



THE ROCKET DOCKET NEWS

The Newsletter of the Northern Virginia Chapter of the Federal Bar Association

JULY 2009

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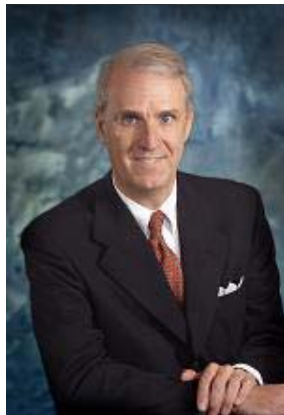
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The President's Report

by John E. Coffey, Esq.



With the rains of June having (at last) departed, what better way to celebrate the arrival of summer than with the July issue of the Rocket Docket News! While this time of year is traditionally a time for vacation and "kicking back," a number of our Chapter officers and directors have been hard at work putting together a full complement of summer programs for our members.

Last month got off to a great start with a program coordinated by Chapter Secretary Sean Murphy and featuring United States Bankruptcy Judge Steven S. Mitchell. Judge Mitchell spoke to a packed house in the Eastern District Bankruptcy Courthouse on June 11, on the essentials of litigating in Bankruptcy Court. The program, geared for the non-bankruptcy practitioner, featured first-rate course materials prepared by Judge Mitchell, and provided attendees with a procedural roadmap for navigating a case through the Bankruptcy Court.

Immediately prior to this Bankruptcy Litigation CLE, our Chapter held a brief business meeting and formally elected the following officers and directors for one-year terms beginning on October 1, 2009:

Attison Barnes -- President
Chas McAleer -- President-Elect
Sean Murphy -- Vice President
Scott Caulkins -- Secretary
Damon Wright -- Treasurer
Anne Devens -- National Delegate
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Judge Mitchell's presentation was not only first rate, but also the most recent example of the time and effort invested by our local federal judiciary in improving the quality of practice in the Eastern District. Many thanks to Sean Murphy for organizing, and Judge Mitchell for preparing and presenting, such a worthwhile program.

Our next Chapter CLE program kicks off next week, when a distinguished panel of practitioners and a United States Magistrate Judge present "E-Discovery: Identifying Issues and Sharing Practical Solutions." With the logistical challenges and attendant expenses inherent in the process, E-Discovery continues to be a hot topic for all federal civil court litigators. Next week's program will feature United States Magistrate Judge John F. Anderson, together with Miller & Chevalier's Chas McAleer and Reed Smith's Anne Devens, as well as Patrick Oot, Director of Electronic Discovery and Senior Litigation Counsel for Verizon Communications. A flyer with further information and a registration form is attached to this newsletter. We hope to see you there.

Following next week's program we will be gearing up for next fall's Torrey Armstrong Lecture and Law Clerk Reception. Mark your calendar now for September 16 at the George Washington Masonic Memorial in Alexandria. More information will be forthcoming. Until then, enjoy the summer!



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Members of the Northern Virginia Chapter are encouraged to submit articles or news information of interest to other members of the Northern Virginia Chapter for possible publication in the Rocket Docket News. Please submit any proposed articles or news information to the Editors at the telephone numbers and e-mail addresses listed above. The Editors reserve the right to decide on publication, and any articles accepted for publication are subject to editing.

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Plan to Attend July 14th E-Discovery CLE and Networking Opportunity

If you have been searching for a program that will actually help you solve the most vexing e-discovery issues in your practice, then you should attend the CLE program that the Chapter is sponsoring next Tuesday, July 14, 2009, from 3:00-5:00 p.m. in the Jury Assembly Room at the federal courthouse in Alexandria. The program will include a panel discussion moderated by Chapter Board member Anne M. Devens of Reed Smith, LLP and including U.S. Magistrate Judge John F. Anderson, Patrick Oot, Esq. (Director of Electronic Discovery and Senior Litigation Counsel at Verizon Communications) and Chapter Vice-President Chas McAleer of Miller & Chevalier Chartered. The program will also include an interactive workshop in which discussion leaders and leading practitioners will share creative and practical solutions to e-discovery issues. Following the program, the Chapter's Board will welcome attendees and panelists to a networking happy hour at the Trademark Bar in the Westin Hotel across from the courthouse to continue the discussion or simply catch up the latest news from your colleagues. A copy of the registration flyer is attached to this issue of the *Rocket Docket News*. It is not too late to sign up and, if necessary, you can register and pay at the door. We hope to see you there.

News from the Clerk's Office

The Clerk's Office has asked the Chapter to share the following information with Chapter members. First, attached to this issue is a notice of reappointment of U.S. Magistrate Judge T. Rawles Jones, Jr., whose current term is due to expire on February 27, 2010. Comments regarding the reappointment must be submitted to the Merit Selection Panel no later than August 10, 2009. Second, attached to this issue is a notice of appointment of a new Magistrate Judge for the Norfolk/Newport News Division of the Court. Applications must be received by the Clerk at the Norfolk/Newport News Division on or before 5:00 p.m., September 1, 2009. Finally, in an attached tips sheet, the Clerk's Office is offering details regarding how ECF filers can add secondary e-mail addresses to receive Notices of Electronic Filing (NEFs) in a case. The Chapter takes this opportunity to thank the Clerk's Office for its always professional and courteous assistance to the members of the Bar, as well as its willingness to share information that will improve the practice in the Court.



Eastern District Rules on New Statute of Limitations

J. Douglas Culbertson

Miles & Stockbridge, P.C., McLean, Virginia

A judge in the Eastern District of Virginia recently held that a consumer's fair-credit lawsuit against a credit card issuer was not time-barred, even though she discovered that she was the victim of identity theft half a decade earlier. U.S. District Judge Henry E. Hudson ruled on May 6, 2008 that a new statute of limitations in the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq., did not bar the woman's claims, which she discovered and first complained about in 2003. "FCRA provides damages when a bank or credit reporting agency fails to take certain steps once notice of a consumer dispute is received," Judge Hudson wrote in *Broccuto v. Experian Information Solutions, Inc.*, 2008 WL 1969222 (E.D.Va., May 06, 2008) (NO. CIV.A. 3:07CV782HEH). "It is the failure to act . . . which creates the cause of action," he wrote in holding that a new limitations period started each time the credit card issuer failed to act.

The new statute of limitations requires FCRA lawsuits to be filed within two years after a consumer discovers a violation, or five years after a violation occurs, whichever is earlier. 15 U.S.C. § 1681p. The amendment was part of the Fair and Accurate Credit Transaction Act of 2003 (FACTA), Pub. L. No. 108-159, 117 Stat. 1952. Only a handful of courts across the country have addressed the new statute of limitations, issuing conflicting opinions.

Plaintiff Robin Broccuto filed her complaint on December 26, 2007, more than four years after she discovered the fraudulent account, but within two years of her last dispute. The credit card issuer argued that "the FCRA violations Broccuto claims occurred in 2006 must be tied to her original discovery" of the fraud in 2003. It argued that she should not be able "to rekindle an FCRA claim simply by making another complaint about the same account."

Broccuto claimed she discovered a past due Lane Bryant account on her credit report in April 2006. She maintained that she did not open the account and was the victim of identity theft. She filed disputes with the three major credit reporting agencies, Experian, Equifax and TransUnion. She alleged that World Financial Network National Bank, the issuer of the Lane Bryant credit card, did not investigate her disputes or note them on her account, in violation of the FCRA, 15 U.S.C. § 1681s-2(b)(1)(C) and (D).

World Financial moved to dismiss her complaint as barred by the two-year statute of limitations. It alleged that Broccuto actually discovered the identity theft in 2003 and contacted it and the credit reporting agencies several times since then. Broccuto later admitted the allegations.

Judge Hudson denied World Financial's motion, holding that Broccuto's suit was timely. "A plain reading of the Act reveals that [the duty to investigate a dispute is] triggered when a credit reporting agency or lender receives notice of a dispute from a consumer," he wrote. A creditor's failure to investigate creates the cause of action, he said. Although Broccuto only sought damages for World Financial's investigation of her April 2006 dispute, any violations in response to her earlier disputes "may indeed be time-barred," Judge Hudson wrote.

The Federal Bar Association's Mission Statement:

"The mission of the Association is to advance the science of jurisprudence and to promote the welfare, interests, education, and professional growth and development of the members of the Federal legal profession."

For more information regarding the Federal Bar Association and its activities, please contact the Federal Bar Association at its national offices:

The Federal Bar Association,
1220 North Fillmore Street
Suite 444
Arlington, VA 22201
(571) 481-9100 (phone)
(571) 481-9090 (fax)



Eastern District (cont'd)

World Financial argued that Broccuto's later disputes were in effect the same dispute over the same account and should not give rise to multiple claims, each subject to its own statute of limitations. Judge Hudson rejected that argument, holding that Broccuto's April 2006 dispute was not part of her original dispute in 2003. But he recognized that other district courts have come to the opposite conclusion. U.S. District Judge Terry R. Means of the Northern District of Texas refused to allow additional complaints about the same allegedly inaccurate information to restart the statute of limitations in *Bittick v. Experian Information Solutions, Inc.*, 419 F. Supp.2d 917 (N.D.Tex., Feb. 08, 2006) (NO. 4:05 CV 405 Y). To hold otherwise, Judge Means said, "would allow plaintiffs to indefinitely extend the limitations period by simply sending another complaint letter to the credit reporting agency."

In *Blackwell v. Capital One Bank*, 2008 WL 793476 (S.D.Ga., Mar. 25, 2008) (NO. 606CV066), U.S. District Judge B. Avant Edenfield of the Southern District of Georgia said that "[t]o allow . . . claims to go forward based upon the subsequently submitted complaints would allow plaintiffs to indefinitely extend the limitations period and render it a nullity." "The Court will not read the statute so as to provide such an anomalous result," he said. "If Congress intended such a result it would have said so clearly."

Judge Hudson said he "cannot square the logic of those opinions with a plain reading of FCRA." He held that the FCRA is violated every time a consumer submits a dispute to a credit reporting agency and a creditor does not investigate it. "The fact that the account . . . may have also been the subject of a previous dispute does not mitigate the obligations of the bank" to investigate, he said.

The new statute of limitations was part of the FACTA, which amended the FCRA to help consumers fight the growing crime of identity theft. The FACTA changed the statute of limitations by adding a "discovery" rule. That is, the new statute does not begin to run until consumers discover an identity theft, giving them more time to file suit. The prior version had a discovery rule only in cases of misrepresentation by the defendant. The new statute was part of the "Cantwell-Enzi Restore Your Good Name Act," which was incorporated into FACTA. Senator Maria Cantwell (D-Wash.) said the reason for the amendment was to give consumers more time to sue. "In the 2001 Supreme Court case of *TRW v. Andrews*, the Court ruled that the statute of limitations in these cases runs for 2 years from the time the crime is committed," she said. "But what we have found is that some victims of identity theft don't even realize they are victims until a year or 2 years after the identity theft has occurred. The statute of limitations therefore impacted the ability of victims to get justice," she said. 149 Cong. Rec. S13863-02, 20 (Statement of Sen. Cantwell).

Broccuto's discovery of the identity theft was not an issue, since she learned of it shortly after it occurred in 2003. In her case, the statute of limitations merely limited the number of disputes for which she could seek damages.

Other U.S. District Courts have issued conflicting opinions on the issue.



Eastern District (cont'd)

Less than a month after Judge Hudson's opinion in Broccuto, U.S. District Judge Victoria A. Roberts of the Eastern District of Michigan held that additional consumer complaints do not restart the statute of limitations. The case was *Hancock v. Charter One Mortgage*, 2008 WL 2246042 (E.D.Mich., May 30, 2008) (NO. 07-15118). "The Hancock's subsequent dispute letters regarding the same erroneous information do not restart of the statute of limitations clock," wrote Judge Roberts, who considered the Bittick case controlling. "A perpetual statute of limitations not intended by the FCRA would be the result if the Court adopted the Hancocks' argument," she said. "The Hancocks knew of the errors on their credit report more than two years before they filed suit."

But Judge Hudson's ruling found support in an earlier opinion issued by then-U.S. Chief District Judge James M. Rosenbaum of the District of Minnesota. In *Larson v. Ford Credit*, 2007 WL 1875989 (D.Minn., June 28, 2007) (NO. 06-CV-1811 JMR/FLN), Judge Rosenbaum held that "each re-report of inaccurate information, and each failure to conduct a reasonable investigation in response to a dispute, is a separate FCRA violation subject to its own statute of limitations."

While these opinions are conflicting, the Broccuto and Larson courts found it important that the plaintiffs alleged FCRA violations that occurred after discovery, but within two years of bringing suit. These allegations, they held, were enough to state claims.

Portions of this publication were drawn from the author's article, "FACTA May Not Bar Later Fair Credit Suits," 2009, published in ABA Business Law eNewsletter: *Young Lawyer Forum*, published by the American Bar Association.



Member Spotlight: J. Douglas Cuthbertson, Esq.



Doug Cuthbertson, whose article on an important recent decision by the Court appears in this issue of the *Rocket Docket News*, is a principal in the commercial and business litigation group in the McLean, Va., office of Miles & Stockbridge P.C., specializing in consumer financial services litigation.

Doug was born and raised in Cleveland, Ohio. He attended the University of Richmond, where he earned a B.A. in Journalism in 1993. After college, Doug worked as an Associate Editor at the Baylor

College of Medicine in Houston, Texas, editing medical and scientific manuscripts for publication.

Doug attended the University of Houston Law Center, where he earned his J.D. in 1997. After graduation, he practiced in Richmond, Virginia with McGuireWoods LLP (1997-1999) and Sands Anderson Marks & Miller, PC (1999-2001).

Doug represents businesses, financial institutions and individuals in all types of commercial litigation. He regularly handles disputes involving commercial law and contracts, business torts, intellectual property rights, real estate and bankruptcy litigation.

Doug devotes a significant portion of his practice to representing financial services entities, including banks, credit card companies, consumer finance companies and mortgage lenders, in the defense of individual and putative class action suits alleging statutory consumer lending violations.

Doug volunteers with the Veterans Consortium Pro Bono Program and is active in a number of bar associations. He is the Co-Chair of the Young Lawyers Subcommittee of the American Bar Association, Business Law Section, Consumer Financial Services Committee. He also serves as the Chairman of the Awards Committee of the George Mason American Inn of Court.

Doug and his wife, Sophie, and their son, Jimmy, live in Falls Church, Virginia.

**The Federal Bar Association
Northern Virginia Chapter**



Presents:

***E-Discovery:
Identifying Issues And Sharing Practical Solutions***

A CLE Presentation and Interactive Workshop Featuring:

Hon. John F. Anderson
U.S. Magistrate Judge

Patrick Oot
Director of Electronic Discovery and
Senior Litigation Counsel, Verizon Communications

Anne M. Devens
Reed Smith LLP

CHARLES F. B. McALEER, JR.
Miller & Chevalier Chartered

Tuesday, July 14, 2009, from 3:00 p.m. to 5:00 p.m.

**Albert V. Bryan Courthouse
401 Courthouse Square
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Jury Assembly Room, Third Floor**

APPROVED FOR TWO HOURS OF CLE CREDIT

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\$90 FOR NON-MEMBERS

-- Registration Form attached --

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Miller & Chevalier Chartered
655 15th Street, N.W., Suite 900
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Tel: 202.626-5963
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**Last minute registrants may e-mail or fax your registration form in advance, and
bring your check to the seminar.**

REGISTRATION FORM "E-Discovery: Identifying Issues And Sharing Practical Solutions" Tuesday, July 14, 2009 Albert V. Bryan Courthouse, 401 Courthouse Square Alexandria, Virginia (Jury Assembly Room)	
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Business Address:	_____ _____ _____
Phone (_____) _____	Fax: (_____) _____
E-mail	_____
Member (\$70) _____	Non-member (\$90) _____

NOTICE

REAPPOINTMENT OF UNITED STATES MAGISTRATE JUDGE T. RAWLES JONES, JR.

The current term of the office of the United States Magistrate Judge T. Rawles Jones, Jr., at Alexandria, Virginia, is due to expire on February 27, 2010. The United States District Court is required by law to establish a Merit Selection Panel made up of members of the bar and the public to consider the reappointment of the magistrate judge to a new eight-year term.

The duties of the magistrate judge position include: (1) conducting most preliminary proceedings in criminal cases; (2) the trial and disposition of misdemeanor cases; (3) conducting various pretrial matters and evidentiary proceedings on delegation from the judges of the district court; and (4) the trial and disposition of civil actions upon consent of the litigants.

Comments from members of the bar and the public are invited as to whether the Merit Selection Panel should recommend that the incumbent magistrate judge be reappointed by the court. These comments should be directed to:

Merit Selection Panel
c/o William B. Cummings, Esquire
P. O. Box 1177
Alexandria, Virginia 22313

Comments must be received by August 10, 2009

This District Court is an Equal Opportunity Employer

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PUBLIC NOTICE FOR APPOINTMENT OF A NEW MAGISTRATE JUDGE

The Judicial Conference of the United States has authorized the appointment of a full-time United States magistrate judge for the Eastern District of Virginia at Norfolk / Newport News.

The current annual salary of the position is \$160,080. The term of office is eight (8) years.

A full public notice and application form for the magistrate judge position may be obtained from the Clerk of Court, at the Walter E. Hoffman U.S. Courthouse, 600 Granby Street, Norfolk, Virginia, 23510, or the United States Courthouse, 2400 West Avenue, Newport News, Virginia, 23607. The notice and form is also available on the court's Internet website at www.vaed.uscourts.gov .

Applications must be submitted in a clearly marked sealed envelope, **Attn: Clerk of Court, Fernando Galindo, USMJ Application Form**, and only by applicants personally, and **must be received by the Clerk at Norfolk or Newport News, Virginia, at the above addresses on or before 5:00 p.m., September 1, 2009.**

Adding Secondary E-Mail Addresses to Receive NEFs in a Case

Instructions for Adding a Secondary E-mail Address for a Specific Case

Attorneys may want to add one or more secondary e-mail addresses to receive NEFs in a case. For example, an attorney acting as local counsel for an attorney not admitted (foreign counsel) in the Eastern District of Virginia could add the e-mail address for the foreign counsel as a secondary e-mail addressee to receive NEFs for the case in which the attorney is local counsel. When a document is filed in the case, the foreign counsel would receive a NEF at the same time as the local counsel. To add one or more secondary e-mail addresses for a case, take the following steps:

Step	Action						
1	Click <i>Utilities</i> on the blue menu bar.						
2	Click <i>Maintain Your Account</i> link.						
3	Click the <i>E-Mail Information</i> button.						
4	Click the <i>Add Additional E-mail Address</i> button.						
5	Type in one secondary e-mail address.						
6	Click the down arrow in the box where <i>Hide Options</i> is currently selected in the <i>Additional Options</i> column and then select <i>Specific or Additional Cases</i> option.						
7	Click the down arrow in the box where the option <i>Show</i> is currently selected and then select the option <i>Add</i> .						
8	Type in the appropriate case number in the white box. <table border="1" data-bbox="565 1150 1386 1606"> <thead> <tr> <th>If you typed the case number...</th> <th>Then...</th> </tr> </thead> <tbody> <tr> <td>To include the divisional office number and two letter case type designation (i.e., 1:08-cv-113)</td> <td>Click the <i>Add to List</i> button.</td> </tr> <tr> <td>Without the divisional office number and two letter case type designation (i.e., 08-113)</td> <td> <ul style="list-style-type: none"> Click the <i>Add to List</i> button. Select the appropriate case from the list in the pop-up window. Click the <i>Next</i> button in the pop-up window. </td> </tr> </tbody> </table>	If you typed the case number...	Then...	To include the divisional office number and two letter case type designation (i.e., 1:08-cv-113)	Click the <i>Add to List</i> button.	Without the divisional office number and two letter case type designation (i.e., 08-113)	<ul style="list-style-type: none"> Click the <i>Add to List</i> button. Select the appropriate case from the list in the pop-up window. Click the <i>Next</i> button in the pop-up window.
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9	<ul style="list-style-type: none"> Click the <i>Add Additional E-mail Address</i> button if you are adding more e-mail addresses and repeat <i>Steps 5 through 8</i>. Click the <i>Return to Person Information Screen</i> button if you are not adding any more e-mail addresses and proceed to <i>Step 10</i>. 						
10	Click the <i>Submit</i> button.						
11	Click the <i>Submit</i> button.						



Federal Bar Association

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