

Future Shock Automated Federal Docket Tracking

Many litigators think they must be served with papers before action is required. This is a dangerous attitude if you have a federal practice. In *Grun v. Pneumo Abex Corp*, 170 F.R.D. 441 (N.D. Ill. 1996) the court set a trial date, but neither party was served with notice of the date. The court then dismissed for lack of prosecution when both parties failed to appear. Adding insult to injury plaintiff's counsel was not served with the dismissal order. The court conceded that there may have been clerical errors, but refused to reopen the case. The court noted that the orders setting the trial date and dismissal were placed in the court's file and on the court's computer docket in a timely manner. The judge ruled this to be constructive knowledge and emphasized a lawyer's continuing duty to *sua sponte* track the status of a case.

Dismissals and default judgments are not the only bad things that can happen if you don't track federal court dockets. Missing docket dates may lead to jury trial waivers, loss of expert witnesses, class certification waivers, and unwanted binding settlement agreements. Conversely, tracking court dockets can do a number of good things for your practice in addition to avoiding malpractice. A good tracking system can provide new activity on current firm cases, new cases involving clients and potential clients, and specific information by individual, subject matter, or practice area. For example, by searching the court docket system you can look for similar cases or motions to yours by subject matter, judge and lawyer. From there you can find winning or losing motions or briefs, learn the judge's track record on your issue, and how your opponent may have argued similar issues in the past.

Obviously only a large firm can afford to do all this - right? Wrong! Current automated court docket technology makes all this possible for any size practice. Like it or not, legal research and the lawyer's standard of care are being revolutionized by automated information management systems. If anything, this revolution has come late to the court docketing system, but it's here now for the federal courts. Can the state courts be far behind?

Source: David I. Bookspan, "Watching the docket can be software's job"; The National Law Journal. 3/22/99, B9. Mr. Bookspan's company developed CaseStream, software for federal court civil docket information (david@marketspan.com).

Consumer Report Malpractice

The Law

Obtaining consumer reports in violation of the federal Fair Credit Reporting Act (15 U.S.C. §§ 1681 *et seq.*) continues to blossom as a new malpractice risk for lawyers. The FCRA carries both criminal penalties and civil damages. Damages include actual damages sustained by the consumer, punitive damages, and costs and reasonable attorney's fees for the successful plaintiff. The law has a two year statute of limitations.

Like the Fair Debt Collection Practices Act, the statutory scheme for the FCRA is demanding in application. It requires a thorough understanding of terminology, persons protected, and permitted uses of consumer reports. The FCRA is designed to assure that consumer reporting agencies act with fairness, impartiality, and consideration for consumer privacy. It fosters responsible dissemination of accurate and relevant information on a confidential basis by limiting access to reports to those with a legitimate need to know.

The Problem For Lawyers

Lawyers have tripped over the FCRA in these situations:

- Obtaining a credit report in a divorce proceeding (*Berman v. Parco*, 986 F. Supp. 195, S.D.N.Y. 1997).
- Obtaining a credit report to determine the collectibility of a judgment (*Bakker v. McKinnon*, 152 F.3rd 1007, 8th Cir. 1998).
- Obtaining a credit report to impeach the plaintiff at deposition (*Duncan v. Handmaker*, 149 F.3rd 424, 6th Cir. 1998).
- Obtaining credit information for a divorced wife's use in child visitation litigation (*Bils v. Nixon, Hargrave, Devans & Doyle*, 880 P.2d 743, App. 1994).

A recent development is the potential application of the FCRA to sexual harassment investigations. An April 5, 1999 Federal Trade Commission advisory letter, Sexual Harassment Investigations and The Fair Credit Reporting Act..., provided that under certain circumstances outside organizations who investigate harassment claims for an employer become a consumer reporting agency under the FCRA. This result triggers several requirements designed to assure fairness to the employee. Lawyers often perform these investigations for employers and must be sensitive to any FCRA implications. For a detailed discussion of this development see *Employers, Lawyers Who Investigate Harassment Liable Under Credit Act?*, Lawyers Weekly USA, 99 LWUSA 481, 5/31/99.

Risk Managing The Hazard

Before seeking a credit report in your practice for any purpose some of the details you need to know about the FCRA are:

- What is a consumer reporting agency? Under what circumstances could a law firm become a consumer reporting agency?
- What is a consumer report? Does the statutory definition cover only credit information (credit worthiness, standing, capacity) or may it go into other matters such as character and reputation? What is an investigative consumer report? Is an oral report covered by the FCRA?

- For what purposes may a consumer credit agency prepare and disseminate a consumer report? Does the FCRA apply if a consumer report is used for a purpose other than those prescribed in the law?
- For what purposes may a consumer report be obtained? What is a legitimate business need?

Although not a case involving lawyers, one of the best cases for learning about the FCRA is *Yang v. Government Employees Insurance Co. (GEICO)*, 146 F.3d 1320 (11th Cir. 1998). In *Yang* a GEICO claims adjuster was suspicious of the claimant's car accident claim. To evaluate the claim an Inquiry Activity Report (IAR) was obtained from Equifax Credit Information Services, Inc. The Yangs sued claiming this was an FCRA violation. The Court agreed. It found that IAR's were covered consumer reports regardless of their ultimate use for a purpose not contemplated by the FCRA - in this case to evaluate an insurance claim. In *Yang* the Court covers many of the questions posed in this article.

Read the statute, *Yang*, and the other cases cited in this article before you request your next consumer report.