



CONSUMER FINANCIAL SERVICES COMMITTEE NEWSLETTER

Fall 2014

Committee Roster | Join CFSC

Important Dates

[Consumer Financial Services Winter Meeting](#)
January 10-13, 2015
New Orleans, LA

[Business Law Section Spring Meeting](#)
April 16-18, 2015
San Francisco, CA

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Membership Minute

CFSC by the Numbers:
2014 YTD through August
Total Members = 1,405. A
9.25% increase since August
2013. Keep up the good work
in spreading the word about
joining the ABA's CFSC -
encourage your clients and
colleagues to check it out!

Business Law Section:

- Join us for 2015
CFSC Winter Meeting
- January 10-13,
2015 in New Orleans!
For details, click
[here](#).

CFSC Website: Did you
know you can find links to
helpful information on the
website, including past
newsletters, meeting
materials and non CLE
Webinars?

Get Involved in the CFSC:

Want to get more involved in
the CFSC? Feel free to
contact [Carolyn Hann](#) or
[Grace Powers](#), CFSC
Membership Chair and Vice
Chair for information.

Leadership Message



Nikki Munro
Chair
Consumer Financial
Services Committee

Dear CFSC Members:

Our Committee has had a busy couple of months: the first-ever Business Law Section Annual Meeting held in Chicago September 11-13; the regular Housing Finance monthly calls; and the University of Maryland Law School hosted the Fifth Annual National Institute on Consumer Financial Services Basics.

But there is much more on the way: our subcommittee chairs are currently deep in the process of planning programming for our Winter Meeting, to be held at the Ritz-Carlton in New Orleans January 10-13, 2015. (*Laissez les bon temps rouler!*) Not to mention that the Business Law Section Spring Meeting, scheduled for April 16-18, 2015, at the Marriott Marquis and Intercontinental hotels in San Francisco will be here before we know it.

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Meeting Promos/Postcards



We hope that everyone will be able to attend the Consumer Financial Service Committee's (CFSC) stand-alone winter meeting in January 2015. It looks to be a great event at the Ritz-Carlton in the French Quarter of New Orleans. The meeting will be held January 10 through the 13. The CFSC is planning an exciting agenda of CLEs, substantive subcommittee panels, and roundtables to get you up to speed on the latest developments in consumer financial services as well as a number of social and networking activities to ensure you have a fun time in the Big Easy. The CFSC will begin its meetings on Saturday, January 10, 2015 at 4 pm with the ever popular Beer and Basics program. A Welcome Reception will follow the Beer and Basics program. Everyone can also enjoy a new attendees' bar crawl, a women's breakfast and a committee dinner. To register or for information, please click [here](#).

Pro Bono Article

[A New Model for Pro Bono: The "Pillar Firm"](#)
David R. Esquive, Bass, Berry & Sims PLC

This article, which is based on my remarks at the Pro Bono Breakfast during the September 2014 Annual Meeting of the Business Law Section, presents information about a new model for pro bono that is taking hold in Tennessee and showing results. The new model is an initiative of the Tennessee Supreme Court's Access to Justice Commission and is known as the Pillar Firm model.

The best way to understand how the Pillar Firm model works is to understand how it was developed. Several years ago, the pro bono leaders of the larger firms in Nashville began meeting on a regular basis to discuss the challenges of implementing successful pro bono programs in a law firm and strategies that had been effective, or potentially could be effective, to meet those challenges. From these meetings, two prominent themes emerged.

First, most lawyers at our firms lacked the practical legal skills to help people in poverty. Most of us have no experience drafting a will, completing a parenting plan, or representing a tenant in a dispute with a landlord. Traditionally, our local Legal Aid pro bono program sought out volunteers by circulating a list of prospective clients that was organized by subject matter - divorce, landlord-tenant, denial of public benefits, etc. Those lists terrified our lawyers, not because they were unwilling to do pro bono, but because they had absolutely no familiarity with the subject matter of these kinds of cases.

Member Spotlight

[Spotlight on Robert N. Collier and the Leadership Diversity Outreach Committee](#)
By Rachel Marin, Bank of America

The American Bar Association ("ABA") Business Law Section's Leadership Diversity Outreach Committee ("LDOC") program promotes diversity within the Section by actively recruiting young lawyers (Fellows), lawyers of color (Ambassadors), and lawyers with disabilities (Diplomats) to provide a springboard into the leadership of the Section. In 2013, the Business Law Section expanded the existing LDOC program to actively recruit lesbian, gay, bisexual and transgender business lawyers as Envoys for the Section. Each of the chosen Fellows, Ambassadors, Diplomat (chosen every other year), and Envoys serve in the Section for a 2-year term, are funded to attend Section meetings during their term, and are assigned to a substantive committee based on their business law practice and interests.

The LDOC recently appointed and welcomed Robert N. Collier as an Ambassador for the 2014-2016 term. The Consumer Financial Services Committee (CFSC) is pleased to welcome Robert as our newest Ambassador assigned to our committee for the LDOC program. "The LDOC Program helps participants navigate the ABA and enables members to tap into the network of Section leaders," Robert commented. This past September Robert attended the CFSC programs at the ABA's Annual meeting in Chicago and is enjoying getting to know the CFSC members. Also, he is involved with other Business Law Section Committees such as the Cyberspace Law and Corporate Counsel Committees. Currently he serves as General Counsel and Corporate Administrator in the

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Houston, TX office of PreCash, Inc., a payment services and transaction processing company. Previously Robert worked in private practice as a Partner at Collier Hudson PLLC where he focused on regulatory compliance and litigation for financial services clients. Earlier in his career he was an Associate at Morgan Stanley & Co. and Pricewaterhouse Coopers UK. Robert keeps active in his local community by staying involved with local bar associations and donating his time to *pro bono* work. In addition to learning the ins and outs of the ABA, Robert is navigating parenthood, along with his wife, attorney Rabeea Sultan, with the recent addition of their 2 month old son Adam, and their 17 month son Idris. "I could not do it without her support and sacrifice."

For anyone interested in joining Robert as a Fellow, Ambassador, Diplomat or Envoy, please refer to the information and selection criteria [here](#). It's important to note that the selection criteria for Fellows have been expanded beyond the traditional prerequisite of demonstrated leadership in the ABA's Young Lawyers Division. Effective this year, candidates who have demonstrated leadership in the Section, including but not limited to, the Section's Young Lawyers Committee, or in state or local young lawyer bar organizations, also will be considered for Fellow positions. For the next round of LDOC appointments (Fellows, Ambassadors and Envoys), applications are due **May 1, 2015**.

Legal Feature

California Law Exempts Nonprofit Lenders to Help Build Consumer Credit

Manuel P. Alvarez, GC/CCO, Affirm, Inc.

Payday lenders in California may soon see increased competition from an unlikely source: nonprofit organizations. In August, Governor Jerry Brown signed SB 896, which creates a licensing exemption within the California Finance Lenders Law (CFLL) for 501(c)(3) nonprofits that facilitate zero-interest small dollar loans. By its text and legislative history, SB 896 seeks to ameliorate two problems facing low credit-score individuals. First, SB 896 seeks to address the lack of affordable, credit-building, small-dollar loans. Second, SB 896 seeks to address the lack of legal and regulatory certainty provided under the CFLL to nonprofit organizations that facilitate affordable, credit-building, small-dollar loans. SB 896 passed with unanimous bipartisan support throughout the legislative process.

Nonprofits seeking an exemption under SB 896 must meet certain reporting criteria, provide credit education, and, perhaps most notably, report to national credit agencies. Additionally, qualifying loans must have a principal amount between \$250 and \$2,500, and a term of at least:

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Legal Feature

Debt-Sale Compliance: New Guidance from OCC Requires Action

By R. Scott Adams, Spilman Thomas & Battle, PLLC

In August 2014, the Office of the Comptroller of the Currency (OCC) issued a Risk Management Guidance to national banks and federal savings associations on debt-sale arrangements (Guidance). All OCC-supervised banks need to take note of these new requirements and formulate appropriate policies and procedures to address debt-sales. This Guidance from the OCC complements the Consumer Financial Protection Bureau's (CFPB) emphasis on debt collection issues.

Pursuant to the Uniform Retail Classification and Account Management Policy guidelines, "banks are generally required to charge off certain consumer debt when the debt is 180 days past due, and in some instances, earlier than 180 days past due," as explained in the Guidance. The majority of debt that is charged off and sold is credit card debt, but banks also sell other delinquent debts, such as auto, home-equity, mortgage, and student loans. While the OCC recognizes that banks have a responsibility to their shareholders to recover losses, the Guidance also states that "banks must be cognizant of the significant risks associated with debt-sale arrangements, including operational, compliance, reputation, and strategic risks."

The OCC has focused on debt sales issues for several years, most recently issuing "best practices" that it provided to the Senate Subcommittee on Financial Institutions and Consumer Protection in July 2013. Since that time, the OCC received comments and input from numerous parties, including financial institutions, debt buyers and collectors, consumer and community advocates, and other governmental entities. The introductory comments to the Guidance state that all of this commentary has been taken into account in developing the document.

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But there is much more on the way: our subcommittee chairs are currently deep in the process of planning programming for our Winter Meeting, to be held at the Ritz-Carlton in New Orleans January 10-13, 2015. (*Laissez les bon temps rouler!*) Not to mention that the Business Law Section Spring Meeting, scheduled for April 16-18, 2015, at the Marriott Marquis and Intercontinental hotels in San Francisco will be here before we know it.

The Business Law Section Annual Meeting saw another triumph for the Committee. Of the top five most highly attended programs, four were sponsored by our Committee – E-contracting, privacy tea leaves, student lending, and debt collection – each with more than 100 attendees.

National Institute

In keeping with our Committee's long and hallowed tradition of stellar programming, this year's National Institute on Consumer Financial Services Basics played to another packed house of nearly 100 participants. For two days, our highly experienced and knowledgeable faculty – from national law firms, academia, industry, consumer advocacy groups, as well as the Federal Trade Commission (FTC), Consumer Financial Protection Bureau (CFPB) and banking agencies – gave these students an overview of the ABC's of consumer financial services law.

Among the many highlights, we had the great privilege of hearing from our keynote speaker, Holly Petraeus of the CFPB's Office of Service Member Affairs, at the luncheon on Day One of the Institute. Mrs. Petraeus helped us realize more fully the difficulties our service members encounter in the consumer financial service realm.

In addition, a panel of regulators from the CFPB, Conference of State Bank Supervisors, Federal Reserve, FTC, and Office of the Comptroller of the Currency discussed their respective regulatory roles and gave their insights on how they coordinate complaints, investigations, and examinations.

Other presentations included:

- Professor Jim Brown providing an overview of the evolution of consumer financial services law from the Magna Carta through the Ability to Repay (ATR/QM) Rule.
- Professor Rick Hackett regaling us with stories of federal preemption (or lack thereof) of state laws.
- A discussion of fair lending requirements – including ECOA, HMDA, FHA and CRA – which also addressed the costs and benefits of regulating access to credit.
- An overview of payment systems and deposit products, including electronic payments, funds availability, stored value, and possible future regulation of general purpose reloadable prepaid cards.

- An introduction to the federal and state laws governing credit reporting, financial privacy, data security and identity theft prevention, including a discussion of the impact of security breaches on financial institutions.
- An introduction to various federal laws governing communications with consumers, including the intersection of these various laws based on the purpose of the communication, the type of communication and the technology used to transmit the communication, and what may be on the horizon with respect to these laws.
- An introduction to the Truth in Lending Act (TILA), how TILA evolved beyond merely requiring disclosures, the products that are covered by TILA and other essential elements of TILA.
- An introduction to installment lending, which provided insight into the various laws that govern various installment loan products, the nature and features of those products and hot topics for each product.
- An overview of the significant new laws and regulations governing mortgages, including the ATR/QM rule, TILA/RESPA integration and the new mortgage servicing rules enacted under TILA and RESPA.
- A panel discussing UDAAP, which included a trifecta of speakers from the CFPB, FTC and Federal Reserve.
- A review of financial services litigation remedies, dispute resolution systems, and enforcement actions under federal and state law, which also explored recent trends in individual and class actions.
- And, last but not least, a lively discussion of the promises and pitfalls of consumer financial regulation between Nessa Feddis of the American Bankers Association and Paul Bland of Public Justice, using as their point of departure the provision of services to unbanked and underbanked consumers.

We look forward to seeing everyone in New Orleans in January, if not before.

Nikki Munro
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Vice Chair
Consumer Financial Services Committee
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A New Model for Pro Bono: The “Pillar Firm”
David R. Esquive, Bass, Berry & Sims PLC

This article, which is based on my remarks at the Pro Bono Breakfast during the September 2014 Annual Meeting of the Business Law Section, presents information about a new model for pro bono that is taking hold in Tennessee and showing results. The new model is an initiative of the Tennessee Supreme Court’s Access to Justice Commission and is known as the Pillar Firm model.

The best way to understand how the Pillar Firm model works is to understand how it was developed. Several years ago, the pro bono leaders of the larger firms in Nashville began meeting on a regular basis to discuss the challenges of implementing successful pro bono programs in a law firm and strategies that had been effective, or potentially could be effective, to meet those challenges. From these meetings, two prominent themes emerged.

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Second, lawyers at our firms very seldom worked on matters alone. We most often worked in teams (often interdisciplinary teams) in which collective knowledge and experience could be brought to bear on a client’s matter. When we circulated the traditional lists of potential pro bono cases to our colleagues, not only were we asking them to take cases in which they had no subject-matter knowledge, we were asking them to do it alone.

Based on these observations, an idea began to take hold. Why not create a pro bono program that is tailored to the way law firms practice law, one in which the law firm creates collaborative teams that develop specialized, subject-matter expertise? In the same way that our firms vied to become “go-to firms” in subject matters for paying clients, we envisioned a city-wide plan in which each of our law firms would become the “go-to” pro bono firm for consumer debt, landlord-tenant, family law, etc.

Each firm that participated in our meetings picked a subject matter area that was in high demand by Legal Aid clients. Legal Aid then provided in-house training at each firm in that subject matter area and made available its own internal specialist for on-going consultations. Legal Aid then began referring cases in those subject matter areas to the firms. Some of the participating Nashville firms formed teams of lawyers that would be assigned cases as we received them from Legal Aid. At my firm, each team had three lawyers – one partner, one transactional associate, and one litigation associate. This not only made it less intimidating to take a case, it also provided opportunities for partner-associate mentoring and work with colleagues across departments.

Though still relatively new, the model has begun to show results. One of the participating Nashville firms chose to specialize in landlord-tenant matters. In the past, this firm had taken almost none of these cases. The firm now has 10 teams of lawyers; each team handles approximately two cases per year. Over the past two and a half years, the firm has taken on approximately 50 landlord-tenant cases. Participants report that they have enjoyed the team approach to these cases and are gaining confidence and enthusiasm as they develop expertise in landlord-tenant law.

In addition to meeting the needs of law firms, this model also has advantages for a Legal Aid pro bono program. Coordinators of those programs now have designated recipients for cases in each of the subject matter areas that comprise the majority of their referrals. And referrals are more efficient, freeing the coordinators to spend less time trying to cajole law firms to take individual cases and more time increasing the pipeline of pro bono cases and other important work.

Thanks to the efforts of the Tennessee Supreme Court's Access to Justice Commission, the Pillar Firm model has begun to spread state-wide. With the support of the Commission, whose strategic plans in 2012 and 2014 provided for expansion of the Pillar Firm model, the program has now been rolled out in each of Tennessee's largest cities – Memphis, Nashville, Knoxville, and Chattanooga. As the program has expanded, it also adopted its present name, which recognizes that firms or law departments of any size – not just large firms – can become “pillars” in their legal community in a particular substantive area of poverty law.

We have great hope for the success of this model and the opportunity it provides to do more and better pro bono work. We also hope that other firms, cities, and states will see promise in the Pillar Firm model and consider implementing it. If anyone is interested in learning more about the Pillar Firm model and how it might be used in your jurisdiction, I am eager to discuss it with you.

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California's new legislation arrives at an interesting time for short-term, small-dollar lending. Nationally, the Consumer Financial Protection Bureau (CFPB) has certainly devoted a fair amount of attention to payday lending and attendant abuses. California, too, previously grappled with payday lending legislation. Just last year, State Senator Hannah-Beth Jackson introduced SB 515, which sought to amend the California Deferred Deposit Transaction Law by capping the number of payday loans annually and extending the minimum loan terms. Opponents of SB 515 argued that it would drive customers to unlicensed, unregulated payday lenders, and that it would render payday lending unprofitable. SB 515 ultimately failed to get through committee.

Payday lending, of course, continues to be used by many Americans. About 12 million borrowers spend more than \$7 billion on payday loans, according to Pew. As some have argued, the numbers alone justify the existence of payday lending, and any restrictive legislation—the argument goes—is misguided at best or paternalistic at worst.

This ongoing debate makes SB 896 all the more interesting because it moots the usual criticisms of payday lending legislation by limiting its applicability to qualifying 501(c)(3) organizations, which, by definition, do not seek profitability. The remaining question, though, is one of *viability*. Will qualifying nonprofits in California be able to support the administrative costs involved with small-dollar lending? And will these nonprofits emerge in sufficient numbers to compete with, and perhaps drive down the cost of, traditional for-profit payday lenders? Presumably, a rational market-participant would always choose a cheaper nonprofit loan. But as we know, the market is not always rational.

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Regarding the supervisory concerns of the OCC with respect to debt sales, the Guidance explains that risk to institutions is the primary concern. The Guidance states that "[b]anks should know what resources debt buyers use to manage and pursue collections and consider the debt buyers' past performance with consumer protection laws and regulations." Additionally, the OCC states it has become aware of situations where "banks inappropriately transferred customer information to debt buyers [and] gave debt buyers access to customer files so they could assess credit quality before the debt sale, without the banks first making proper customer disclosures, which was inconsistent with the banks' internal privacy policies and applicable laws and regulations." The Guidance points out concerns with transferring incomplete customer files, including basic details like account numbers and payment histories.

The Guidance explains supervisory expectations of debt sales that are specific and detailed. First, with respect to ensuring appropriate internal policies and procedures for debt-sale arrangements, the OCC lists more than a dozen unique requirements, including that "customers receive timely notification from the bank that the debt has been sold, the dollar amount of the debt transferred, and the name and address of the debt buyer." Additionally, other requirements involve ensuring that credit bureau information is updated to reflect the sale or transfer of the debt to the debt buyer, as well as that internal review standards are revised to ensure that debt sales comply with the bank's own policies and procedures.

With respect to due diligence when selecting the debt buyer, the Guidance requires banks to “assess the potential debt buyers’ background, experience, and past performance, including consumer complaints about the debt buyers, and assess steps taken by debt buyers to investigate and resolve the complaints.” The due diligence requirement, which reaches down to the customer complaint level, will require banks to work with debt buyers to obtain the needed information and details to comply with the Guidance. The due diligence obligation is ongoing, with required periodic updates when forward-flow contractual arrangements are in place.

Contracts pertaining to debt-sale arrangements with debt buyers should cover all the “important considerations” that the OCC enumerates in the Guidance. Such concerns include downstream sales to other debt buyers, as well as steps associated with terminating a collection contract, i.e., return or destruction of all customer information. The contracts between debt buyers and banks should address the “reasons why the debt buyer can litigate.”

At the time of sale, banks must provide eight discrete pieces of information to the debt buyer, including the signed contract evidencing the relevant consumer’s liability for the debt in question, the last 12 account statements, all account numbers used by the bank, an itemized account of amounts claimed to be owed, the name of the issuing bank, details of the last payment and date(s) of the default, information about unresolved disputes and fraud claims made by the debtor, and the debtor’s name, address, and Social Security number.

The Guidance states that certain types of debt are not appropriate for sale, including debt that has been otherwise settled or is in process of settlement, debt of deceased account holders, debt of borrowers that have sought or are seeking bankruptcy protection, debt of account holders currently in litigation with the institution, debt incurred as a result of fraudulent activity, and accounts lacking clear evidence of ownership. Further, banks should refrain from the sale of certain additional types of debt, including accounts eligible for Servicemembers Civil Relief Act protections, as well as accounts of minors, individuals in disaster areas, and close to the statute of limitations.

Finally, the Guidance explains the need for banks to implement appropriate oversight of the debt-sale arrangement and to comply with applicable laws and regulations in that process. These obligations go hand-in-hand, but the Guidance’s discussion on compliance with applicable laws and regulations identifies specific criteria under each law and regulation that must be addressed. The oversight responsibilities will vary depending on the structure of the arrangement between the bank and the debt buyer, but regardless, appropriate oversight is important to minimize the bank’s “exposure to potential reputation damage and supervisory action.”

The CFPB has publicly stated that regulating the debt collection industry and institutions engaged in collecting their own debts is a priority. Regulation F, which implements the Fair Debt Collection Practices Act, was open for comment earlier this year, and forthcoming additional regulation is certain.

For banks supervised by the OCC, it is crucial to review the Guidance and identify appropriate updates to compliance documents and personnel. The “best practices” have been fleshed out, and incorporating other areas of emphasis should be a priority.’