



Creditor's Rights
Section
of the State Bar of Georgia

N e w s

October 2000

Message from the Chair.....

First Edition

We are pleased to present the Section's first Newsletter. We plan to publish the Newsletter quarterly and solicit any short articles or announcements that you believe would be of interest to the membership.

We have planned a great year. A breakfast meeting is scheduled for January 18, 2001. David Dolinsky, Esq. will summarize significant state case law decisions in the areas of creditors' rights. Jay Loeb has already organized the Section's annual "Emerging Issues in Debt Collection" CLE Program, as well as two additional CLE programs on consumer credit collections to be held in late May in Atlanta and middle/south Georgia. (See Jay's article.) As you may recall, Jay produced one of the best attended and well-organized CLE's in recent history, so better sign up now. Frank Wilensky, the Section's Chair Elect is planning several Section socials for member networking and fun. Frank also is coordinating a joint program with the Commercial Law League of America for late summer, 2001.

One of the Section's projects is to survey all state court clerks to find out both the procedures and the costs of preparing, issuing, and recording a writ of fi. fa. Gary Jackson is chairing this ambitious project known as the "State Court Clerk Survey." (See Gary's article). The survey questionnaire to the court clerks is almost complete thanks to Gary's efficient and timely stewardship and Brett Berlin's efforts in assisting in drafting the survey questions.

Finally, one of the Section's purposes is to monitor legislation which will affect the Creditor's Rights Bar and its clients. Beau Hays will chair this worthy endeavor. If you have ideas or wish to make sure that you are on his mailing list, give him a call. (See Beau's article.)

If you would like to volunteer to head or committee or simply just volunteer, please call or e-mail me. 770-645-5400 or janr@mindspring.com.

Jan Rosser

**Note: See Important
Notice on Page 6**

DATES TO REMEMBER

January 18, 2001

Section Breakfast Meeting
David Dolinsky, Speaker

March 15, 2001

CLE Seminar - Emerging Issues in Debt Collection
Jay E. Loeb, Chair
Notices to Follow

Creditors Rights Section Officers & Executive Committee Members.

Officers

Chair: Janis Rosser, Attorney at Law, Roswell
Chair Elect: Frank Wilensky, Macey, Wilensky, Cohen, Wittner & Kessler, Atlanta
Secretary: Sarah Wyeth, Attorney at Law, Roswell
Treasurer: Jennifer Scoliard, Attorney at Law, Atlanta

Executive Committee

George A. Broxton, Attorney at Law, Gainesville
James (Beau) Hays, Hays & Potter, P.C., Atlanta
Gary E. Jackson, Lowenthal & Jackson, LLP, Atlanta
J. Michael Kaplan, Attorney at Law, Columbus
J. Benjamin Kay, III, Attorney at Law, Augusta
George Marshall Kent, Jr., Shapiro Fussell Wedge Smotherman Martin, Atlanta
Jay E. Loeb, Olim & Loeb, LLP, Atlanta

Newsletter Editor

Greg S. McLaughlin, 404/266-2421

Upcoming Programs

By Jay E. Loeb, Chairman

The Section will have a breakfast meeting on Thursday, January 18, 2000 at which time we will have David Dolinsky, Esq. as a speaker to summarize significant state case law decisions in 2000 in the area of creditors rights. We urge all Section members to attend. The location will be announced later.

On March 15, 2001, the Section will present its second program, with ICLE, on Emerging Issues in Debt Collection, at a site in Atlanta. Please mark your calendar now, and send in your reservations in January as the program earlier this year had over 125 attendees, and ICLE ran out of space and program materials. Any persons with ideas on topics to be covered should contact me at telephone No. 678-686-6630, fax 678-686-6633, and e-mail address is olimloeb@mindspring.com. The tentative program already includes the following topics:

A. Prejudgment remedies against the debtor who may be transferring assets;

- prejudgment garnishment;
- prejudgment attachments;
- prejudgment injunction; and
- writ of ne exeat and other extraordinary remedies.

B. Creditors rights to recover attorney's fees, and what must be proven under O.C.G.A. § 9-15-14 and § 13-6-11.

C. Applicability of the automatic stay to collection of NSF checks and past due support. Creditor's remedies on unscheduled debts.

D. Attorney's duties to "verify" a debt under the Fair Debt Collection Practices Act, Attorney's duties under the Fair Credit Reporting Act on a disputed debt, and Attorney's rights to get a defendant's credit report before and after suit.

The Executive Committee has also asked me to plan a program solely on issues in consumer credit collection in late May with meeting locations in Atlanta and in middle/south Georgia. Please write, fax, or e-mail your suggestions on program topics, program speakers, and suggested meeting sites to me at the above number.

State Court Clerk Survey

By Gary E. Jackson

Despite the Uniform Rules, as many of you know, practice in the 70-odd State Courts located in Georgia is sometimes anything but "uniform." This is particularly true when it comes to the issuance of writs of fieri facias (Fi. Fas.). For example, when a case is filed in the State Court of Fulton County, the fees for preparation and recording of a fi fa. are already included in the original filing fee. When a plaintiff is successful, the very able docket clerks in that Court automatically issue a fi fa., send it to the Clerk of Superior Court, and it is later returned to your office, generally without the winning attorney having to do anything. The situation is different in some of the other metropolitan Atlanta state courts in that, many times, unless you ask for a writ of fi fa., it is never issued. Some courts require \$7.50 for the issuance and recording of a fi. fas., some \$5.00 and a few even \$5.50.

The Creditor's Rights Section has asked me to head a special committee to do a survey of all the various clerks of the State courts in Georgia. We want to find out both the procedures and the costs of preparing, issuing, and recording a writ of fi. fa. Section members Brett Berlin, Timothy Curtin, Janis Rosser and Sarah Wyeth have graciously agreed to contribute to this effort.

The purpose of the survey is not to request the clerks to change any existing rule, but to simply obtain information regarding the costs and procedures surrounding fi. fas. At the same time, we will ask each clerk to provide a "cost sheet" so that we can assemble data that can be useful to Section members who file cases in "new" venues.

Hopefully, all of this information can be made available in a handbook distributed free to Section members and to other members of the State Bar at a nominal charge.

Legislative Liaison

By James (Beau) Hays

One of the most important benefits which this Section can provide is in the area of legislative review and discussion of pending or proposed laws. The Section was formed in part to provide creditors' attorneys with a voice in legislation affecting credit and collection issues. The State Bar legislative office will forward copies of bills, which may impact the practice of Section members. As legislative liaison, I will be reviewing these bills and reporting to the Section leadership. If proposed legislation needs to be addressed by the Section, we will contact Section members for their input and to request some assistance with lobbying efforts if required. In addition to Section membership giving you a voice in possible legislation, I would urge you to include your contribution to the legislative effort in your annual dues.

I would like to see this Section become an instrument for changing the law where it encumbers our members' ability to practice law. In that regard, I believe that we need to amend the law allowing courts to charge a new filing fee for actions taken thirty days after judgment. This makes it unduly expensive to pursue post-judgment remedies because courts charge a new filing fee every time you need to compel the debtor to respond to post-judgment interrogatories or deposition. If you believe that this is an issue that the Section should act upon, please contact me at 770-934-8858 or the Section leadership.

Importantly, if any Section member has possible legislation to consider on issues of interest to the Section, please contact me.

Mr. James W. Hays
Hays & Potter, P.C.
3310 Henderson Mill Rd, Suite 203 (1)
Atlanta, GA 30341

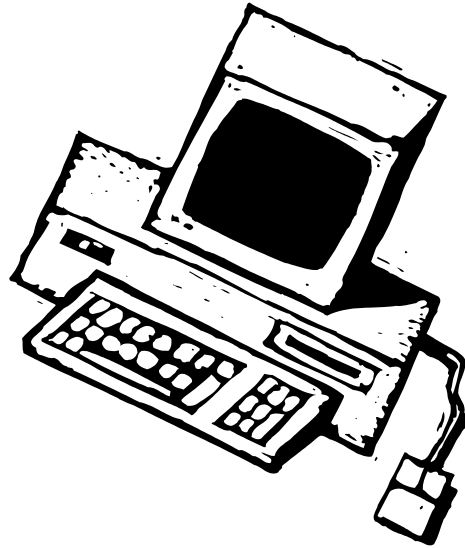
770/934-8858 ph
770/934-8932 fax

Did You Know?

Our Section has a web page!

Visit www.gabar.org (the State Bar's web site) and select "Sections". All 33 sections are listed, complete with a list of members. The web site is a wealth of information. You can view the ICLE calendar - check your credit hours, change your address with the Membership Department of the Bar & view our current section newsletter. From time to time we'll send those of you who

have email, supplemental correspondence via email - so notify the State Bar's Membership Department of your email address *in writing*.



Pass This Form To A Prospective Member

Yes, I Would Like To Join

The Creditor's Rights Section

Name _____

Address _____

_____ (Zip)

Bar No. _____

This form can be mailed to:
 State Bar of Georgia
 Membership Department
 800 The Hurt Building, 50 Hurt Plaza
 Atlanta, Georgia 30303

Make Your \$15 Check Payable To The State Bar of Georgia. This will give you membership through July, 2001

Creditor's Rights Section First Seminar a Big Success

Commentary by Gary Jackson

Congratulations are in order to Section member Jay E. Loeb and past Section Chair B. Emory Potter for holding the first annual Creditor's Rights seminar March 17, 2000 at the Atlanta Marriott Century Center Hotel in Atlanta. Entitled "Emerging Issues in Debt Collection," this seminar was a huge success that literally had attendees "sitting in the aisles." In fact, ICLE Assistant Director Daniel White reports attendance of 131 at the seminar which "... received exceptionally high ratings." For those of you who were not able to attend, here are the highlights:

John A. Swann, collection attorney extraordinaire spoke at length regarding fraudulent transfer litigation. If you have a case where your debtor is giving the property to a spouse to avoid collection, talk to John, or better yet, review his excellent materials.

Then Section Chair B. Emory Potter spoke on piercing the corporate veil and his talk was well received. If you have an NSF check and are faced with a bankruptcy, Neil Moskowitz supplied all the information on this ever-recurring topic. Before lunch, we were treated to an excellent presentation by Cindy Liebes of the Federal Trade Commission who talked about the Fair Debt Credit Collection Practices Act as viewed by the FTC. Her outline alone was worth the cost of admission.

After a very well catered lunch, Chief Judge Warren Davis from Gwinnett Magistrate Court was joined by Judge Ural Glanville of Fulton Magistrate Court who offered tips on practicing in their courts and how to

handle collection cases. It isn't often when lawyers get a "hands on view" from the very Judges before whom they practice and we are grateful for these two fine jurists taking time from their busy schedules to meet with us.

Robert Dokson spoke on enforcement and applicability of mandatory arbitration clauses in credit agreements. This is a very hot issue and I urge all of you who did not attend to buy the seminar materials from ICLE and read this very fine presentation. Yours truly spoke on levying of assets of a judgment debtor subject to a lien and "talking objections" by attorneys in discovery and in trial. I hope I did not put the remaining attendees asleep during my time. Finally, the day ended with a wonderful presentation by Milton D. Jones on the effect of bankruptcy on debt collection.

I have attended ICLE seminars for years and my personal participation notwithstanding, this was the finest collections seminar I have ever heard. Assuming ICLE has been able to keep up with the demand, you may order reprints from them at 1-800-422-0893. Ask for "Emerging Issues in Debt Collection" presented March 17, 2000.

If any of you Section members wish to make presentations at next year's seminar, drop me an e-mail at "jacksonlwr@aol.com and I will pass your name along to Jay Loeb. The best learning we get is from ourselves and I can assure you that preparing and presenting seminars is not only fun but an excellent way to build your practice■

Member News

Congratulations to Section member Gary Jackson who was named by Mayor Bill Campbell to be the next Associate Judge of the City of Atlanta (Traffic Court). The swearing-in ceremony has not yet been scheduled as of press time. Gary is in his 26th year of practicing law, concentrating in commercial collection and judgment collection. He is currently winding down his office and seeking attorneys and law firms to continue to serve his clients.

While Gary is in transition, Brett Berlin will take over the State Court Survey Project.

IMPORTANT NOTICE

Revised Article 9. If you would like to review a draft of the Revised Article 9 of the UCC which has been approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, and which has been presented to the Advisory Committee on Legislation of the State Bar of Georgia with a request for endorsement, call Beau Hays or Jan Rosser for a copy. As the Board of Governors will be reviewing the request in late October, your review and comment should be done ASAP.

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Beau Hays 770/934-8858