PROPOSED RESOLUTION FROM THE
LOUISIANA STATE BAR ASSOCIATION HOUSE OF DELEGATES
TO THE HONORABLE JUSTICES OF THE LOUISIANA SUPREME COURT

The House of Delegates having held its Mid-Year Meeting on January 19, 2019, and the following Proposed Resolution has been brought by David A. Szwak, of Shreveport, Chairman of the Consumer Protection Section and a Member of the Committee on the Profession, and Vercell Fiffie, of Edgard, and the matter being brought before the House of Delegates for vote and approval:

BE IT RESOLVED THAT the House of Delegates for the Louisiana State Bar Association has considered and voted to approve the following recommended action to the Honorable Justices of the Louisiana Supreme Court for approval and further orders to issue according and as necessary: That the use of consumer credit reports and credit scores as part of the character and fitness process be terminated. Further, that the use of consumer credit reports and credit scores by the Office of Disciplinary Counsel be terminated. For reasons outlined by the proponents of this Resolution, there are a number of substantial problems which make the use of those reports and scores problematic and lacking as a reliable measure for character, fitness and as an investigative device for discipline.

The House of Delegates having approved this Proposed Resolution, the Resolution should be issued to the Honorable Justices of the Louisiana Supreme Court for approval and further orders to issue according and as necessary.

Movers:

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MEMO IN SUPPORT OF PROPOSED RESOLUTION FROM THE LOUISIANA STATE BAR ASSOCIATION HOUSE OF DELEGATES TO THE HONORABLE JUSTICES OF THE LOUISIANA SUPREME COURT

For many of you who have practiced law for decades, it may come as a surprise to you to learn that the Bar began the practice of using consumer [credit] reports as part of character and fitness investigations of applicants. Further, the ODC uses consumer [credit] reports for investigating and prosecuting ODC charges. While the federal Fair Credit Reporting Act may allow same under 15 U.S.C. 1681b, the actual practice is problematic.

[1] Error Rates of 50% to 90% of all Reports

Consider the error rates for consumer credit reports. Published testimony of industry personnel and studies by non-consumer reporting agencies showed that the error rate is 50%-90% across the board for all reports published by all three national consumer reporting agencies, Experian, Equifax and Trans Union.[1] Despite decades of litigation, monumental damages and punitive damages awards, mainly in the federal court system due to removal and preemption, those agencies have failed to make necessary improvements and corrections. Testimony proved that roughly half of the error rate [25%-45% of all reports] consisted of errors that were so serious that the error[s] would have resulted in the denial of credit, denial of employment, denial of a license, denial of a mortgage, denial of a security clearance, etc. Hence, this is not a mere incorrect address or a contested "typographical error" but includes the kinds of errors discussed below.

So, why are these reports treated as "reliable" when they are anything but reliable? The reports are treated with a presumption of accuracy because it is in a written report. I should not have to remind you all of the countless, daily reports of the nightmares encountered by consumers seeking correction of errors. Some of these processes never resolve. After all, disputes, dispute reinvestigations, dispute corrections, and the like are not profit-centers for the consumer [credit] reporting agencies or their symbiotic partners, the information furnishers, resellers, public record vendors, etc. These error resolution processes are cost-centers. Most of

[1] See "Credit Reports Are Full of Errors: FTC," American Banker, https://www.americanbanker.com/news/credit-reports-are-full-of-errors-ftc [Feb. 11, 2013]; In a deposition taken in February, 1996, in *Sheridan v. Equifax, et al*, cause no. 95-274-CIV-ORL-22, United States District Court, Middle District of Florida, Judith Chipley, a major Florida-based Mortgage Reporting Company's Credit Investigation Supervisor, testified that in her experience of reviewing credit bureau reports from the three major credit bureaus, TRW, Trans Union and Equifax, she found an error/inaccuracy rate of 50%-90%. In essence, over half of all reports contained errors. Many of the error-ridden reports contained substantial and significant errors. Her job was to reinvestigate the credit reports and compile a thorough, complete mortgage report on the applicants, through use of the data in the three major bureaus' reports on the applicants. Mortgage reports, since it is a protracted, large dollar transaction, are more carefully prepared through reinvestigating the error-ridden reports of the three major bureaus then compiling accurate data for use by the lender. Chipley's statement that more than half of all the reports she reviewed were error-ridden is astounding. Chipley testified that father-son, junior-senior, generational difference and common named persons, suffered at least a 90% error rate virtually insuring their reports are inaccurate. Chipley's testimony was summarized and highlighted in: R. Smith, "*A Look Inside a Credit Bureau's Operation*," Privacy Journal, Vol.22, No.6, p.5 [April 1996]. Oddly, Chipley's laughter was noted on the deposition record as she described the bizarre error rates and problems suffered by consumers. Also, see https://ivebeenmugged.typepad.com/my_weblog/2013/02/ftc-credit-report-errors.html

these entities transferred and outsourced these processes to India, South America, the Carribean and other third world locations. Have any of you tried obtaining corrections by contacting an outsourced call and automated dispute resolution center? It is a horrific and never-ending process.

[2] In re Mark Carter, ODC Matter, Louisiana State Bar Association

Consider the application of Mr. Carter to become a Louisiana Bar member on transfer from another state where he was a licensed bar member. He was fully qualified however his credit report contained some negative trade line information or at least ODC felt it did. Carter's application was held up, as ODC was convinced Carter lied about his credit usage, and he could not become a Louisiana Bar member and licensed Attorney due to ODC's interpretation of his credit report. A trial was eventually held after inordinate delays and Honorable Andy Gallagher presided. It was proven that Carter's credit report was not being interpreted correctly by ODC. Carter had to pay an attorney, an expert and endure litigation through trial to clear his good name; all due to misinterpretation of his credit report. He has been a successful attorney and contributor to our Bar since.

[3] Identity Theft

Identity theft is "application fraud." It is where a defrauder uses the victim's name or other unique identifier, like social security number, to apply for any form of benefit in the identity of the victim. The defrauder actually assumes the victim's identity. An address accessible by the defrauder is used as the "mail drop." Benefits are directed, via the application to the mail drop. The victim's name [or a permutation or likeness] and the victim's social security number [or a permutation within at least seven of nine digits of the victim's identifier to cause a "hit" on the victim's file] or other unique identifiers are listed on the application. Use of the victim's name and identifier causes the victim's credit file, for example, to be used during issuance of the benefit [for example, victim's credit score used in issuance process] and subsequent reporting of the unpaid fraud charges by the duped creditor attach to the victim's credit file.

Identity theft continues to grow each year.[2] Financial frauds surge in natural disaster areas. Identity theft wreaks havoc on already error-laden consumer reporting databases.

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[2] "To be sure, identity theft remains a huge threat that costs businesses $50 billion a year and plunges victims into a draining, time-consuming battle to eradicate fraudulent activity. The FTC will release a survey this spring, but its most recent figures show that 10 million people, or roughly 4.6% of the adult population, are affected by identity theft each year, and that victims spend an average of $500 and 30 hours to clear their records. *** Such [data] breaches have led to an outcry from consumer advocates, and lawmakers across the country moved to enact stiffer penalties and stronger protections. Legislation in Congress has stalled, but many states have enacted laws that force companies to disclose breaches or allow consumers to shield their credit reports from unauthorized access. *** The FTC's complaint data showed that identity theft accounted for 37% of total fraud complaints. For the fourth year in a row, Washington, D.C., was the leader in total per-capita fraud complaints, and several Western cities led in the category of identity-theft complaints, including Phoenix, Las Vegas and Los Angeles. *Meanwhile, identity-theft complaints surged in hurricane-ravaged Louisiana, rising 26% last year*, while Mississippi saw an 8% increase. Complaints related to "government documents or benefits" in Louisiana more than doubled, however, to 551 from 247, possibly an indicator of post-Katrina fraud." "ID Theft Complaints Still Rising, but Rate of Increase Slows," The Wall Street Journal [Jan. 29, 2006].

Unraveling fraud accounts from non-fraud accounts takes vigilance. The agencies view the consumers-victims as an expense caused by the agencies' symbiotic partners, the creditors, whose furnishing of credit reports on the fraud accounts ends up posting into the victims' files. The agencies cannot charge the consumers to clean up the mess and the agencies would not dare ask their partners to pay thus the agencies muddle along and hope the consumers-victims simply go away or, worse yet, pay the fraud charges to the duped creditors.

[4] Mixed Credit Files

Mixed files result from deficiencies in the consumer reporting agencies' match algorithms.[3] First, inadequate inquiry data fields are required to be completed. Then the inquiry data is used in a matching algorithm where an inadequate number of required points of correspondence between the inquiry data is compared to identification data connected to the data in the database. What results is "over-information" a known problem when matching algorithms are loosened up to allow more hits than proper. It results in extraneous information listing as a match for inclusion in the report generated. As examples, father-son/senior-junior-III, partial first name consideration, ignoring last names, common names, 7 of 9 match on social security numbers, etc. There are many forms of mixed files however the common thread is that there is some minimal match process used resulting in over-information in the resultant report. The agencies frequently blame the consumer by claiming inconsistent use of identifiers on credit applications and other writings. The agencies often cover up mixed file issues by claiming identity theft when it really is not.

[5] Student Loans, Gym Club Memberships, Parking Tickets and Other Such Reportings

Student loan debt in America was $1.3 Trillion dollars at the end of 2015 and had surpassed credit card debts owed by Americans. Student loan debt is now second only to housing debts owed by Americans. Many law students are burdened with excessive student loans. Student loan credit reporting is mandated by the Higher Education Act. The loans have a negative impact on the face of the credit reports as well as economic ratios and credit scores. Making matters worse, in a race to the bottom, agencies seek out new sources of negative information such as gym club membership account data, parking ticket data, tenant data, and

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[3] "On December 11, 2002, Comeaux filed this lawsuit under Sections 1681e[b] and 1681i[a] of the Fair Credit Reporting Act ["FCRA"], claiming that a mixed credit file has caused her to be denied credit with various lenders. More specifically, Comeaux claims that Experian combined her credit file with the credit file of another consumer, Mrs. Cindy Carr, thereby causing adverse credit that belonged to Mrs. Carr to be placed in Comeaux's credit file. Some of the inaccurate and derogatory information in Comeaux's credit file included: misspellings of Comeaux's name; that she had filed Chapter 7 bankruptcy; a listing of at least 70 trade lines and collection accounts; that she was married to another woman, Bridget, who is Mrs. Carr's teenage daughter; a listing of Mrs. Carr's home mortgage; that she had joint accounts with Louis Carr, Mrs. Carr's ex-husband; that she worked and lived in New Orleans; a listing of false telephone numbers, employer data; and finally, five different social security numbers, with only one being Comeaux's." *Comeaux v. Experian Information Solutions*, 2004 WestLaw 1354412 [U.S.D.C. E.D. Tex. June 8, 2004]. Also see, as examples: *Taylor v. Tenant Tracker, Inc.*, 710 F.3d 824, 2013 WL 1235314, [8th Cir. [Ark.], March 28, 2013] [Catherine Taylor, a CPA, and her husband applied for federal housing assistance. During a required background check, Tenant Tracker produced a public records report which showed two criminal records for a "Chantel Taylor," [and other "Taylors"] who were born on the same day as the plaintiff. The report did not explain that the other criminal records [including convictions for sex crimes and multiple financial frauds] related to someone other than plaintiff.]; *Jensen v. Experian Info. Solutions, Inc.*, 2001 U.S.Dist.Lexis 15134, 2001 WestLaw 1045510 [U.S.D.C. E.D. Tex. 2001].

every other type imaginable. Any form of negative information is used to tweak the consumer and assess higher interest rates and charges.

Credit reporting and particularly debt collection credit reporting serves no function but to damage the consumer who is the subject of the reportings. Credit reporting is an act of debt collection by debt collection agencies.[4] Credit reporting is a cheap and effective means of damaging the subject consumer which is the intended result sought by the defendants, as furnishers.[5]

Concluding Remarks

Credit reports fall short of a reliable tool to examine character and fitness of a candidate for the Bar. The inaccuracy rates are astounding. If any manufacturer performed with such rates, they would be run out of business. Sadly, because the reports are in writing, the reports are given an unusual presumption of accuracy when it should be the opposite. It falls on the consumer to protest and endure undue punishment and expense to seek corrections. We should recommend putting to an end the use of the reports in our processes.

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[4] *James v. MRC Receivables Corp., et al*, 2018 WL 3213147 [U.S.D.C. W.D. La. June 29, 2018] [No. 5:16cv00448] [Hicks, J.].

[5] *Rivera v. Bank One*, 145 F.R.D. 614, 623 [D.P.R.1993] [The court held that a creditor's "ability to report on the credit habits of its customers is a powerful tool designed, in part, to wrench compliance with payment terms from its cardholder. [The creditor's] alleged refusal to correct mistaken information can only be seen as an attempt to tighten the screws on a non-paying customer."]; *Bartels v. Retail Credit Co.*, 175 N.W.2d 292 [Neb. 1970] [An erroneous or careless report serves no purpose but to substantially damage the target of the report, who after publication can do little to correct the damage caused by the report.].