that they're going to jail unless
24 they pay this old, defaulted payday loan.

25 Usually the person got the information from a

1 bankruptcy filing or, in some cases, they've actually
2 purchased a group of defaulted or discharged payday
3 loans.

4 And they call and they use really aggressive
5 tactics, scare people into paying. People do it. And
6 it's really difficult to convince somebody that this is
7 a scam when somebody's calling up and has their phone
8 number, their social security number, has their place
9 of business, has their home address, all this
10 information about them, and says, "You know, we're
11 going to file a lawsuit with the district attorney.
12 We're standing outside the door, and you're going to
13 jail today unless you, you know, pay me a hundred
14 dollars right now and fifty bucks a month."

15 And there's nothing really that we can do
16 about it because, you know, trying to be a private
17 attorney and hunt down these people, we don't have the
18 resources for it. But it's a criminal act.

19 And since -- and they're out-of-state actors.
20 It's very difficult. But there are lots of schemes out
21 there like that. And so I'm just wondering if that's
22 anything that's popped up on your radar.

23 JULIE MEADE: It has. And like you, we have
24 limited resources. But I encourage you, anytime a
25 consumer has that, the more -- we're trying to track

1 phone numbers, trying to track locations, but it is
2 very difficult to follow these through and actually end
3 up being able to take action against somebody.

4 DAN BECKER: Okay. And one of the things
5 that you'll see that the PB has done has been really
6 useful is that all the information on complaints that
7 they receive is all public information.

8 Not all the information is public, but the
9 existence of a complaint is public. And they've made
10 it really simple to give that information to the agency
11 so that they can keep track of it.

12 And I really -- it would be nice to know what
13 information either to collect from my clients to give
14 to you or to tell them that they'll need to give it to
15 you in order to make a complete complaint so that it
16 makes the process efficient.

17 If there was some way to digitize that or
18 have it available online, that would be most useful
19 because there are cases all the time where it's nothing
20 we can do, but if it turns out that there's a critical
21 mass of these things, and it's the same people, and
22 they can be located, then certainly it's an issue
23 for -- that should addressed.

24 JULIE MEADE: Agreed. It's finding that
25 balance that the COPB has found with protecting

1 consumers so that they want to complain and providing
2 helpful information so that we can track these down.
3 And that that is a very difficult balance.

4 T.A. TAYLOR: Since you're aware of this,
5 maybe what we can do is just sort of put the word out
6 to the consumer base that when this happens, even if --
7 and sometimes they're so embarrassed because they've
8 actually paid it. So maybe (inaudible.) Get the
9 information out, the number where they said
10 (inaudible).

11 JULIE MEADE: We've done a couple advisories
12 when we're starting to get a lot of complaints around a
13 particular number or the iterations of a name.

14 And we've tried, and we know they're
15 offshore, or something along those lines. We sort of
16 take a step back. And the only way we can do anything
17 at all is to do these consumer advisories. And so
18 we've tried to do those as well.

19 Any general thoughts on this forum, this
20 opportunity, how do you want to improve it?

21 RICH JONES: Well, we very much appreciate
22 the opportunity to come in and meet with you and talk
23 to you. And I think, particularly going forward, the
24 focus on the Fair Debt Collection Practices Act and
25 some of those provisions, I think, will -- we're going

1 to be pretty attentive to what's going on and
2 monitoring.

3 So we'll have a lot more things, I think, to
4 bring back to you going forward. Some real, you know,
5 specific examples about things, and more questions
6 about that.

7 I know we had sent a lot of the information
8 out to folks that we've been meeting with and that.
9 And I think the more that we can get that information
10 out to people, and they get used to having it, I think
11 you'll see a lot more participation, probably, from
12 number of groups.

13 But and a lot of the issues that our group
14 has been working on, some of them in collections area,
15 some of them are in, you know, the U-triple-C area and
16 different loans and rates and some of that stuff.

17 And so probably a lot -- lot of different
18 things to say about different pieces of the overall
19 statute that you guys administer.

20 DAMIAN COOPER: Yeah. I want to add to that.
21 I'm Damien Cooper from COPIRG, C-O-P-I-R-G, Colorado
22 Public Interest and Research Group.

23 And my silence is mostly because this is just
24 going in. There's not a lot to say. So I think,
25 moving forward, it's really nice to have this

1 opportunity to get together. I think more people will
2 participate as it becomes more a regular thing.

3 And so don't take silence as a, you know,
4 just that we're in that moment. We're in that moment
5 of, like, yeah. Pretty soon, we'll have a lot to say.

6 But to the extent that, you know, start some
7 trends that will lead us in a direction. So we
8 appreciate the opportunity.

9 T.A. TAYLOR: Echo.

10 RICH JONES: One of the areas we mentioned
11 about the process servers, one of the other areas that
12 there's some legislation was in the end of the session
13 last year, coming back as looking at student loan
14 servicers and licensing that group.

15 And again, for a lot of the same reasons,
16 where making sure that they are providing the proper
17 amount of information and the right information and --
18 to the student borrowers and making sure that they're,
19 you know, serving more on a fiduciary role than I think
20 we think that they have been up to this point.

21 They're, you know, not always explaining all
22 the options or the best options to the borrowers.

23 SPEAKER: Yeah. That's a critical one on our
24 radar, similar to mortgage loan servicers.

25 RICH JONES: Yeah. My sense is that we'll

1 probably see some legislation this session around the
2 loan servicers -- student loan servicers.

3 T.A. TAYLOR: It's a great idea. I
4 appreciate it. And I found a parking space. So it was
5 all good.

6 JULIE MEADE: So unless there's anything
7 else, well, thank you.

8 (The proceedings were concluded at 2:43 p.m.,
9 on Tuesday, January 23, 2018.)

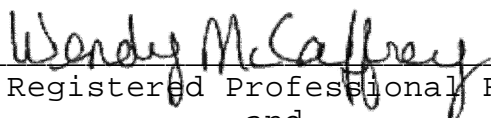
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1 REPORTER'S CERTIFICATE

2 I, Wendy McCaffrey, Registered Professional
3 Reporter and Notary Public in and for the State of
4 Colorado, do hereby certify that said proceedings were
5 taken in shorthand by me at the time and place
6 hereinabove set forth and were thereafter reduced to
7 typewritten form under my supervision, as per the
8 foregoing transcript; that the same is a complete,
9 true, and correct transcription of my shorthand notes
10 then and there taken.

11 I further certify that I am not related to,
12 employed by, nor of counsel for any of the parties or
13 attorneys herein, nor otherwise interested in the event
14 of the within action.

15 My commission expires January 31, 2020; and I
16 have hereunto set my hand this January 31, 2018.

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22 Registered Professional Reporter
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24 Notary Public
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