President’s Podium

Dear Members,

2016 was a banner year for our FBA Chapter!

We hosted the FBA National Convention here in Cleveland in September. The Convention started with a very well attended State of the Court Luncheon held at the historic Silver Grill where Judge Oliver was our keynote speaker. The Judge honored retiring Magistrates Kenneth McHargh, Greg White and Nancy Vecchiarelli. Chief Judge Russ Kendig also brought us up to date as to happenings in the Bankruptcy Court. Thanks to the many firms and Chapter members who sponsored the event and made it possible.

In a nod to the Convention and our incoming National President, the Sixth Circuit Court of Appeals held oral arguments at the District Courthouse the same day as our Luncheon. It was quite a day for our Chapter and the Cleveland legal community.

The Convention was very well attended by FBA members and District Court Judges from across the country. The weather was absolutely perfect for the socials Thursday night on the Flat’s east bank and Friday at the Rock & Roll Hall of Fame.

On Saturday evening Magistrate Judge Newman was sworn in as the new President for the National FBA. Additionally, our own board member, Kip Bollin, was sworn in as National President-Elect. Also, many thanks to Kip, Board Member Phil Calabrese and members of their Convention Planning Committee for the phenomenal job they did in putting the Convention together.

The Chapter is going to implement two new programs in conjunction with the National FBA. The first is the SOLACE program. SOLACE is an acronym for Support of Lawyers/Legal Personnel—All Concern Encouraged. The purpose of the SOLACE program is to allow the legal community to reach out in meaningful and compassionate ways to judges, lawyers, court personnel, paralegals, legal secretaries, and their families who experience deaths or other catastrophic illnesses, sickness, or injury. SOLACE is essentially an online bulletin board that is monitored nationally by liaisons. They monitor requests for assistance and pass those requests on to their Chapter members. They also do submit requests for assistance which are then passed along through the network. Our SOLACE liaison to the National FBA SOLACE program is Rob Chudakoff, a new Chapter board member.

The other program the Chapter will sponsor is a Civics Program. The Civics Program’s focus is to facilitate meetings between high school and middle school students and federal judges. The purpose of the Civics Program is to have a judge teach these students how our Constitution and Courts function. Our Chapter liaison for the Civics Program to the National FBA is Ellen Toth, a former Chapter President.

The Chapter will continue to provide our members top notch CLE’s, Brown Bag luncheons with Judges (and others), and social events that will entertain you.

In closing, I’d like to thank Tim Collins for all the help and encouragement he gave me as outgoing Chapter President. I look forward to serving the Chapter during my tenure.

Regards,

Tony Vegh
President
Federal Bar Association
Northern District of Ohio Chapter
Federal Bar Association taps Cleveland attorney Kip Bollin as president-elect

September 08, 2016 UPDATED 9/9/2016

Crains’s Cleveland Business By JEREMY NOBILE

Kip Bollin, a partner at Thompson Hine LLP, has been elected president-elect of the Federal Bar Association for the 2016-2017 term.

Bollin will be sworn in during the bar association’s annual meeting and convention in Cleveland next week. As president-elect, Bollin will become president of the organization, the second largest group of its kind with some 18,000 members, for the next term commencing in 2017.

“I’m deeply honored to take on this important responsibility,” Bollin said in a news release. “The Federal Bar Association plays a vital role in our justice system. I look forward to working with attorneys and federal judges from across the country to develop strong professional bonds, and to solidify relationships between the bench and bar.”

Bollin has been a member of the federal bar association since 2003. He’s held several leadership positions since then, including, most recently, treasurer of the bar association itself in addition to serving as president of the Northern District of Ohio Chapter.

“We are proud of Kip’s many accomplishments, both for the firm’s clients and the legal community at large,” said Thompson Hine managing partner Deborah Read in a news release. “We are honored that one of our partners has been chosen by his peers for this important position, and know that Kip will exceed the expectations for the role.”

Bollin, a litigation partner who focuses on the defense of product liability and business claims, holds a variety of other professional and civic roles.

He is a member of the Northern District of Ohio Advisory Group, a court-appointed panel charged with providing information on matters of interest to the court and serves as co-chair of the Civil Rules Committee. Bolin has served as the Advocacy Committee chair for six years for The Free Medical Clinic of Greater Cleveland and on its board of directors for the past eight years. He also has been a member of the Free Clinic Associate Board and previously served as its president.

Matthew T. Fitzsimmons, a partner at Nicola, Gudbranson & Cooper, has been elected to the Board of Trustees of MidTown Cleveland, Inc. MidTown Cleveland, Inc. is a 501(c)(3) entity that serves a two-square mile area between downtown Cleveland and University Circle. It is supported by area businesses and individuals. In conjunction with various elected officials, MidTown Cleveland, Inc. has significant input into various development projects within its service area.

***Sanford Watson, a partner at Tucker Ellis LLP is the newly elected Vice Chair of the Board of Professional Conduct for the State of Ohio. He is a member of the board as well.

***Tim Collins, Collins & Scanlon LLP is President – Elect of the Cleveland-Marshall Law Alumni Association, to take the 1 year office as President in June 2017.
Q&A: Kip Bollin, Cleveland partner at Thompson Hine LLP and Federal Bar Association treasurer

September 11, 2016 UPDATED 9/12/2016

Crain’s Cleveland Business By JEREMY NOBILE

With a downtown renaissance underway, a recent Republican National Convention that went off smoothly and a long-awaited national sports championship notched in our belts, Cleveland has spent much of 2016 basking in the limelight.

That momentum continues this week as the Federal Bar Association (FBA) comes to town for its annual meeting, in its first trip here in 16 years. The meeting will take place over four days, Wednesday, Sept. 14, through Saturday, Sept. 17, at The Westin Cleveland Downtown.

If you’re not an attorney or judge, you may not even know this is happening. However, much like the RNC was an opportunity to show off Cleveland on a national stage regardless of politics, the bar association event is a chance for the legal community to do just the same for scores of visiting judges and attorneys, many of whom have never been to the city before.

Crain’s spoke with host committee organizer Kip Bollin, a Cleveland partner at Thompson Hine LLP and current bar association treasurer who will be named the organization’s president-elect this week, about the event and why it’s so meaningful to the Cleveland legal sector.

Much like planning for the RNC, I imagine getting Cleveland to host the Federal Bar Association must’ve been quite an undertaking in its own right.

We had our first planning meeting in January 2015. But the (Northern District of Ohio Chapter) actually applied to host this convention four-and-a-half years ago. This is before the RNC had even really thought of coming to Cleveland. We’re honored they followed our lead and came to Cleveland.

So what’s the purpose of the FBA event? What usually happens during these meetings?

The purpose is three-fold. One is to provide opportunities for national members to network. Second is to provide some quality legal education opportunities for attendees. Third is the running of the organization. We’ll have a national council meeting, vote on governance matters and determine the direction of the organization of the coming year.

That all sounds rather routine. But in reality, this is practically the same as bringing the equivalent of your own RNC to the city, isn’t it?

That’s exactly right. We are looking forward to an opportunity to show off Cleveland both as a city and a legal market. It’s a great town with great sophisticated businesses and legal practices.

When we were reaching out to land this convention, it was very much our goal to reintroduce the hundreds of folks attending from across the country to Cleveland. Many haven’t been here in decades, or never been here at all and have no clear perception of what the town is like these days. We have so much going on and we’re really excited to show it all off to our national colleagues.

It does seem Cleveland has been slow to shake off some negative stigmas, at least in the minds of some outsiders.

When I talk to folks from out of town about the city, it’s so common for them to respond to me and say, “Wow, I really like Cleveland,” as if that would be news to me. It’s because of an outdated perception. People think back to events from the 1960s — there’s always the burning river. My canned response to them these days is that happened before I was born, so I can’t tell you about that. But everything is coming together right now. There’s a great belief in ourselves. I want people to go back where they came from and talk about what a great town Cleveland really is.

What do you have planned for fun? What are some places in town you’ll be showing off?

We’ve got a lot of events planned, starting with a welcome reception on Wednesday in the fantastic lobby at Calfee (Halter & Griswold LLP). For Thursday, we’ve rented out the Alley Cat in the East Bank of the Flats so we can show off the view of the river in the renovated Flats. Friday night, there’s going to be a big party that we’re throwing for everybody at the Rock and Roll Hall of Fame. We’ll also have a local band of attorneys, The No Name Band, who will get to play at the Rock Hall.

If someone is reading this who isn’t signed up and wants to go, is it too late?

The online sign-ups are over. But you can still sign up by walking up or contacting the FBA directly by phone or by email. You can check out an online itinerary at www.fedbar.org/FBACon16.

Well I can tell you’re excited and maybe a little anxious to get things kicked off.

I’m just so glad for the opportunity that the FBA has provided to me and the opportunity to give back to the FBA by hosting a great meeting in one of America’s great cities.
CWRU Student Representatives on Chapter Board

Jonathan L. Entin
CWRU Faculty Representative

Case Western Reserve University School of Law has two energetic student representatives on the chapter board. James Walsh and Lidia Mowad are native Ohioans who attended Ohio Wesleyan University at different times before entering law school a year apart. They have recruited many new student FBA members this year.

James is a 3L who is a contributing editor of the law review. He will publish two pieces in this year’s volume, a Note on taxing pyramid schemes and a Comment analyzing the Supreme Court’s recent insider-trading decision in *Salman v. United States*. The North Olmsted native received his B.A. in political science and philosophy with a minor in history in 2010. He later received an M.A. in English literature from Cleveland State University, where he also was a graduate assistant, grader, and tutor.

James externed for Magistrate Judge Kenneth S. McHargh after his first year and was a summer associate at Benesch, Friedlander, Coplan & Aronoff after his second year. He will join Benesch as an associate after he graduates this spring.

Lidia is a 2L who also is a member of the law review. A native of Poland, Ohio, she entered Ohio Wesleyan the year after James graduated. She received her B.A. in music and international relations. While studying in Ireland during a semester abroad, Lidia played the oboe in the Cork Symphony Orchestra. She continues her involvement with music as the oboist in a woodwind quintet called *Stage CWRU* (pronounced “crew”), which performs regularly in the Cleveland area.

Last summer, after her first year in law school, she externed for Judge Benita Y. Pearson in Youngstown, just a few miles from her home town. Lidia is writing her law review Note on performance rights for musicians and artists under intellectual property law. She will spend the summer at an entertainment law firm in Beverly Hills.
Cleveland Hosts the 2016 FBA National Convention
By James W. Satola

The City of Cleveland hosted the 2016 FBA Annual Meeting & Convention, which took place at the Westin Downtown Cleveland from Wednesday, September 14, through Saturday, September 17. The event was co-sponsored by the FBA Northern District of Ohio Chapter (lead by Chapter Planning Committee chairs Kip Bollin and Phil Calabrese) and the FBA Dayton Chapter (lead by incoming FBA National President Michael Newman and Glen McMurry). The Annual Meeting also marked the inauguration of incoming FBA National President United States Magistrate Judge Michael J. Newman, a member of the FBA Dayton Chapter, where he served as Chapter President from 2013 to 2014 (he is also a Past Chapter President of the Cincinnati-Northern Kentucky Chapter, serving from 2004 to 2005).

The Annual Meeting revived a tradition that had not been instituted since Cleveland last hosted the FBA Annual Meeting in 2000 – Wednesday events and a pre-Convention reception. The Convention week began with the FBA Northern District of Ohio Chapter’s annual State of the Court Luncheon, featuring presentations by Chief District Judge Solomon Oliver, Jr., of the U.S. District Court for the Northern District of Ohio, and incoming Chief Bankruptcy Judge Russell Kendig of the U.S. Bankruptcy Court for the Northern District of Ohio. The luncheon, attended by over 400 guests, also included presentations and acknowledgments of thanks to the three recently-retired U.S. Magistrate Judges from the Northern District of Ohio, Nancy Vecchiarelli, Kenneth McHargh, and Gregory White.

The State of the Court Luncheon was followed by a Special Argument Session of the U.S. Court of Appeals for the Sixth Circuit, held in the Ceremonial Courtroom of the Carl B. Stokes U.S. Courthouse and presided over by an “All-Ohio” panel comprised of Circuit Judges Alice Batchelder (from Medina), Karen Nelson Moore (from Cleveland), and Deborah Cook (from Akron). The argument session was preceded by a brief swearing-in ceremony for attorneys being admitted to practice before the Sixth Circuit.

Wednesday’s events concluded with an evening reception held in the atrium of the Calfee Building, hosted by the Northern District of Ohio Chapter and sponsored by law firm Calfee, Halter & Griswold LLP. The Calfee Building is the recently-restored (opened in 2011) 1916-built East Ohio Gas Building (and later home of television station WKYC).

The Annual Meeting formally opened on Thursday morning with a breakfast for younger lawyers, hosted by Sixth Circuit Judge (and former Chief Judge) Alice Batchelder, followed by opening welcome remarks by Cleveland Mayor Frank Jackson and FBA National President Mark Vincent (who is a longtime Assistant U.S. Attorney from Salt Lake City and a member of the FBA Utah Chapter). The day’s events continued with a full day of triple-tracked CLE presentations (another feature revived by the Northern District of Ohio Chapter from the 2000 Convention) and the FBA Younger Lawyers Division Awards Luncheon with guest speaker Paul Grewal, Facebook Vice President and Deputy General Counsel for Worldwide Litigation and former U.S. Magistrate Judge from the Northern District of California, in San Jose. To cap off the eventful day, the Northern District of Ohio Chapter rented out the full Alley Cat Oyster Bar restaurant and upstairs deck for an evening reception, blessed with essentially perfect fall-evening warm weather. The reception’s bar was generously sponsored by the FBA National Litigation Section.

Friday’s convention activities continued with a morning of triple-track CLE presentations, numerous FBA Business Meetings, a plenary Legislative Update presentation by FBA National Government Relations Counsel Bruce Moyer, and the Foundation of the FBA Fellows Luncheon, sponsored by the FBA Labor and Employment Law Section, with guest speaker Ovie Carroll, Director of the Department of Justice Cybercrime Laboratory. In the afternoon, in honor of Constitution Day (September 17, which fell on a Saturday this year) and in tandem with similar events held throughout the country, the two host FBA Chapters and the U.S. District and Bankruptcy Courts held a Naturalization Ceremony for new United States citizens at the Federal Reserve Bank in its beautiful and inspiring lobby. The Federal Reserve Building, completed in 1923, is among the historic civic buildings completed as part of Daniel Burnam’s turn-of-the-20th Century (1903) overall “Group Mall Plan” – the other buildings being the Metzenbaum U.S. Courthouse (1910), Cuyahoga County Lakeside Courthouse (1912), Cleveland City Hall (1916), Public Auditorium (1922), Cleveland Public Library (1925), and the Cleveland Board of Education Building (1931).

On Friday night, the Northern District of Ohio Chapter hosted an offsite reception at the Rock and Roll Hall of Fame & Museum, with entertainment provided by the all-attorney “No Name Band” playing rock and roll classics. The reception was sponsored by law firm Thompson Hine LLP and the Past Presidents of the FBA Northern District of Ohio Chapter.

The final day of the Annual Meeting began with the FBA National Council Meeting, followed by the FBA Awards Luncheon (at which the Northern District of Ohio Chapter was presented with a “Chapter Excellence” Award as well as an award for being the top Chapter in achieving new membership as part of the “Countdown to Cleveland” national challenge). The luncheon was highlighted by a presentation by guest speaker U.S. Senator (Ohio) Sherrod Brown. The afternoon was completed by a number of FBA Business Meetings among the Circuit Vice Presidents, Sections & Divisions, and other FBA boards.
The 2016 FBA Annual Meeting and Convention closed with the evening Presidential Installation and Banquet activities, which included a reception and Presidential Installation Dinner, hosted by the FBA Dayton Chapter and sponsored by Dayton-based LexisNexis, at which incoming FBA National President Michael J. Newman was sworn in as this year’s FBA leader. The dinner included presentations of the FBA’s highest national awards, including the Northern District of Ohio Chapter’s Elaine R. “Boots” Fisher Award for public service, given this year to United States District Judge (and FBA-NDOC Board member) Dan Aaron Polster of the U.S. District Court for the Northern District of Ohio (Judge Newman, a Magistrate Judge on the U.S. District Court for the Southern District of Ohio in Dayton is also a past recipient of the award). The Boots Fisher Award was presented to Judge Polster by Lee Fisher, son of the award’s namesake and former FBA National President Stanley Fisher (Lee Fisher is also a former Attorney General of Ohio and the current Dean of Cleveland Marshall College of Law). The other awards given out were the Earl W. Kintner Award for outstanding FBA service, awarded to Judge Elizabeth A. Kovachevich of the U.S. District Court for the Middle District of Florida, and the Honorable Sarah T. Hughes Rights Award for promoting the advancement of civil rights, awarded to Judge Michael J. Davis of the U.S. District Court for the District of Minnesota. For those keeping score, no, these distinguished FBA awards are not always given to judges, it just worked out that way this year. Speakers at the Presidential Installation included Chief Circuit Judge R. Guy Cole of the U.S. Court of Appeals for the Sixth Circuit, Senior District Judge Walter J. Rice and District Judge Thomas M. Rose (both colleagues of Judge Newman in Dayton), Chief District Judge Edmund A. Sargus, Jr., of the United States District Court for the Southern District of Ohio, retired Magistrate Judge Jack Sherman, Jr., formerly of the U.S. District Court for the Southern District of Ohio (for whom Judge Newman began his legal career as a law clerk), U.S. Senator (Ohio) Robert Portman (who also swore in Judge Newman as FBA President), and outgoing FBA National President Mark K. Vincent.

The Presidential Installation Dinner concluded with remarks by new FBA National President Michael Newman, who outlined his hopes to make this year’s FBA term a year of civic engagement and education among all the Chapters throughout the country and announce of the nationwide launch of the FBA “SOLACE” program (Support of Lawyers/Legal Personnel – All Concern Encouraged), the community support project started in New Orleans over ten years ago by U.S. District Judge Jay Zainey.

Next year’s FBA Annual Meeting and Convention will be held in September 2017 in Atlanta, Georgia, hosted by the FBA Atlanta Chapter, at which FBA-NDOC Board Member and Past President Kip T. Bollin will be sworn in as the 2016-2017 FBA National President.

All photos of the 2016 National Convention courtesy of the National Federal Bar Association. Please visit their Face Book page for more photos at: https://www.facebook.com/pg/FederalBar/photos/?tab=album&album_id=1249528158411889
Military Personnel Protections Affecting Bankruptcy  
By: Dawn Kennedy - FBA NDOC Member

Members of our military who face financial hardship and consider filing for bankruptcy have statutory rights in addition to those available to all debtors under the Fair Debt Collections Practices Act (FDCPA) 12 CFR §1006 “Regulation Z” and the Federal Credit Reporting Act (FCRA), 12 CFR §1002. These statutory protections available to Servicemembers include the Military Lending Act (MLA) 10 USC §987, and the Servicemembers Civil Relief Act (SCRA) 50 USC §501 et seq. These specific Acts can affect Servicemembers filing for bankruptcy in several ways.

One way is to identify which debts are disputed, based on the total amount owed, because a creditor violated the Military Annual Percentage Rate (MAPR). Another is based on a creditor violation that completely voids the credit agreement from the inception of the debt, and provides the right for restitution to the debtor. Another example is where a default judgment for a debt is granted to a creditor in violation of SCRA protections, and the debtor maintains the right to reopen and defend the judgment. These military acts also have private rights of action for statutory damages, awards for fees and costs, and provisions for punitive damages.

The Military Lending Act, 10 USC §987

The Military Lending Act (MLA), 10 USC §987, was enacted in 2007 and put limitations on the terms and conditions placed, and the interest charged, in consumer contracts entered into by Active Duty Military Service Members and their dependents (Service Member’s spouse or child). In July 2015 Congress enacted changes to the MLA. Some of the changes were effective on 1 October 2015, and all new MLA provisions are fully implemented on 3 October 2016. The 2015 changes are not retroactive. The “extension of credit between October 1, 2007 and October 3, 2016 is subject to the definitions, conditions, and requirements effective on October 1, 2007.” 32 CFR §232.12.

The Military Lending Act, 10 USC § 987, is designed to identify and enforce a set of limitations on creditors extending “Consumer Credit” to Service Members. The statute and the regulations enforcing it are comprehensive and describe the maximum rate of interest that can be charged, the disclosures that must be given to the borrower, and the terms and conditions that, if imposed by the creditor, are unlawful and in violation of the MLA. Any credit agreement or promissory note that “fails to comply with 10 USC §987, and the regulations implementing it (32 CFR §232) is void from the inception of the contract.” 32 CFR §232.9 (c). The Act also awards actual damages, not less than $500 per violation, costs and fees, and punitive damages.

A Covered Service Member, for the purposes of the MLA, is any Active Duty Service Member in the Armed Forces and any Service-member on Active Guard or Reserve duty and their dependents. 10 USC §987 (1)(A)(B). The debt must be incurred while on Active Duty status to be covered by the Act. The provisions of the MLA do not extend to current Service Members where the consumer debt was incurred prior to Active Duty (and covered) status. The Department of Defense issued 32 CFR §232 is the body of regulation which implements the Military Lending Act. 32 CFR §232.1. The Act covers “Consumer Credit” extended to Servicemembers including payday loans and title loans. There are several exceptions to the definition of “consumer credit” under the MLA most notably the extension of credit for a mortgage or auto purchase loan.

I. APR Interest Cap, Military Annual Percentage Rate, and Required Creditor Disclosures

A creditor “shall not require,” a Servicemember or covered dependent to pay interest on consumer credit except 1. As agreed to in the terms of the credit agreement, 2. Authorized by applicable State or Federal Law and 3. Not specifically prohibited by this section. 10 USC §987(a). Subsection (b) caps the maximum Annual Percentage Rate which can be charged under the MLA as 36% APR. The creditor is obligated to calculate and provide a Military Annual Percentage Rate (MAPR) to the borrower, which is also a maximum rate of 36%. 32 CFR §232.4. The method of calculation, the types of covered loans and the description of allowable fees which can be charged by the lender are provided in 32 CFR §232.3. The creditor is required to provide a statement of the Military Annual Percentage Rate (MAPR) in the exact language and form required in 32 CFR §232.6. The disclosures must be made to the borrower both orally and in writing. These disclosures are “different from, and in addition to” the disclosures required under the Federal Truth in Lending Statement required by the Fair Credit Reporting Act. 32 CFR §232.6(C)(2).

1 http://media.ca11.uscourts.gov/opinions/unpub/files/201412977.pdf in an unpublished opinion from August 2015, the 11th Circuit found that there was a private right of action in the MLA.

Several terms which are common in consumer credit contracts are unlawful under the MLA, and may be found in loan agreements where creditors extend to both military and non-military borrowers. Many consumer contracts do not contain language removing the unlawful statutes or protecting the covered borrower from enforcement, so the creditor is in violation of the MLA. Some unlawful terms include: where the terms for any extension of consumer credit force a covered member to waive the right to seek legal recourse under State or Federal Law 10 USC §987(e)(2), submit to arbitration (e)(3), require an allotment from the Service Members pay and allowances as a condition to extend credit (e)(6), or prohibit prepayment of any loan or charge a fee for prepayment (e)(7). Additional terms and conditions which are unlawful under the Act can be found in subsection (e).

II. Remedies and Penalties

An action can be brought for a violation of the MLA by a covered Servicemember the earlier of: two (2) years after the date of discovery by the plaintiff, or five (5) years after the violation occurred. A civil action for remedies under the MLA may be brought in any district court, without regard to the amount in controversy, or any other court of competent jurisdiction. Where the lender violates the provisions of the MLA, there are criminal penalties (misdemeanor) for the lender and civil remedies available to the borrower. Beyond the civil remedies, however, any credit agreement or promissory note that “fails to comply with 10 USC §987, and the regulations implementing it (32 CFR §232) is void from the inception of the contract.” 32 CFR §232.9 (c). Any voided contracts may affect a bankruptcy application and remove an obligation which was to be included.

32 CFR §232.9 (e) imposes additional remedies for Servicemembers, but is limited to consumer credit extended on or after January 2, 2013. These remedies include: 1. Actual damages, not less than $500.00 per violation, 2. Appropriate punitive damages, 3. Appropriate equitable or declaratory relief, 4. Any other relief provided by law, 5. Costs in the action, 6. A finding of bad faith by the lender. The only defense available to a creditor is where the violation was unintentional and the creditor can prove the mistake by a preponderance of the evidence. No other affirmative defenses are available under the MLA. 10 USC §987 (5)(D). The summary of effective dates of MLA provisions is found in §232.12:

“(a) In general. This regulation shall take effect October 1, 2015, except that, other than as provided in this section and in §232.13 (b)(1), nothing in this part shall apply to consumer credit that is extended to a covered borrower and consummated before October 3, 2016.

(b) Prior extensions of consumer credit. Consumer credit that is extended to a covered borrower and consummated any time between October 1, 2007, and October 3, 2016, is subject to the definitions, conditions, and requirements of this part as were established by the Department and effective on October 1, 2007.

(c) New extensions of consumer credit. Except as provided in paragraphs (d) and (e) of this section with respect to extensions of consumer credit under paragraph (b) of this section (and except as permitted by §232.13(b)(1)), the requirements of this part that are effective as of October 1, 2015, shall apply only to a consumer credit transaction or account for consumer credit consummated or established on or after October 3, 2016.


(e) Civil liability remedies. The provisions set forth in §232.9(e) shall apply with respect to consumer credit extended on or after January 2, 2013.” 32 CFR §232.12

Consider the protections of the MLA whenever a Servicemember is in your office and incurred a consumer debt after October 1, 2007.

Servicemembers Civil Relief Act, 50 USC §501 et seq.

The Servicemember Civil Relief Act (SCRA), 50 USC §501 et seq., offers certain protections for Active Duty military members in certain civil actions including default judgments, unlawful detainers, and may stay or vacate the execution of a judgement, garnishment, or attachment of assets of the Servicemember. The Act applies to any civil proceeding in any jurisdiction while the defendant is on active duty §512 (b) (c). Under the SCRA, §521 applies to any civil action against a Service member who fails to appear at a hearing. Where any plaintiff seeks a default judgment, an affidavit attesting to the military status of any defendant must be submitted to the court under penalty of perjury §521 (B) (1) (a). The court may move forward with the default judgment against a defendant for non-appearance only where the defendants are not military members. If the affidavit indicates that a defendant is military, the SCRA safeguards are triggered.

The statute of limitations is tolled for any civil action during military service under the SCRA, subject to procedural rules permitting defendants to have reasonable notice of the suit and present a defense §§22, §524. This absolute tolling of the Statute of Limitations under the SCRA is discussed, In re Donald Brandt, 437 B.R. 294, Bankr. M.D. TN, 2010. The statute of limitations to reopen a default judgment requires that a motion to reopen must be filed within 60 days of the servicemember’s release from active duty. §521 (g) (2). To reopen the judgment, the court must find that the defendant’s military service materially affected the ability to appear and the defendant must also show that there is a colorable legal defense to the action. Where those elements are met, the servicemember may reopen a default judgment to present a defense to the judgment. §521(g)(1).
The Servicemember must: 1. Be on Active Duty or within a certain timeframe from discharge (based on the civil action), and 2. The Servicemember’s military service materially affects the Servicemember’s ability to appear at a hearing or comply with a judgment or garnishment. Where a default judgment is entered against a Service Member without the proper procedures outlined in the SCRA, the default judgment may be reopened to permit the Servicemember an opportunity to make a meritorious or legal defense, §521 (g) (2). Upon proper application, the courts must stay or vacate any judgment, order, attachment or garnishment, where military service materially affected the Service Member, §523.

If part of the bankruptcy application includes judgments and orders, attachment, or garnishments in violation of the SCRA, and the military service materially affected the Servicemember’s ability to attend a hearing or comply with a judgment, the SCRA protections may affect the bankruptcy proceedings of a Servicemember. The Servicemember will be permitted to reopen the case and present a defense to the civil judgment. This is a consideration where bankruptcy planning is ongoing, because the schedule of a hearing on a civil judgment will affect the intended time for filing the Bankruptcy petition. Additionally, where the Servicemember prevails in the reopened civil hearing, the outcome may be to dismiss debts and obligations, which may drastically change the liability for debts and could even change the need to file for bankruptcy at all.

Questions to Consider With a Military Bankruptcy Client

1. What dates did you serve on Active Duty, when did you separate, did you ever deploy?
2. Which debts did you incur before entering the service? Which were incurred after?
3. What consumer debt was incurred after 2007? (Covered under the MLA)
4. Was any consumer debt incurred after January 2, 2013? (Additional remedies available)
5. Do you have the terms and agreements for any consumer credit incurred after October 3, 2016? (2015 MLA governs)
6. Do you have any default judgments from creditors? Repossessions? Garnishments? (SCRA)

Answers to these questions may reveal opportunities to assist your client with bankruptcy planning, identify where your client may have disputed liabilities, and offer an avenue to advocate for your Servicemember client, where your fees and costs may be awarded.

Dawn Kennedy is an accredited Veterans Administration attorney and practices across the spectrum of Veterans law issues on behalf of Veterans and their families. Dawn is also a member of the ABA Military Pro Bono Project and has represented active duty Servicemembers in consumer law cases, leading to her interest in practicing bankruptcy, student loan law and consumer law as well. She can be reached at dawnkennedylaw@gmail.com.
WHY THE ETHICS SUIT AGAINST TRUMP IS UNLIKELY TO SUCCEED

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Citizens for Responsibility and Ethics in Washington, a nonpartisan watchdog group, recently filed a lawsuit claiming that President Trump’s continuing involvement with his business enterprises (CREW) violates the Foreign Emoluments Clause of the Constitution. That clause forbids federal officials from accepting “any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.” U.S. Const. art. I, § 9, cl. 8.

The lawsuit argues that the chief executive is profiting from foreign governments that do business with Trump properties in this country and overseas. CREW leaders Richard W. Painter and Norman L. Eisen, the chief ethics lawyers for Presidents George W. Bush and Barack Obama, suggest that President Trump could solve the constitutional problem by selling his interest in the Trump Organization or by putting his interest into a blind trust.

The constitutional argument might well be correct, but it is unlikely that the lawsuit will succeed. Two important jurisdictional hurdles could prevent a court from ruling on the merits of the case.

First, a plaintiff must have standing. This means a legally recognized injury that is personal to the plaintiff, not one shared by the general public. The abstract desire to have the president follow the Constitution won’t do. So CREW says it has had to “divert and expend its valuable resources” to oppose Trump’s violations of the Foreign Emoluments Clause.

This claim of injury is based on a unanimous 1982 Supreme Court ruling that a civil rights organization had standing to challenge violations of the Fair Housing Act. Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982). But the FHA grants the broadest possible standing so that perpetrators of discrimination can be held accountable. Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 109 (1979); Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205, 209 (1972). CREW cannot point to a similar statute applicable to its claim, so a court might dismiss the case for lack of standing.

Even if CREW does have standing, the case could present a political question. The precise meaning of this term is hazy, but the Supreme Court has defined a political question as one that the Constitution assigns to Congress or the executive branch rather than the judiciary.

To involve a political question means more than that a case has political significance. For instance, redistricting can lead to bare-knuckle politics, but courts regularly hear cases addressing the legality of congressional and legislative districts. And the Supreme Court has ruled that legislators must seat duly elected candidates who meet the minimum qualifications for office no matter how controversial those candidates might be.

But some cases do get dismissed as raising political questions. The most recent example involved a former federal judge, Walter L. Nixon of the Southern District of Mississippi, who claimed he had not gotten a proper impeachment trial before being removed from office. Nixon v. United States, 506 U.S. 224 (1993). The trial was held by a special Senate committee instead of by the full Senate, as the judge wanted (and as later happened with President Clinton).

The Supreme Court unanimously held that the case raised a political question and refused to address the merits of the judge’s claim. The Constitution gives the Senate “the sole Power to try all Impeachments.” U.S. Const. art. I, § 3, cl. 6. This provision, the justices concluded, means that courts have no role in assessing the procedures used in impeachment trials.

That ruling suggests CREW’s lawsuit against President Trump also might raise a political question. The Foreign Emoluments Clause bans federal officials from accepting goodies from other nations “without the Consent of the Congress.” This language might mean that it is for Congress, not the judiciary, to deal with emoluments issues. That is not the only possible interpretation, but Congress sometimes has allowed federal officials to accept gifts from other countries. A court therefore might say that the legislative branch should decide how to proceed and the judiciary should keep out.

Either way, courts might not tell us whether President Trump’s business dealings with foreign governments violate the Constitution. Those dealings (and some of his domestic business affairs) raise well-founded concerns. But if the courts don’t give a clear answer, the people must decide how much those concerns matter.

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<table>
<thead>
<tr>
<th>Years in Practice</th>
<th>Gender</th>
<th>Types of Practice</th>
</tr>
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<tbody>
<tr>
<td>0-2 years</td>
<td>68%</td>
<td>72% Public</td>
</tr>
<tr>
<td>3-5 years</td>
<td>32%</td>
<td>26% Federal</td>
</tr>
<tr>
<td>6+ years</td>
<td>12%</td>
<td>8% Student</td>
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<tr>
<td>Retired</td>
<td>9%</td>
<td>5% Judicial</td>
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<tr>
<td>Student</td>
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<td>4% Retired</td>
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Note: Chart only includes practicing attorney members of the Association.

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