



# Mound City News

Mound City Bar Association Newsletter  
August 2006

**Welcome Mrs. Pamela Meanes, Esq.**

**Mound City Bar Association President 2006 – 2007**

*Her Platform will inspire, move and motivate you to become involved!*

## INCLUSION OR ILLUSION

Greetings,

It is with great admiration that I humbly accept the opportunity to serve as MCBA President for the 2006-2007 Bar Year. During my tenure, I would like to accomplish the following:

1. Propose and implement a progressive platform which addresses critical professional, educational and social issues currently facing the Mound City Bar and the St. Louis Metropolitan community;

2. Propose the Establishment of a Legal Legends Award; and

3. Promote diversity on the bench.

It is undisputable that one of the critical issues facing America today and the legal profession is **DIVERSITY**. Think about it, rarely can you find an institution, business, or establishment which does not have some type of diversity initiative or



Pamela Meanes, Esq.

program. To that end, there is no question that most of us applaud the efforts of these organizations. They had the foresight to implement safeguards, which are designed to create diversity. However, when confronted with the results of many of these programs, most are left wondering whether these efforts have created diversity

or simply an appearance of it. Quite frankly, I must confess that I really do not have the answer. This is why I have decided to dedicate my Bar Year to exploring this critical question. The theme I have chosen for the 2006-2007 Bar Year is: "Inclusion or Illusion: The Examination of a Fact or Fiction." My hope is to research, examine, and analyze the diversity initiatives of various establishments in the following four disciplines: education, political, social and employment:

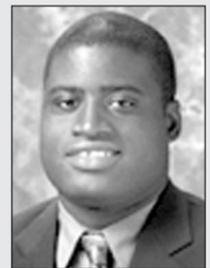
1. Education: I would like to examine the diversity efforts of Washington University, St. Louis University, University of Missouri at Columbia and University of Missouri at Kansas City to determine whether their initiatives have successfully led to the recruitment, retention and preparation of future African-American lawyers;

See SPEECH page 2MC



Rolanda Johnson  
Editor

## Newsletter Committee Members



Samuel Henderson Esq.



Hope Whitehead Esq.

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## What Do Debt Collectors Fear Most?

**Mitchell B. Stoddard, Esq.**  
Founder, Consumer  
Law Advocates

The phone rings at 7:00 a.m. on a Saturday morning. You answer it and some stranger wants to know why you haven't paid your VISA bill that month (or the previous month for that matter). You try to explain that your car broke down and you had to divert funds to pay for repairs so you could keep your job (and therefore have at least a *chance* of getting current on your future VISA bills). The stranger is unsympathetic and will not be put off. He demands to know when you intend to make your next payment. The fact is, you can't give an exact date because you just don't know when you'll have the funds available. The stranger keeps insisting, and you keep rebuffing



Mitchell B. Stoddard, Esq.

him. What happens next may give you the right to file a lawsuit against this intrusive stranger.

If you take nothing else away from reading this article, please understand this: whether or not you actually owe money to a debt collector is *irrelevant* to the ques-

tion of whether the debt collector has violated federal debt collection law. Under the Fair Debt Collections Practices Act (or "FDCPA"), a debt collector is prohibited from using ANY false, misleading, unfair, harassing or abusive means to collect a debt, period! Since these prohibitions are unrelated to the issue of whether the debt is actually owed, we'll assume throughout the remainder of this article that the debt in question is "true" and the collector has every right to collect it.

In the example above, what the stranger does next to collect the debt will often test the boundaries of the FDCPA. Before we even get to that question however, we first need to find out who the stranger works for so we can determine

See STODDARD page 6MC

Please remember the articles in this newsletter reflect the views of the authors and are not necessarily the views of the Mound City Bar Association. The information contained in this newsletter is not legal advice; if you want legal advice, you must consult your own attorney.

Questions? Concerns? Comments? E-mail: [discovery219@charter.net](mailto:discovery219@charter.net)

# Speech

Continued from page 1MC

2. Political: I would like to explore an existing healthcare initiative to determine whether it adequately provides basic medical care for people of color;

3. Social: I would like to evaluate minority representation in the Missouri Bar, BAMSL, The Lawyer's Association and Women's Lawyers Association. To determine not merely whether we have a seat at the table but to establish whether we have a voice. It means very little to be present at the table if you are in fact invisible; and

4. Employment: I would like to analyze the diversity initiative of law firms and governmental entities to determine whether African Americans are a part of the fabric or window dressing.

To accomplish these goals, I plan to establish a commission for each discipline. Each Commission would research and analyze its particular issue and survey the appropriate entities. Thereafter, the Commission would invite the leaders of said entities to a Mound City Bar meeting to discuss the topic. Finally, the Commission would publish its findings and recommendations in various media outlets. Similar, to Mr. Paul Sims, my hope is that we not simply say it, but that we do it. But not just do it, but do it with excellence, proficiency and integrity so that we may preserve the dignity of this historic organization while improving the status of African Americans in the legal community as well as the general populace.

In addition, to the implementation of this Platform, I would like to establish the Legal Legend Award for the following two reasons:

1. First, so often we rely on

other organizations to recognize the accomplishments of African Americans who have made tremendous contributions to the legal profession; and when this does not occur, we often are disappointed and disdained;

2. Second and more importantly, as a community we often discount and overlook the contributions of pioneers who have been in the struggle for years, trailblazers who are succeeding and progressing by their own standards. Yet, we rarely hear their names, acknowledge their contributions or pay homage to their success.

I propose that we establish a Legal Legend Award to celebrate these unsung heroes. To the end, these individuals would be honored at a Mound City Bar meeting. At that meeting, the recipient would be given the opportunity to address the membership. Thereafter, a reception would be held in his/her honor.

Finally, I propose we join the fight to preserve the Non-Partisan Court Plan and continue our efforts to promote diversity on the bench. With respect to diversity on the bench, there is no question that we have made strides in this area. Just look at our current representation on the bench. We have,

#### **One Missouri Supreme Court Judge**

The Honorable Ronnie White

#### **Three Federal District Court Judges**

The Honorable Carolyn Jackson  
The Honorable Charles Shaw  
The Honorable Henry Autrey

#### **Three Appellant Court Judges**

The Honorable George Draper  
The Honorable Booker Shaw  
The Honorable Nannette Baker

#### **Six Judges on the 21st Circuit (St. Louis County)**

##### **Two Circuit Judges**

The Honorable David Lee Vincent III  
The Honorable Michael T. Jamison

##### **Four Associate Circuit Judges**

The Honorable Sandra Farragut-Hemphill

The Honorable Brenda Stith-Loftin

The Honorable Gloria Clark Reno

The Honorable Judy P. Draper

#### **Nine Judges on the 22d Circuit (City of St. Louis)**

##### **Six Circuit Judges**

The Honorable Michael B. Calvin

The Honorable Evelyn M. Baker

The Honorable Angela Turner-Quigless

The Honorable Jimmie M. Edwards

The Honorable Donald L. McCullin

The Honorable David C. Mason

##### **Three Associate Circuit Judges**

The Honorable Paula Perkins-Bryant

The Honorable Barbara Peebles

The Honorable Calea Stovall-Reid

##### **One Bankruptcy Judge**

Kathy Surratt-States

There is an underlining reason why I wanted to recognize each of these Judges by name and that reason simply is: although I am extremely proud of their presence, the mere fact that I am able to list them on one sheet of paper is a testament to the fact that although we have come a ways, we still have a long way to go.

I propose that our Community Affairs committee take a critical look at the judicial selection process and develop a strategic plan aimed at increasing diversity on the bench. As we strive to accomplish this, we must remain careful not to move backwards. In other words, in our efforts to increase diversity on the bench, we must never lose sight of

our responsibility to protect, defend and preserve the current members of the judiciary. I propose that the Community Affairs committee develop an action plan which would allow us to expeditiously respond when an African American judge is unfairly attacked and/or challenged. As other Bar Associations have so rightly done, so must we take necessary steps to preserve the Non-Partisan Court Plan.

Finally, as we forge ahead this year, let us always strive to accomplish our Constitutional objections, which are:

1. To advance the professional interest of our members;

2. To improve the administration of justice;

3. To uphold the honor of the legal profession;

4. To promote the professional development of African American attorneys; and

5. To service the community.

To accomplish this and the action items I intend to propose, I will need your help. I challenge each dues paid member to attend the monthly meetings *and* participate. I challenge each individual who has not paid their dues to pay them and help us explore this timely and critical question: "Diversity Initiatives: Inclusion or Illusion." The Answer To Be Determined. Again, I thank you for this opportunity to serve and look forward to working side by side with each one of you.

*Pamela J. Meanes, MCBA President 2006-2007; Inaugural Speech; Mound City Bar Association Annual Stoval Reid Scholarship dinner*

## PEOPLE IN THE NEWS

# St. Louis Business Journal's '30 Under 30'

## Frank Smith Jr., 29, Associate, Thompson Coburn LLP

By John Terry

*Courtesy of  
the St. Louis Business Journal –  
July 14, 2006*

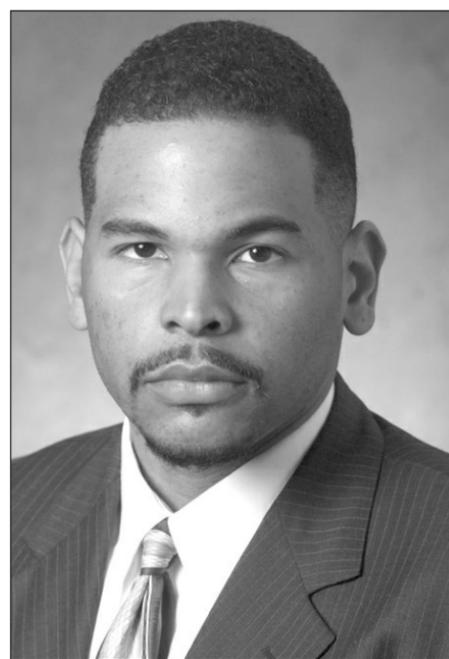
Frank Smith Jr., a lawyer in the business litigation practice group of Thompson Coburn LLP, said if things go as he hopes they will, he will someday be a judge. He has already spent considerable time in the company of judges, having done two separate stints as a law clerk — one with Judge Michael Wolff of the Supreme Court of Missouri and a second with Judge Duane Benton of the U.S. Eighth Circuit Court of Appeals.

"My clerkship with Judge Wolff was great," Smith said. "He is a former professor at Saint Louis University Law School, so he really had a teacher's demeanor. It was kind of like graduate school, because you learn so much about Missouri law as a clerk. I assisted Judge Wolff in drafting judicial opinions, and I also drafted memos with recommendations on whether a given case should be heard by the court."

Wolff said of Smith, "He does good work. He has a lot of talent and a lot of strengths. I think he'll be a success at whatever he chooses to do. I was very happy with our year together."

Smith is a 1998 graduate of Central Missouri State University in Warrensburg and a 2002 graduate of the SLU School of Law, where he was a staff member of the Law Review. He went directly to the Missouri Supreme Court clerkship from law school, and after a year there, he joined Thompson Coburn's product liability practice group. A year later, he left for his clerkship with the Federal Appeals Court in Kansas City, another year-long stint, and returned to Thompson Coburn in September 2005. He now handles a variety of business litigation cases involving matters such as lender liability, labor and employment, product liability, breach of contract and breach of fiduciary duty.

In addition to his Thompson Coburn duties, Smith works with Junior Achievement and is a member of the Legal Services of Eastern Mis-



Frank Smith

souri's Volunteer Lawyers Program.

"Specifically, I work with the St. Paul's Church program where we go to the church on Saturdays and do client intake," he said. "Indigent people come in who would-

n't normally have access to lawyers or the legal system and tell us about legal problems they have. We submit the information to Legal Services and eventually their case is assigned to one of us to work on their behalf."

A key to his success, Smith said, is continuous learning, the value of which has been stressed by his parents, both of whom are school principals.

"You can take something from every experience to make yourself a better and more capable person."

His mother, Brenda Smith, is principal of McKinley Classical Junior Academy, a magnet school in the St. Louis Public School system. She said her son has always been focused and goal-oriented.

"I find that when he sets his sights on a particular goal, he zeroes in on it, sets up the steps he needs to take toward the goal and will do whatever it takes to reach it, including personal sacrifice, discipline and hard work," she said.

*John Terry is a St. Louis freelance writer*

# For new Mound City Bar leader, it's about mentors and retention

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By Gail Appleson

gappleson@post-dispatch.com  
ST. LOUIS POST-DISPATCH  
07/07/2006

Pamela Meanes, a partner at Thompson Coburn and a minister, takes the helm of the Mound City Bar Association, the oldest black bar association west of the Mississippi River, at a time when law firms are under pressure from corporate clients to diversify their staffs.

Although they say efforts are hampered by a small pool of minority law school graduates, Meanes, one of the few black partners at a large St. Louis firm, believes both firms and law schools need to try harder. Bringing minorities into the practice of law and keeping them there are challenges that can be met. After all, the word "no" is an opportunity, says Meanes, quoting her role model

mother, who raised her five children in East St. Louis working as a maid.

We talked in a conference room at Thompson Coburn.

**One of the things I wanted to talk to you about is the Mound City Bar Association and your plans for your presidency.**

My theme for the year is the term inclusion or illusion, and what I'd like to test are the diversity programs and the initiatives of different entities to see whether or not African-Americans, participation and representation in those entities are actually an inclusion. Are we a part of it, or is it really an illusion?

I'd like to look at the educational system. I'd like to look at the four law schools that are in the Missouri area. And I'd like to form a commission that will study the history of these law schools for the last two or three years and to look at enrollment, their retention and graduation rate with respect to law students.

Look at their hiring, retention and

promotion of the African-American profession.

I'd like to send a survey to these four law schools, invite them to come to our meeting to speak with us and discuss what we have determined as the potential issues and have an open a conversation with us. Thereafter, we would be looking to come up with a recommendation on how to improve some of the potential problems that we found.

I'd like to look at the majority bar associations and take a real look at whether or not we have a viable seat at the table. Is our presence at the table just presence or is our voice welcome?

I'd like to look at employment. About three years ago (Missouri Court of Appeals) Judge Nanette Baker and I did an evaluation of the employment of African-Americans, and we expanded it to people of color of majority law firms in St. Louis.

I think we surveyed about 10 of them. At that time the issue that was really hot was about whether or not African-Americans or people of color were being recruited and retained at law firms.

Our conclusion really came down to that the issue doesn't really revolve around recruitment. It's really about retention. So if you're really a revolving door, it really doesn't make a difference if you have 15 people. If five of them have left in the last three years, you can never get anybody up to the fifth, sixth year. That's the real issue, and so that is what law firms should be focusing on.

**What can law firms do to improve retention rates?**

There has to be a mentorship program. You have to connect the minority to a majority partner whose connected to some measure of power. And then the mentor has to be accountable to someone of authority in the law firm.

We have a program at this firm where every single minority that walks in the door is partnered with a midlevel partner who is connected to some business. Because, look, I don't need you to mentor me socially. I need opportunity.

When you make an associate feel they're valued and they're important to the process, you retain them whether they're white, black, Japanese, or Chinese. When you make them feel like they are part of the structure and they have opportunities, they will stay. That's how you retain. That's how I was retained.

Law firms say recruiting is also a problem because there is a small pool of minority students to choose from in this area. What can law schools do to increase the minority

enrollment?

I think law schools may have to be a little bit more deliberate in their efforts in recruitment and training at the high school level. I think that if we had a concerted effort to mentor people at the high school level and get them involved and actually get them interested in the practice of law, then you might see a higher enrollment in law.

I'll tell you, when I was growing up the thing that was pushed the most was to become a teacher. And when I went to undergraduate school that was exactly what I intended on becoming. I didn't know a lot of lawyers. I didn't know about the concept of the practice of law.

I was never recruited by a law school in St. Louis. I never gave consideration to a law school in St. Louis. Not that I didn't think the schools were good, but I just didn't give any consideration to them, because you know why? An African-American gentleman who worked at the University of Iowa called me and said, "I heard about you. I have a program, a support system here at the University of Iowa. . . . I will be here with you from the day you walk in until the day you leave." He wanted me, and it was purely the connection. If someone from this area had actually come to my school, perhaps I would have given it consideration.

**You said you thought you would become a teacher. Why did you decide to switch to law?**

I (learned) I can be more assistance to people that looked like me if I was actually practicing law. Did I ever think I would be practicing in a big law firm? Heck no. I thought I'd be doing civil rights. But from this perspective, I think I better serve people of color here.

There's a small number of people who work in law firms and go on to make partner. That's why I have a responsibility.

Some people tell me, "You do not have a responsibility. It's not your job to make certain that people stay here. It's not on your shoulders." Well, it's not an obligation that's been placed on me by anyone but me because somebody helped me get to this point. None of us gets anyplace unless it's on the shoulders of somebody else.

**Are there things about the practice of law that you don't like?**

I don't like the politics of it sometimes. I don't like that sometimes it comes down to the black versus the white issue. But that's part of the reality. I don't like losing, and I don't like it when people play dirty. I don't like when people are unethical in the practice of law.

## MOUND CITY BAR ASSOCIATION 2006-2007 PROCEDURES

### Email Procedures

In an effort to reduce the dissemination of sensitive information to the general public, the following procedures shall be implemented:

1. E-mails regarding legislative, political or social issues should be sent to President Pamela Meanes at pmeanes@thompsoncoburn.com or Carla Allen at callen@armstrongteasdale.com
2. E-mails regarding minutes or membership status should be sent to Kemba Logan at Kemba.logan@thehartford.com.

### Agenda Procedures Executive Board Agenda

To be placed on the MCBA Executive Board Agenda, a written request must be submitted to Kemba Logan on or before the first Tuesday of each month.

### General Body Agenda

To be placed on the MCBA general body agenda, a written request must be submitted to Kemba Logan on or before the first Tuesday of each month.

Written requests shall state the nature of the proposed item and the duration of your presentation. The request shall be mailed to Kemba Logan, attention at P.O. Box 1543, St. Louis, MO 63188 or via e-mail at Kemba.logan@thehartford.com

### Emergency Situations

To be placed on the agenda under emergency circumstances, please contact President Meanes.

### Speaker Requests at Meetings

In order for a non-member to address the membership, he/she must submit a written request at least one month in advance to his/her appearance. The request should include:

- the nature and purpose of the presentation;
- the duration of the presentation;
- a copy of any material(s) (handouts, power-point, etc.) which will be

utilized during the presentation;

— a copy of any material(s) describing the presenter or the organization; and

— an indication regarding whether the presenter will be available for a question & answer session following the presentation.

Emergency situations shall be evaluated on a case-by-case basis by the President and the Executive Board

### Co-Sponsorship of an Event for Other Organizations

If another organization/individual would like MCBA to co-sponsor an event with it, the organization/individual shall submit a written request at least two and a half months in advance of the event. The request shall include the following information:

- the nature and purpose of the event;
- the proposed date(s) of the event;
- the desired level of MCBA involvement and any monetary requirements; and
- any literature describing the event and organizer.

Finally, the organization shall be co-sponsored by a MCBA dues paid members

### Event Request from MCBA Members

If any MCBA member would like to propose a new event, the member shall submit a written request to the Executive Board at least two and a half months in advance of the proposed event date. The request should include the following information:

- the nature and purpose of the event;
- the proposed date(s) of the event; and
- any necessary monetary requirements.

Your cooperation with following the procedures is appreciated.

Placing legal notices statewide

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Fax: 800-273-4575

# MOUND CITY BAR ASSOCIATION COMMITTEES 2006-2007

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## EDUCATION

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### Members

Rolanda Johnson  
Pamela Meanes  
Annette Slack  
Anne-Marie Clarke

## LIAISONS FOR EVENTS CO-SPONSORED WITH OTHER ORGANIZATIONS

### 1. BLACK HISTORY MONTH DINNER

Kemba Logan ^ (on Committee with  
Lawyers Association)  
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### 2. UNITY DINNER

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### 3. JUSTICE FOR ALL BALL

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(314) 436-9506 x17  
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# MOUND CITY BAR ASSOCIATION STANDING COMMITTEES 2006-2007

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## 7. HANDBOOK

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## 8. NAACP DINNER

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General Counsel for Monsanto

## Meet Mound City Bar Association's 2006 - 2007 Elected Executive Board

### PRESIDENT-ELECT:

Rufus Tate

Born in Jackson, Mississippi. Educated at Brown University (A.B. Public Policy 1992) and Washington University School of Law (J.D. 1995). Appointed Assisted Circuit Attorney in 1996; tried over 55 jury trials to completion. Entered general private practice (The Tate Law Firm, LLC) in November 2001 under the tutelage of Wayne C. Harvey. Appointed General Counsel for the City of St. Louis Board of Election Commissioners in 2002 in anticipation of federal litigation regarding 2000 Presidential election fiasco; he negotiated the federal consent decree with the Department of Justice approving use of new technology and personnel at each City polling place (cell phones, PDAs, & additional personnel). Appointed to ARCH's board of directors in 2003. Formerly served as City Attorney for City of Beverly Hills, Missouri. Served as Vice-president Mound City Bar Association during 2005 term. Founder & Director of Little Red Schoolhouse Legal Ministry based at Friendly Temple MB Church in St. Louis. Licensed in Missouri & Illinois. Wife: Natalie (teacher). Daughter: Austin McKenzie, born March 24, 2006.

### VICE-PRESIDENT:

Annette Slack

Annette E. Slack is a litigator for the law firm of Rabbitt, Pitzer & Snodgrass, P.C. She graduated from St. Louis University School of Law in 1998. She has been admitted to practice in Missouri and Illinois. She has been a member of Mound City Bar since law school. She has previously served as Member at Large for the 2003-2004 years. She has previously served on the Workers' Compensation Section of BAMSL and currently is an active member of BAMSL, Lawyer's Association and the Women Lawyer's Association. She has also been the Chair of the Scovel Richardson Dinner Committee for the past three years. Annette has also been a Registered Nurse for the past twenty-six years and is a Retired Lt. Col. from the United States Army Nurse Corp. She currently serves as a trustee and on the Health Ministry for Central Baptist Church. She is the proud mother of one son, Carey Davis. Carey is a graduate of the University of Illinois and currently plays profes-

sional football for the Tampa Bay Buccaneers.

### RECORDING SECRETARY:

Kemba Logan

Kemba Logan serves as panel counsel for The Hartford Insurance Company in the St. Louis Legal Office. She received her Juris Doctor from Washington University School of Law in 1999. She has been a member of Mound City Bar Association since she was in law school. Ms. Logan serves on the Legislative Committee, Constitutional Committee and the Scovel Richardson Scholarship Dinner Committee. She enjoys volunteering in the Ma'at program at Rowen Community Center. She is an active member of The Bar Association of Metropolitan St. Louis (BAMSL), Lawyers Association and the Professional Organization of Women (POW).

### CORRESPONDING SECRETARY:

Carla Allen



Carla R. Allen is an attorney at Armstrong Teasdale, LLP. She is a member of the Corporate Services Group where she primarily practices in the areas of mergers and acquisitions, corporate formation, and corporate governance/compliance. She also practices Securities Law, Trusts and Estates, and Taxation. Currently, Ms. Allen is the corresponding secretary of the Mound City Bar Association and a member of the Board Elections committee for the Bar Association of Metropolitan St. Louis. Ms. Allen is a member of the Missouri Bar and the Illinois Bar. Ms. Allen graduated from St. Louis University School of Law in 2005, and received her B.B.A. in Accounting from Tennessee State University in 2002. Moreover, Ms. Allen is a member of Friendly Temple Missionary Baptist Church, where she is active with the Music Ministry, the Legal Ministry, and the Athletic/Recreation Ministry. Ms. Allen is also a member of Delta Sigma Theta Sorority, Inc.

### TREASURER:

Paul Randolph

Paul Randolph is the Assistant United States Trustee for the Eastern District of Missouri. Prior to assum-

ing that position in 2004, he was a Trial Attorney for nearly 15 years in the Office of the U.S. Trustee in Phoenix, Arizona, where he also served as a Special Assistant U.S. Attorney for bankruptcy fraud matters. Mr. Randolph received his Juris Doctor degree from the University of Virginia School of Law in 1987 and his Bachelor of Science degree with Honors from Lindenwood College in St. Charles, Missouri in 1984. He was engaged in the private practice of law for several years, primarily in the areas of finance and bankruptcy law, prior to joining the U.S. Trustee. Mr. Randolph has been involved in various aspects of civic and community service in Missouri and Arizona including his service on the Board of Directors for the Mound City Bar Association and for the Haven of Grace women's shelter in St. Louis. He is a member of the National Bar Association and the American Bankruptcy Institute. He has chaired and/or lectured at numerous bankruptcy law seminars.

### PARLIAMENTARIAN:

Robert Kenney

Robert Kenney is an Associate in Polsinelli Shalton Welte Suelthaus's St. Louis office in the Trial Department. Robert is a 1994 graduate of Hampton University and a 1998 graduate of Saint Louis University School of Law. While in law school, Robert served as president of the SLU chapter of the Black Law Students' Association. He was also an articles editor for the Saint Louis University Public Law Review. Robert concentrates his practice in the area of commercial litigation. He has represented a variety of clients in all phases of litigation, from inception through appeal. Prior to joining Polsinelli Shalton Welte Suelthaus, Robert was a Missouri Assistant Attorney General in the Consumer Protection division. Robert was charged with enforcement of Missouri's consumer protection laws, as well as the implementation of community education and outreach efforts. Robert was also an instrumental part of the initial implementation and enforcement of the Missouri Telemarketing No-Call List law. Robert is a member of Alpha Phi Alpha Fraternity, Inc., where he heads up his chapter's political action committee.



### HISTORIAN:

Celeste Dotson

Celeste was born in Chicago, Illinois. She attended University of Illinois for both undergrad and law school. Upon completion of law school, she obtained employment with the AF/CIO. Later she practiced law with a public interest firm, MO Plot and Advocacy. After nearly three years with this office she began work in the private sector for Caldwell & Singleton, later to become the Cochran Firm, St. Louis. Currently she is a solo practitioner and Of Counsel to the Law Office of Freeman Bosley and Associates where she concentrates her practice in the areas of Workers, Compensation, Personal Injury and Civil Litigation.

### MEMBER AT LARGE (OVER 10 YEARS):

Joan Miller

Joan Miller has been a Mound City Bar Association member since 1995 and has held leadership positions as Corresponding Secretary and E-Secretary since 1999. "Mound City Bar Association must remain a vital and important organization in the St. Louis region."

### MEMBER AT LARGE (UNDER 10 YEARS):

Rolanda Johnson

Criminal Defense attorney admitted to practice for 3+ years. Received her BA from the University of Dubuque and her JD from the University of Iowa. Originally from Chicago — moved to St. Louis after Law School. COMMUNITY INVOLVEMENT: Mound City Bar Association: Member (2000 — Present); Member at Large (2003-Present) Editor — Mound City News (2004 — Present); Missouri Bar Leadership Academy 2004/2005; CORO: Women in Leadership 2003; Bar Association of Metropolitan St. Louis: Member — (1999 -Present); Metropolis St. Louis: Member — (2000 -2003); Humane Society — Volunteer (1997 — Present); Stray Rescue — Foster Care Volunteer (Present); Habitat For Humanity — Volunteer (May 2006). Proud Co-Human of Stray Rescue Foster Dog now known affectionately as Kunta Kente. I thank you for your support in the past and will continue to work diligently in the best interest of the Mound City Bar Association. Thank you.



# Stoddard

Continued from page 1MC

whether the FDCPA even applies.

## **"Creditors Who Collect Their Own Debts Are NOT 'Debt Collectors' Under The FDCPA"**

Assume our stranger makes the following statement after failing to get a date certain as to when you intend to make your payment: "If you don't send a payment by Monday, I will report this matter to the police and will instruct them to have you arrested for theft." Clearly the stranger has no right to bring criminal charges against you for failing to pay a debt; therefore the statement is blatantly false, misleading, deceptive, etc., and constitutes a clear violation of the FDCPA, right? . . . well, *perhaps*. It depends on whether the stranger was collecting his company's own debt when he made the call, or whether he was collecting the debt for some other company. The FDCPA defines a "debt collector" as "any person who . . . regularly attempts to collect, directly or indirectly, debts owed or due or asserted owed or due another." Therefore, if our stranger was employed by VISA when he threatened to have you arrested, there can be no FDCPA violation because he was not attempting to collect a debt owed to "another," rather he was attempting to collect a debt owed to VISA itself. In such cases, the stranger does not fit within the FDCPA definition of "debt collector," so there can be no FDCPA violation.

By contrast, if the stranger was working for (let's say) Collections R Us, Inc.

at the time he threatened to have you arrested (and Collections R Us, Inc. had been hired by VISA to collect VISA's debt), then the stranger was clearly attempting to collect a debt owed to *another* and therefore qualifies as a "debt collector" under the FDCPA. The question of who is actually making the debt communication is a threshold question and is *critical* to whether a person can bring a claim under the FDCPA.

Let's assume the stranger was indeed employed by Collections R Us when he made the threatening call, you can now file a claim under the FDCPA and seek (1) actual and statutory damages; (2) attorney's fees; and (3) costs of suit.

Note however that you will NOT be able to recover punitive damages, no matter how egregious the violation. Statutory damages under the FDCPA may not exceed \$1,000.00, which means you could recover anywhere between \$1.00 and \$1,000.00 for even a mere "technical" violation of the Act. Arguably, the more egregious the conduct, the closer you should come to receiving the full \$1,000.00. However, most recent court decisions cap the amount of recoverable statutory damages at \$1,000.00 regardless of the number of independent violations that occur. For instance, if you receive 100 calls from the same debt collector regarding the same debt, and each call separately violates the FDCPA, you will still only recover a maximum \$1,000.00 in statutory damages. By contrast, actu-

al damages are not capped, and permit recovery for emotional distress, humiliation, inconvenience, verbal abuse, and similar injuries. Moreover, it is generally recognized under the FDCPA that you do NOT have to show a medically diagnosable injury in order to recover for emotional distress, etc.

Does this mean that simply because a company calls you about its own debt there is *nothing* you can legally do about it? The answer is "no," because common law claims like invasion of privacy, defamation and intentional infliction of emotional distress remain viable causes of action in these situations. The *problem* with these common law claims, however, is they are often much harder to prove, and sometimes require a showing of a medically diagnosable injury as an element of the claim. In other words, while it is still *possible* to pursue claims against original creditors, the added hurdles generally make such claims impractical. As a result, creditors collecting their own debts can often make threatening and harassing phone calls with impunity.

## **What Constitutes A Violation Of The FDCPA?**

Once we are satisfied a collection call is coming from a "debt collector," the next issue is deciding whether the caller's conduct rises to the level of an FDCPA violation. For the most part, the FDCPA is *very* consumer friendly, and permits claims to be brought against debt collectors for any number of rea-

sons. For instance, the mere fact the debt collector called at 7:00 o'clock a.m. in the above example in itself constitutes a violation (the FDCPA prohibits calls before 8:00 a.m. or after 9:00 p.m.). Next, while it is an obvious violation to threaten arrest or imprisonment under *any* circumstances, suppose the debt collector instead said something like "make a payment by Monday or I'm going to have your wages garnished." Technically, the debt collector "can" garnish your wages, but of course he can only do so *after* he first obtains a judgment against you. It is therefore "deceptive" and "misleading" to threaten a debtor with garnishment when no judgment has as yet been obtained. This statement would almost certainly violate the FDCPA.

Debt collectors are all too aware that the more consumers feel "squeezed," the more likely they can get the consumer to make a payment, even if it means the consumer will have to forego making a mortgage or car payment as a result. In order to exert some extra pressure on the consumer, some debt collectors have been known to use official-sounding names like "St. Louis County Investigations" or "United States Recovery Service," which are designed to create the impression that the government is somehow involved in the collection effort. Such names are deceptive and misleading, and violate the FDCPA. Another type of FDCPA violation occurs when companies file verified petitions in collection suits, but attach untrue affidavits in support of the petition. This violation often arises when the original creditor has sold or assigned the consumer's installment loan to a debt collector after a default. The company receiving the assignment will then file a collection action against the consumer, and will attach an affidavit to the petition (as it must do if it wants the right to take a default judgment against the debtor). The affidavit will often attest to the signor's "personal knowledge" of the consumer's debt when, in fact, the debt collector merely accepted an assignment of the debt and has no such "personal knowledge." Filing a false affidavit in support of a petition has been held to constitute a violation of the FDCPA.

## **How To Level The Playing Field**

More than anything else, debt collectors dread hearing the words "Fair Debt Collection Practices Act" from a consumer. These words, combined with the threat of contacting an attorney, will silence all but the most intransigent debt collector. The fact is that most debt collectors are scared of death of being sued, and when faced with litigation the debt collectors almost always seem eager to settle rather than fight. Who can blame them? Very few debt collectors are willing to take the chance a jury will disbelieve the consumer when confronted with the "horror stories" about the debt collector's conduct. So the next time you find yourself in the unfortunate circumstance of having to deal with an abusive debt collector, see what happens when you speak the words "Fair Debt Collection Practices Act" – I bet you'll be pleasantly surprised.

For more information: Mitch Stoddard - Consumer Law Advocates, 11330 Olive Boulevard, Suite 222, St. Louis, Missouri 63141 ph: 314/ 692-2001 fax# 314/ 692-2002 [www.ConsumerLawAdvocates.com](http://www.ConsumerLawAdvocates.com)



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