Leadership Message

Continuing Legal Education (Cap P) Program Planning

The Consumer Financial Services Committee (CFSC) hosts three meetings a year. The Winter meeting, held each January, provides CLE credit at all programs presented. The meeting begins with “Beer and Basics,” a basics level presentation covering the topics that will be presented in the coming days. This program is primarily for lawyers new to consumer financial services law. Over the following two days, the CFSC generally provides 12+ hours of continuing legal education focused solely on Consumer Financial Services Law. We have fun, too, alternating between ski and golf resorts.

In the spring, the CFSC holds a meeting in conjunction with the American Bar Associations’ Business Law Section. At this meeting, most subcommittees of the CFSC hold substantive non-CLE meetings. Typically, the CFSC also holds three sponsored CLE programs (Cap P Programs), one of which, the Fisher Memorial Program, is co-sponsored by the Conference on Consumer Financial Services Law. This program presents a theoretical look at current issues in consumer finance. CFSC may also co-sponsor one or more CLE programs hosted by other committees in the Business Law Section.

At the Annual meeting, usually occurring in early August, the CFSC meets with the entire American Bar Association. At this meeting, like the spring meeting, most subcommittees hold substantive non-CLE meetings. In addition, the CFSC sponsors or co-sponsors one or more CLE programs with other members of the ABA.

Hosting a Cap P program requires a lot of pre-planning, both substantive and administrative. First, someone must have the Cap P program idea. The person typically, although not always, becomes the Cap P program chair.

For the Winter meeting, the planning is done by the substantive subcommittee chairs and vice chairs. To host a CLE program, the subcommittee must choose a topic: find speakers and prepare or
In addition to the obligations above, the ABA requires diversity on the CLE panels. Diversity means a panel has one or more lawyers of color, women lawyers, lawyers with disabilities, gay, lesbian, bisexual and transgender lawyers, young lawyers, or law students. The ABA monitors diversity, and ensures that non-diverse Cap P panels become diverse.

Any CFSC member with a timely topic may plan and host an approved Cap P program at the spring and annual meetings. For the spring and annual meetings, the ABA grants the CFSC one or more Cap P program slots. The number granted depends on the attendance at prior Cap P CFSC programs. For the past several years, the CFSC has received three slots at the spring meeting and one slot at the annual meeting. If members have additional worthwhile topics, the CFSC can also apply for one or more discretionary Cap P program slots. Discretionary slot submissions are reviewed and approved or denied by an ABA meetings committee. Cap P program submissions with co-sponsorship from other committees or subcommittees receive more favorable treatment in the review process. These allocated and discretionary programs at the spring and annual meetings are subject to the same speaker, material, and diversity requirements described above.

The ABA requires Cap P program chairs to submit topics and descriptions three to four months in advance of the scheduled meeting; to identify speakers three months in advance of the scheduled meeting; to provide speaker information forms, speaker and copyright waivers, and original materials six weeks prior to the scheduled meeting. The ABA submission system is constantly changing, moving toward an all electronic submission process. Chairs of Cap P programs should expect multiple submissions to the ABA, which has been frustrating in the past, and hopefully will be more streamlined in the future.

The CFSC relies on its subcommittee leadership and its members to continue quality substantive CLE programming. If you have a Cap P programming idea, please contact CFSC Chair Terry Franzén at tfranzen@franzen-saltzano.com.

I have been privileged to travel to Haiti twice per year since 2007 as part of a team from my church which partners with another Episcopal church in Haiti. My “doing” job while there is to run the pharmacy for mobile medical and dental clinics at our community, high in the mountains above Leogane, the epicenter of the 2010 earthquake. Yes, a lawyer serving as a pharmacist! My qualifications include organizational skills, ability to read a doctor's handwriting, whether in English, French, or, Haitian Creole, tireless energy and a sense of humor. More important than "doing", however, is “being” with the people that I have come to love.

I'm often asked to describe Haiti. A one word answer is impossible. So, let me describe one of my walks to the beach after a long day's work. The beach is about 45 minutes, strolling, from our guesthouse. Out the gate, right at the road, take the second real street to the left, then left at the fork. Following those directions, I walk out of the town and into sugar cane fields, past men with machetes, cows, chickens, sheep, goats, and many naked children yelling, "Hey, you!", or "Blanc!", or "Foto!", then grabbing my hand to walk with me. I greet people along the way with "Bonswa", and get a smiling "Bonswa" in return from an old woman smoking a pipe, the two year old completely naked, the mother nursing her baby, the young men weaving mats from the sugar cane reeds, the boy pulling a car made from a plastic pop bottle, the young girls braiding each other's hair, the men working at the cane distillery, the man leading his cows home, the old woman sitting outside her tarp tent in the "camp", and even the young motorcycle machismo speed by. To read the full article, [click here](http://apps.americanbar.org/buslaw/committees/CL230000publnewsletter/201203/).
Meeting Promos/Postcards

Thank you to those who joined us for the fantastic CFSC Winter Meeting at Canyons Resort in Park City, Utah earlier this year. The meeting featured terrific presentations from government representatives, in-house counsel, and outside counsel on a variety of topics, including updates on the Dodd-Frank Act and the Consumer Financial Protection Bureau. The CFSC dinner was held at the Red Pine Lodge half-way up the slopes of the mountain and allowed everyone to take a cold ride on the Canyons’ gondola. For those of you who enjoy warmer locales, the next winter meeting will be held January 5-8, 2013 in the Naples, Florida sunshine.

In the meantime, please join us March 21-24 for the CFSC Spring Meeting in Las Vegas, Nevada at Caesars Palace Hotel and Casino. Our meeting will start with the Welcome Reception on Wednesday, March 21 at 7:00 p.m. at Caesars. Please thank the folks at Ballard Spahr, LLP for graciously sponsoring the reception. Our program begins in full on Thursday morning at 8:00 a.m. with welcoming remarks from our Chair, Terry Franzén, followed by three days of excellent programs filled with new topics and with at least five programs offering CLE credits. Presentations will include updates on foreclosure litigation, the U.S. Supreme Court's RESPA cases, legal issues involving social media, the Department of Justice's recent opinion on internet gambling, and many others that will provide a well-rounded slate of information. We also invite you to join us at the Aureole Restaurant at Mandalay Bay Resort for the CFSC dinner on Thursday evening, March 22 at 8:00 p.m., which is sponsored by Morrison & Foerster, LLP. The programming each day ends at 5:30 p.m., which gives plenty of time to enjoy exciting Las Vegas at night.

Subcommittee Spotlight

Personal Property Financing Subcommittee
By Kelly Lipinski, McGlinchey Stafford PLLC
Personal Property Financing - Liaison

The Personal Property Financing Subcommittee is dedicated to following and reporting on current developments in federal and state law affecting personal property secured consumer finance. The subcommittee covers motor vehicle, motorcycle, marine, and manufactured home mortgage and other consumer secured transactions.

CFSC Constituents

Membership Update: ABA Launches Rewards for Referrals Campaign
By Margaret Stolar and Carolyn Hann

Are you passionate about consumer financial services law? Have you gotten a lot out of your membership in the ABA and, in particular, in the Consumer Financial Services Committee? Well, it's time to let others know how you feel!

The ABA recently launched the "Rewards for Referrals" recruiting campaign, which allows current ABA members to offer a COMPLIMENTARY trial ABA and Section membership to non-members. The trial membership runs through August 31, 2012. The ABA has set up a dedicated website at www.ambar.org/ABARewardsReferrals where current members can go to get all the information about the campaign. The site offers several ways to reach out to non-members, including using e-mail, social networking sites and printable invitation cards. And, to REWARD you for your referrals, the ABA is offering incentives including iPads and iPods for top recruiters!

The ABA's Business Law Section has over 54,000 attorney, associate and student members and offers the chance to get involved through over 50 committees, including the CFSC. Our Committee has over 1,100 members and includes over 15 subcommittees. If you have not done so lately, take some time to explore all that the Business Law Section has to offer. Last year's recruiting campaign helped over 300 new members join the Business Law Section.

As CFSC Membership Chair and Vice Chair, we encourage you to take advantage of this chance to share your ABA experience with non-members. We think you will agree that the CFSC is a great place to help attorneys keep in touch with colleagues and stay on top of important issues in consumer financial services law.

CFSC Legal Feature

Each CFSC Newsletter will include article(s) authored by the CFSC members. We are always looking for volunteers to help with articles. Therefore, please let us know if you have an article that you would like to be featured in an upcoming newsletter. This edition's feature is:

The Mortgage Settlement: A First Look at National Servicing Standards?
By: Heather Thayer
[Editor's Note: The Consent Judgments for the settlement discussed in this article were filed in the U.S. District Court for]
motorcycle, manne, and manufactured housing finance in addition to other types of tangible personal property finance. The subcommittee also tracks state legislation and federal and state court cases affecting financial institutions' consumer finance programs. The subcommittee actively monitors revisions to Regulation Z and Regulation M, as well developments from the Consumer Financial Protection Bureau.

Attendees at the ABA Business Law Section 2012 Spring Meeting can expect to hear a lively panel discussion titled "When Your Customer is a Soldier". The panel will discuss practical issues arising from the Servicemembers Civil Relief Act. This topical panel discussion will bring together representatives from financial institutions, law firms, and trade associations. The subcommittee also regularly contributes to the Annual Survey on Consumer Financial Services Law that appears in the February issue of The Business Lawyer.

Debt Collection Practices and Bankruptcy Subcommittee
By: Yasamine J. Christopherson, Nelson Mullins Riley & Scarborough LLP
Debt Collection Practices and Bankruptcy - Liaison

The Debt Collection Practices and Bankruptcy subcommittee, which is headed by Tomio Narita and Don Maurice, focuses on statutes and regulations governing debt collection practices as well as various related bankruptcy issues. A continuing theme of the Debt Collection Practices and Bankruptcy subcommittee is analysis of the way regulations and litigation impact the practice of law. The CFPB's proposed rules related to the supervision of debt collectors and others, coupled with a flood of litigation, has provided the subcommittee with an abundance of issues to address this year.

For the Spring Meeting, the subcommittee has planned a panel of three attorneys: Cary Fletter, Lundy, Fletter, Belzanos & Berger, P.C.; Joann Needleman, Maurice & Needleman, P.C.; and Louis Freedman, Freedman, Anselmo & Lindberg, LLC. The panel will discuss the Fair Debt Collection Practices Act and its impact on the practice of law. Currently slated for the Summer Meeting is a presentation by Manuel H. Newburger entitled "Affidavits, Witnesses, Ethics and Malpractice: Are You Putting Your Law License at Risk?"

Finally, whether addressed at the Summer Meeting or a later meeting, the subcommittee is also spearheading efforts to address the CFPB's proposed rule to supervise debt collectors, including law firms, and how that impacts the attorney client privilege and the practice of law.

A National Mortgage Settlement was announced on February 9, 2012 between 49 state attorneys general, the Department of Justice and the country's five largest loan servicers. In addition to the various payments to borrowers and states and mandated relief to borrowers provided for in the settlement, these servicers must abide by specific new servicing standards agreed to as part of the settlement. As of this writing, on February 29, 2012, only a draft of the highlights of the servicing standards have been posted. The negotiated settlement servicing standards are more detailed and are still being finalized. While these standards only apply to the servicers involved in the settlement, an interagency group has been working on national servicing standards and the Consumer Financial Protection Bureau has announced its intent to issue national servicing standards. Thus, it is likely that the negotiated settlement servicing standards will form the basis of national standards applicable to all servicers.

To read the full article, click here.
I have been privileged to travel to Haiti twice per year since 2007 as part of a team from my church which partners with another Episcopal church in Haiti. My “doing” job while there is to run the pharmacy for mobile medical and dental clinics at our community, high in the mountains above Leogane, the epicenter of the 2010 earthquake. Yes, a lawyer serving as a pharmacist! My qualifications include organizational skills, ability to read a doctor’s handwriting, whether in English, French, or, Haitian Creole, tireless energy and a sense of humor. More important than “doing”, however, is “being” with the people that I have come to love.

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I walk past houses that are complete rubble and metal framed 8x10 houses in mid construction, old homes made of stone and woven banana leaf walls that withstood the power of the quake and “fancy” houses collapsed with nothing left but a pile of dust, and the tent camps – tarps emblazoned with “USAID a gift from the American people”, “Taiwanese Government Aid”, “Samaritan’s Purse”, and many others from people around the world who cared about those they may never see.

The smells of Haiti are many- musty smoke from burning trash, acid diesel fumes, stinky garbage along the road, slightly alcoholic smoke from the cane distillery, saltiness of the sea, urine from the outhouse, and the freshness of an approaching storm.

The sounds of Haiti are cacophonous – the Christian rock music from an early church service, many talking loudly in a language I understand only ‘petit, petit’, horns blaring constantly, barking dogs, crowing roosters, mooing cows, bleating sheep, grunting pigs.

Mostly, Haiti is its people – doing the best they can with what they have, thankful for water, some food, any job, going back to school, having a dry spot in a thunderous storm, medical care, surviving the quake.
So, why do I go to Haiti? Because I have no choice. I joke that I have to atone for being a lawyer, or for that C in calculus that as an 18 year old convinced me that I’d never get into medical school. But, the truth is that my soul requires it. I have a deep need to help the people I have grown to love.

When a young mother is holding her baby, who is limp in her arms from disease and heat, and she looks at me with eyes filled with pain, despair, and worry, there no choice but to do what little I can to help. Or, when children walk hours to reach a mountainside school, which is now held under a tarp because the building is leaning and cracked from the quake, there is no choice but to help. Or, when a young man is attacked and viciously beaten for the truck he is driving, there is no choice but to help. Or, when Jennifer, an 8 year old who lives in a lean-to outside my guesthouse, greets me with a hug, a smile and slips her hand into mine, there is no choice but to help.

So, I travel to Haiti, do what I can, return home to my family, friends, job, and responsibilities, and plan my next trip to Haiti.
A National Mortgage Settlement was announced on February 9, 2012 between 49 state attorneys general, the Department of Justice and the country’s five largest loan servicers.¹ In addition to the various payments to borrowers and states and mandated relief to borrowers provided for in the settlement, these servicers must abide by specific new servicing standards agreed to as part of the settlement. As of this writing, on February 29, 2012, only a draft of the highlights of the servicing standards have been posted. The negotiated settlement servicing standards are more detailed and are still being finalized. While these standards only apply to the servicers involved in the settlement, an interagency group has been working on national servicing standards and the Consumer Financial Protection Bureau has announced its intent to issue national servicing standards. Thus, it is likely that the negotiated settlement servicing standards will form the basis of national standards applicable to all servicers.

From the draft summary currently posted, many of the standards are duplicative of the expectations set forth in the foreclosure reviews and are unsurprising. The servicing standards reiterate that affidavits and other evidence supporting foreclosures must be accurate, based on a personal review, clearly documented and properly executed. Moreover servicers’ duties to oversee third parties, maintain adequate staffing and training for loss mitigation personnel and have a single point of contact for borrowers in default are reiterated. Importantly, it appears that the settlement servicing standards may detail or clarify some of the expectations in the foreclosure consent orders. In particular, the settlement servicing standards have specific timelines and detailed requirements that should assist in defining and eliminating dual tracking. Many in industry may find these clarifications helpful to avoid regulatory criticism.

However, the standards also impose new obligations that servicers may have to accommodate. For example:

- Borrowers must be sent a pre-foreclosure notice that will include a summary of loss mitigation options offered, an account summary, a description of the facts supporting a lender’s right to foreclose, and a notice that the borrower may request a copy of the note and the identity of the investor holding the loan.
- Loan modification denials must be automatically reviewed, with a right to appeal for borrowers.
- Banks will have specific loss mitigation obligations, including customer outreach and communications, time lines to respond to loss mitigation applications, and e-portals for borrowers to keep informed of loan modification status.
- Military personnel have enhanced protections beyond those protections in the Service Members Civil Relief Act (SCRA).
- Application and qualification information for proprietary loan modifications must be publicly available.
- Servicers are required to expedite and facilitate short sales of distressed properties.

¹ The servicers included in the settlement are Ally/GMAC, Bank of America, Citi, JP Morgan Chase and Wells Fargo.
• Restrictions are imposed on default fees, late fees, third-party fees, and force-placed insurance.

While some of these are changes that servicers can take in stride, some may prove difficult for smaller banks and servicers to accommodate. For example, one requirement is that the servicers provide a web portal through which borrowers can check on the status of their loss mitigation requests and loan counselors can communicate with the servicers. While the largest five servicers have agreed to provide such portals (largely because they already have such web connectivity in place or the infrastructure on which to build enhanced access) for most medium and small servicers such a portal would be unfeasible.

Another concern for industry is that the highlights as posted may conflict with other laws and standards. For example, a settlement provision on posting payments is missing the nuance and flexibility of a related provision in the Truth-in-Lending Act. While this may be fine in the context of a contractual settlement agreement, were these standards to become regulation, nuance and flexibility are key to avoiding regulatory violations. In another troubling section of the draft settlement highlights, the force-placed insurance provisions as currently summarized would seem to put servicers in the position of potentially aiding misrepresentation against insurance companies by having servicers routinely front the payments on insurance policies as if borrowers were funding the payments. The insurance industry may want to have input on such provisions.

Because these standards are likely the harbinger of things to come, all servicers should carefully review the final settlement standards when released to determine whether steps should be taken to incorporate some of the more straightforward requirements. If experience with the foreclosure consent orders holds true for these standards, the regulators may expect industry compliance with the settlement standards without an opportunity for notice and comment, with exceptions individually negotiated between each institution and its regulator. Given the importance of national servicing standards both to the industry and to consumers, everyone should push for notice and comment rulemaking so that the effect on smaller institutions, conflicts with other laws, and impact on other industries can be fully vetted.

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