1.5 General Preparation for UDAP Clients

There are a number of steps attorneys can take, before the client appears, to prepare themselves to press UDAP claims successfully. To stay abreast of the law, in addition to referring to this treatise, the attorney should keep a file of the most current version of the state’s UDAP statute(s) and all previous versions, indicating when they were superseded. California, Delaware, Georgia, Hawaii, Illinois, Maine, Minnesota, Nebraska, Ohio, Oklahoma, and Utah have two UDAP statutes, so both should be consulted. The attorney should collect relevant legislative history and keep current on legislative developments.

Many state attorney general offices compile and publish case summaries, attorney general opinions, regulations, and enforcement proceedings. It is helpful to keep a file of these materials and new reported and unreported UDAP decisions. Remember that UDAP decisions may appear in West’s Bankruptcy Reporter and other federal reporters, as well as a state’s own reporter system. Many are found only in the LEXIS or Westlaw databases or other online sources.

As with other forms of legal research, the internet is an increasingly important resource for UDAP precedent. For example, the FTC has its own website at www.ftc.gov. NCLC’s website is found at www.nclc.org. These are only a sampling of the many relevant sites that are continually being developed relating to UDAP and other consumer law.

Manuels or texts on a particular state’s consumer protection laws have also been published in several states. These include:

- A California law firm’s annual overview of decisions under California’s two UDAP statutes.
- Minnesota: Prentiss Cox (ed.), Consumer Fraud and Deceptive Trade Practice Regulation in Minnesota (May 2009).
- New Mexico: Rob Treinen, The Unfair Practices Act: A Tool for Broad and Robust Justice (Fall 2015).

Several state attorney general offices or consumer protection departments have also prepared handbooks that may be available to practitioners, or may post helpful materials on a website.

Research materials that are helpful for keeping track of FTC developments include:

- Title 16 of the Code of Federal Regulations (C.F.R.) for existing FTC rules and guides.
- The Federal Register for new rules, guides, enforcement statements, consent orders, and other actions.
- Commerce Clearing House, CCH Trade Regulation Reporter for both recent developments, particularly FTC cases, and older precedent; and
- Commerce Clearing House, CCH State Unfair Practices Law for the full text of state UDAP statutes and selected decisions under them.

The text of the FTC rules most frequently applicable to UDAP cases are found in the appendices to NCLC’s Federal...
Deception Law [3]. The online version of that treatise also includes selected administrative history documents and FTC interpretative letters for these rules.

Legal Services programs often offer consumer law training sessions on a state, regional or national basis that include presentations on UDAP issues. State bar associations or the state attorney general’s office may offer similar programs. The National Consumer Law Center offers an annual Consumer Rights Conference that includes sessions on a wide range of consumer law topics. Joining the National Association of Consumer Advocates (NACA) is an excellent way to make contacts with other consumer advocates, both locally and nationally.

Another way to expand the knowledge and use of UDAP statutes is to participate in educational programs to inform the bar and judges as to the expansive use and legislative intent behind the state’s UDAP statute. Attorneys should also consider joining the consumer section of the state bar association and participating in any newsletter or other publications of that section.

Another idea is to write or encourage others to write a consumer law manual or law review articles that interpret the state UDAP statute and that can be cited in later cases. It is helpful to develop a working relationship with the state attorney general’s consumer protection division, the local or state consumer protection agency, and the regional office of the Federal Trade Commission, thus keeping abreast of recent case decisions and consumer problems.

Expert witnesses are often critical to a UDAP case, but they may be difficult to find. It is helpful to locate expert witnesses in areas of common consumer abuse, such as automobile condition and home improvements, in advance of actual cases. The attorney can also gather other helpful factual material, such as standards for various consumer goods and services promulgated by governmental bodies and trade organizations.

Footnotes


24 [22] See § 3.4.2 [5], infra.

25 [23] See § 3.4.3.1 [6], infra.


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32 {30} Published by the Minnesota State Bar Association, and available from Minnesota Continuing Legal Education (CLE), 2550 University Avenue West, Suite 160-S, St. Paul MN 55114, www.minnclc.org [12], telephone (800) 759-8840, fax (651) 227-6262 or (651) 227-9292.

33 {31} Published by and available from the New Jersey Law Journal, P.O. Box 20081, 238 Mulberry Street, Newark, NJ 07101-6081, www.lawjournalpress.com/player/NJ [13], telephone (973) 642-0075, fax (973) 642-0920.

34 46 N.M. Trial Lawyer 97 (Fall 2015).


40 {37} Available from Imprimatur Press, 525 Woodview Tower, 1349 Empire Central Drive, Dallas, TX 75247, telephone (800) 811-6725 or (214) 366-1155, fax (214) 879-9939, http://imprimaturpress.com/ims/pdf/1-50.pdf [18].

41 {38} Published by Imprimatur Press, 525 Woodview Tower, 1349 Empire Central Drive, Dallas, TX 75247, telephone (800) 811-6725 or (214) 366-1155, fax (214) 879-9939 (out of print).


44 {41} Published by and available from the King County Bar Association, 1200 Fifth Avenue, Suite 700, Seattle, WA 98101, www.kcba.org/WLPM [20], telephone (206) 267-7100, fax (206) 267-7099.

45 {42} The Ohio Attorney General’s office provides one such website at http://www.ohioattorneygeneral.gov/Files/Publications-Files [21].

46 {43} These materials can also generally be found on the FTC’s website, www.ftc.gov [1].
1.5 General Preparation for UDAP Clients

47 [44] The Federal Register is available online at www.federalregister.gov [22].


49 [46] Its website is www.naca.net [24].

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