



Federal Bar Association

Northern District of Ohio Chapter

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Fall 2023

Fall 2023

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President's Podium—Brian Ramm

Hello and Welcome to the Fall FBA Northern District of Ohio Newsletter! I am both honored and humbled to be serving as your President this year, walking in the footsteps of those who came before me. I will try to live up to their lofty standards, and I want to give special thanks to our Immediate Past President the Honorable Amanda Knapp. Your guidance and counsel are priceless to me.



Here we are—football in full swing, Thanksgiving now in the rearview mirror and traveling light speed to winter. Before we move forward, let's look back upon some wonderful events we shared together:

August 11: The 2023 Federal Criminal Practice Seminar, planned by the Federal Public Defender's Office—as usual, a huge success.

August 29: Our Summer Social was at Cleveland's 78th Street Studios—a wonderful time had by one and all—great food, beverages, art and friends—how can you go wrong?

September 6-8: Sixth Circuit Judicial Conference in Cleveland—our Chapter was well represented.

September 22 & 29: The Trial Academy featuring "TROs and Injunctive Relief." The program was critically acclaimed and well received—the amount of time that our members put into this process is truly unbelievable, and the results speak for themselves.

October 2: The State of the Court luncheon, featuring the Chief Judges of the District and Bankruptcy courts, the installation of our FBA-NDOC board and officers. I believe we set an all-time attendance record this year, and our friends in the judiciary were touched by the unveiling of their portraits—more on this later.

So, there are still a number of items to look forward to before the end of the year:

Our final CLE for this year is coming up on December 15 at the Federal Courthouse. Our very own Professor Jonathan Entin will present on Reforms and Recent Developments in Judicial Ethics, discussing his forthcoming article "Judicial Ethics and Judicial Competence," which focuses on the use of ethics complaints against judges based on their rulings. Professor Entin will cover the ethics complaints that were filed against Judge Aileen Cannon after she was appointed a special master to review the documents that federal agents seized from President Trump's Mar-a-Lago estate, an order that the Eleventh Circuit quickly overturned. He'll address other ways that judges can be held accountable and examine the use of ethics as an issue in judicial confirmation proceedings when the ethics concerns are a proxy for disagreement with a nominee's rulings. Professor Entin will also explore other recent developments in judicial ethics and ethics reform such as the Supreme Court's recently adopted code of ethics, and will explore the debate over whether Congress can legislate with respect to the Justices' ethics. The 2.5 hour professional conduct CLE is complimentary for our members and satisfies all the mandatory professional conduct CLE's attorneys must satisfy in their biennium reporting period. Join us on December 15 at the Stokes Courthouse at 2:00 P.M. Invitations are in the (e) mail!

Celebration of the Bill of Rights' birthday. We will again be at Campus International School on December 15, 2023 at 2:00 P.M. We expect a wonderful slate of presenters!

I'm looking forward to spending more time together at the regular networking events we are planning for the new year, which is in tune with National's goal of more interaction events on all levels of the FBA. We are also planning an update to our social media sites, so keep an eye out for that in the various locations such as our webpage, Facebook, Instagram and LinkedIn.

Here's to a great year, and Happy Holidays to you all—Brian.

Immediate Past President —Hon. Amanda Knapp

While I am pleased to pass the reins to our new chapter president Brian Ramm, it has been my honor to serve this FBA chapter over the past year. This year's FBA-NDOC activities have included:

- Continuing education programs featuring judges, legal scholars, lawyers, and military leadership, including our popular Trial Academy;
- Brown Bag Luncheons and Roundtables that allowed members to meet and interact with our federal judges in an informal setting;
- Social events that included welcome receptions for the eleven federal judges appointed in this district during the COVID-19 pandemic, a summer associate reception welcoming law students at the House of Blues, and a summer social at the 78th Street art galleries;
- A mentorship program pairing law students and young lawyers with experienced practitioners; and
- Civics programming introducing local elementary and high school students to the workings of our government and courts.



At our State of the Court Luncheon, I also had the pleasure of unveiling the official judicial portraits for six of our distinguished district court judges. The Seventh Floor of the Federal Courthouse in Cleveland already displays the official portraits of twelve district judges who provided distinguished service to our community. The oldest portrait features Robert Taylor, the sixth District Judge to be appointed to the Northern District of Ohio bench. Judge Taylor was appointed by President Theodore Roosevelt, and served from 1905 to 1910. Other jurists whose names you may recognize include William K. Thomas, John M. Manos, Ann Aldrich, George W. White, and Leslie B. Wells.

Official portraits were unveiled for Retired District Judge Paul R. Matia and Senior District Judges Donald C. Nugent, Christopher A. Boyko, James S. Gwin, Dan Aaron Polster, and Patricia A. Gaughan. Luncheon attendees were the first to view the new portraits and enthusiastically applauded these jurists for their dedication and contributions to our legal community. If my math is correct, these six new portraits represent **139 years** of service on the federal bench in the Northern District of Ohio.

Like many of you, I am looking forward to seeing what new events and activities our chapter has in store over the next year. So that you do not miss out on any of these activities, please keep in mind that the "membership year" for FBA membership expired at the end of September. If you have not yet renewed your membership, you may still avoid lapsing by renewing before the end of the year.

The FBA has recently streamlined its membership terms, with a single reduced fee rate for newer attorneys, solo practitioners, public sector attorneys, and retired members; a single rate for private practice attorneys; and a "sustaining membership" rate for those who wish to provide extra support to FBA educational programs and publications. The FBA also provides complimentary memberships to law students, through their first year of practice, and federal term law clerks.

It has been a pleasure serving you for the past year, and I look forward to seeing you at some of our chapter's exciting upcoming events.

ISRAEL/GAZA

The Federal Bar Association-Northern District of Ohio Chapter joins FBA National and organizations across the country in unequivocally condemning the unprecedented terrorist attack carried out by Hamas militants in Southern Israel on October 7, 2023, during which they killed over 1,000 people, mostly civilians, including children and elderly people, and abducted more than 200, the majority of which are still being held hostage within Gaza. Since October 7, the resulting military response in Gaza has led to the deaths of thousands of Palestinians, most of them reportedly civilians, and an increasingly dire humanitarian crisis there. We mourn the catastrophic loss of life suffered by both Israelis and Palestinians and call for the swift return of all the hostages taken by Hamas, as well as the unhindered, safe and secure access to necessary aid for Palestinians in Gaza. We urge all parties involved to uphold international law and respect the law of armed conflict, which forbids targeting civilians, hostage-taking, and collective punishment.

Our Chapter further acknowledges the profound impact the October 7 terrorist attack in Southern Israel has had on the Jewish community worldwide, particularly here in the United States, in light of the steep rise in antisemitic incidents in recent years. We stand with the American Jewish community and similarly denounce any rhetoric that employs antisemitism, anti-Palestinian racism, and Islamophobia, as well as any violence motivated by this bigotry.

As all those affected continue to grieve their tremendous losses, we call on our colleagues in the legal community to recognize the humanity of both Palestinians and Israelis during this crisis and ensure that the members of our community feel safe regardless of their race, religion, or national origin.

The Northern District of Ohio Chapter of the Federal Bar Association has issued this statement in its name only and not that of the national Federal Bar Association. This statement is made on behalf of the chapter and its members, as approved by the FBA-N.D. Ohio Chapter Board of Directors upon consultation and opportunity for comment from its members. The statement does not necessarily represent the views of all members, some of whom expressed concerns about the statement before it was issued. Board members with judicial and other governmental positions did not participate in the issuance of this statement.

FBA MEMBERS IN THE NEWS

FBA members Michelle Baeppler and Brenna Fasko recently attended the second meeting of the Jagsquires, an attorney alumni group for the women of St. Joseph Academy. The event was held on July 13, 2023 on the school's terrace. Many notable legal alumni of St. Joseph Academy were in attendance. This new alumni group was developed to strengthen the network of women that have graduated from St. Joseph Academy and aid those seeking to make connections and develop their career in the legal profession. A third event is planned for later in 2023. For more information, please contact Brenna Fasko at Brenna.Fasko@ThompsonHine.com



FBA News**FBA SUMMER SOCIAL**

On August 29, 2023, over 50 members of the FBA's Northern District of Ohio Chapter gathered for a summer social event at the HEDGE Gallery in the Gordon Square neighborhood of Cleveland. Members enjoyed refreshments, tacos, and a tour by the gallery owner, Hilary Gent. The event was well-received and well attended by the chapter's members. Members were able to not only connect and network with each other but learn about the vibrant art community on Cleveland's West Side.



**STATE OF THE COURT LUNCHEON AND INSTALLMENT OF BOARD OFFICERS
OCTOBER 2, 2023**



**STATE OF THE COURT LUNCHEON AND BOARD OFFICERS INSTALLMENT
OCTOBER 2, 2023**



Photo Credit, Justin Gamble Photography

CASE WESTERN RESERVE LAW REVIEW JUDICIAL CONDUCT, ETHICS, AND REFORM SYMPOSIUM

Jonathan L. Entin

David L. Brennan Professor Emeritus of Law

Case Western Reserve University

The FBA's Federal Litigation Section co-sponsored a November 3 symposium on Judicial Conduct, Ethics, and Reform at Case Western Reserve University School of Law. The symposium featured a wide range of judges, scholars, and practitioners who addressed issues in state and federal courts. The program was organized by the *Case Western Reserve Law Review*.

The state court portion of the program featured Judge Stephen Dillard of the Georgia Court of Appeals ("Judges and Social Media"), Professor Sarah Cravens of the Washington and Lee University School of Law ("Off the Record: Transparency Challenges in Judicial Conduct and Discipline"), Professor Steven Chien of the Cleveland State University College of Law ("Open Courts and Social Trust"), Adam Sopko of the State Democracy Research Initiative at the University of Wisconsin Law School ("Invisible Adjudication in State Supreme Courts"), and Douglas Keith of the Brennan Center at New York University School of Law ("Political Realities of State Supreme Courts").

The federal court portion of the program featured Tim Schnabel of the Uniform Law Commission ("Amending the Constitution: Supreme Court Term Limits"), Professor Jonathan Entin of Case Western Reserve University School of Law ("Judicial Ethics and Judicial Competence"), Professor Dawn Chutkow of Cornell University Law School ("The Rulemakers: An Empirical Analysis of the Chief Justice's Appointments to the Judicial Conference Rules Committee"), Professor Rakesh Anand of Syracuse University College of Law ("A Professionally Responsible Supreme Court?"), and Senior Judge Margaret McKeown of the U.S. Court of Appeals for the Ninth Circuit ("Looking Back: What We Can Learn from History").

The program generated a wide range of questions and extensive comments both from speakers and audience members. The sessions were moderated by CWRU Professors Ayesha Bell Hardaway and Jessie Hill. The symposium was organized by Kelsey Moore, the Law Review's symposium editor and an officer of the law school's student FBA chapter.

Most of the papers presented at the symposium will be published next year in a special issue of the Law Review. Video recording of the program is available now at:

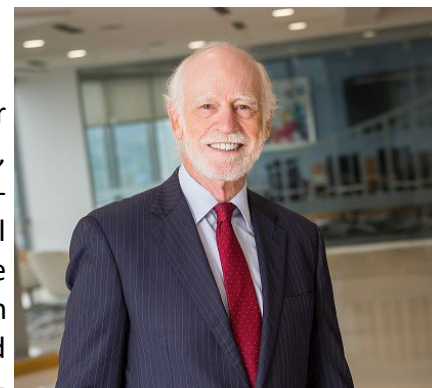
<https://case.edu/law/our-school/events-lectures/law-review-symposium> .



Articles

U.S. SUPREME COURT DECIDES THAT COMPANIES MAY BE DEEMED TO HAVE CONSENTED TO GENERAL PERSONAL JURISDICTION IN STATES WHERE THEY ARE REGISTERED TO DO BUSINESS

BY JOHN B. PINNEY, PARTNER, BRICKER GRAYDON LLP



In a case issued on June 27, 2023, a divided Supreme Court decided another important personal jurisdiction case—*Mallory v. Norfolk Southern Railway Co.*, 2023 WL 4187749. The principal issue was whether a foreign corporation that registers to do business in a state will be deemed to have consented to the personal jurisdiction of that state’s courts (and correspondingly the federal courts in the state for diversity cases). The answer was a qualified “yes,” which suggests that an out-of-state company that is registered to do business in Ohio might be deemed to have agreed to be subject to general personal jurisdiction in Ohio courts irrespective of whether the underlying cause of action has any connection with the state.

In a surprisingly conversational-style opinion by Justice Gorsuch, the decision was based on the precedent of the 1917 case of *Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93. The Court squarely held that the *Pennsylvania Fire* case (decided by Justice Oliver Wendell Holmes) was still good law. It is important to note that only three justices joined Gorsuch’s opinion (i.e., a plurality of four) but Justice Alito concurred in part, agreeing that the holding that the *Pennsylvania Fire* case remained good law and agreeing with the Court’s judgment vacating and remanding the Pennsylvania Supreme Court’s judgment denying personal jurisdiction—making the five justices needed for the judgment. (More to say below on Alito’s separate opinion that discusses the “dormant Commerce Clause” and its potential effect on a state’s constitutional authority to require foreign corporations to register to do business.)

The operative facts in the *Mallory* case are simple. The plaintiff, Mallory, claimed he developed cancer from his work for Norfolk Southern in Ohio and Virginia, but importantly not from any work for NS in Pennsylvania. Notwithstanding that Mallory’s claims had nothing to do with Pennsylvania and that NS is incorporated and had its principal place of business in Virginia, the Supreme Court held that the facts that NS applied for a Pennsylvania business license and had appointed a statutory agent in Pennsylvania were sufficient for it to “consent” for Pennsylvania’s state courts to exercise personal jurisdiction. It is not clear whether the facts that NS also employed 5,000 and ran trains over 2,400 miles of track in the state were significant factors that might distinguish the *Mallory* case from cases involving smaller companies having much less of a “presence.” Moreover, the relevant Pennsylvania statute cited in Gorsuch’s opinion specifically provided that by registering to do business in Pennsylvania a foreign corporation expressly agrees to appear in the state’s courts on “any cause of action” against it. If the *Pennsylvania Fire* case drives the analysis, it may be that, but is not clear whether, simply appointing a statutory agent as part of the process to qualify to do business will itself be sufficient to constitute consent to personal jurisdiction.

The takeaway from the *Mallory* case is that, where a non-Ohio corporation or LLC is registered to do business in Ohio, there is a decent argument that Ohio courts can exercise general personal jurisdiction for causes of action arising outside of Ohio even though Ohio’s registration law is not as explicit regarding consent as is Pennsylvania’s. Moreover, this is likely to be tested soon because Ohio companies will likely prefer to sue out-of-state companies that are registered in Ohio and have appointed Ohio statutory agents in Ohio’s state or federal courts using their Ohio lawyers rather than traveling to an inconvenient distant state to bring a claim that arose there.

An interesting array of justices dissented with an opinion written by Justice Barrett (joined by Justices Roberts, Kagan and Kavanaugh). Beginning with a citation of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), Barrett noted that the due process clause does not allow state courts to assert general personal jurisdiction over foreign defendants merely because they do business in the state. The dissent then goes on to discuss the recent Supreme Court cases drawing the distinction between general and specific personal jurisdiction that basically say that a corporation is only amenable to personal jurisdiction in a state court (and in a federal court exercising diversity jurisdiction) for a suit filed either where the corporation is incorporated or maintains its principal place of business—the corporation’s “home” (“general personal jurisdiction”), or where the plaintiff’s cause of action arose (“specific personal jurisdiction”). Barrett cited the series of recent cases setting forth that dichotomy, including (but not limited to) *Daimler AG v. Bauman*, 571 U.S. 117 (2014) (barred California courts from hearing claims against Daimler for Argentina’s “dirty war”); *Bristol-Myers Squibb Co v. Superior Court of Cal.*, 583 U.S. 255 (2017) (excluded non-California class plaintiffs from state court drug products liability class action); and *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, 141 S.Ct. 1017 (2021) (allowed specific jurisdiction for products claims against Ford because the company reasonably expected its cars would be delivered to and sold in Montana and Minnesota, the forum states, even though the plaintiffs’ cars were bought used). The majority, however, concluded that all of those jurisdictional obstacles were overcome by NS’s consent to jurisdiction by having registered to do business in Pennsylvania and appointing a Pennsylvania statutory agent.

Now turning to Alito’s concurrence addressing the U.S. Constitution’s dormant Commerce Clause, that issue was not addressed by the Pennsylvania Supreme Court and presumably will be addressed there on remand. The dormant Commerce Clause limits the power of states to regulate interstate commerce within their states, because such regulation is reserved under the Commerce Clause for the federal government. The point of Alito’s opinion is that he is concerned that Pennsylvania’s mandate that NS consent to the jurisdiction of its courts for causes of action unrelated to Pennsylvania may violate the dormant Commerce Clause. In other words, while, per the *Mallory* decision, NS had consented (and Pennsylvania had required it to consent) to personal jurisdiction in the state by registering to do business, Alito’s opinion suggests that Pennsylvania might not have had the constitutional power to do so. The issue was left open by the Pennsylvania Supreme Court and wasn’t an issue on which the U.S. Supreme Court had granted certiorari. It will be interesting whether the Supreme Court will again grant cert on the dormant Commerce Clause issue once the Pennsylvania court decides that issue. If Alito’s view prevails, NS could still end-up being able to avoid having to litigate in Pennsylvania on Mallory’s claims.

July 19, 2023

Supplemental Note:

On October 4, 2023, U.S. District Judge Donald C. Nugent of the Northern District of Ohio issued a decision interpreting the *Mallory* case in *Union Home Mortgage Corp. v. Everett Financial, Inc.*, 2023 WL 6465171, albeit only in a footnote. The lawsuit was brought by Ohio-based Union Home Mortgage against its Texas-based competitor, Everett Financial, doing business as Supreme Lending, and four of Union Home Mortgage’s former Florida employees who had been hired by Supreme Lending. Union Home Mortgage brought its federal court suit against both Supreme Lending for “wrongful recruitment” and against the four former employees, all Florida residents, for enforcement of a non-compete provision in each of their respective employment agreements. Those employment agreements also had a forum selection clause requiring that suit over any claim be filed in a state or federal court in Ohio. However, Supreme Lending was not a party to its new employees’ agreements with Union Home Mortgage.

Supreme Lending moved to dismiss for lack of personal jurisdiction. In going through the now standard analysis of both general and specific personal jurisdiction, the court concluded that Supreme Lending was not subject to general personal jurisdiction because the plaintiff had not shown through evidence that the defendant had engaged in “continuous and systematic” activities in Ohio so as to establish a basis for exercise of general personal jurisdiction. Turning to specific personal jurisdiction, the court held with respect to that issue that there was no allegation that any of the defendants had done anything in Ohio, including specifically their recruiting of the four former employees. The plaintiff’s contention that Supreme Lending knew its conduct in Florida would cause injury to Union Home Mortgage in Ohio was unavailing and rejected.

In an extensive footnote (n.6), the court addressed the *Mallory* case, noting that in *Mallory* the Supreme Court had held Norfolk Southern’s registration to do business and appointment of a statutory agent under Pennsylvania’s registration statute subjected the railroad to general personal jurisdiction in that state. The court added that this was “despite the fact that none of the operative facts had occurred in the State.” Although it is not clear from footnote 6, Supreme Lending had registered to do business in Ohio and had appointed an Ohio statutory agent. The court did specifically state that Ohio’s registration law (O.R.C §§ 1703.03, .04 & .041), unlike Pennsylvania’s, did not explicitly require consent to general jurisdiction. The take away from Judge Nugent’s opinion, therefore, is that foreign entities are not automatically deemed to have consented to general personal jurisdiction simply by registering to do business in Ohio. Judge Nugent further observed that this conclusion is consistent with the Sixth Circuit’s decision in *Pittock v. Otis Elevator Co.*, 8 F.3d 325, 29 (1993), quoting “the Supreme Court was saying [in *Bendix Autolite Corp. v. Midwesco Entpr., Inc.*, 486 U.S. 888 (1988)] that the mere designation of an agent in compliance with the service-of-process statute does not automatically eliminate the requirement of minimum contacts to establish personal jurisdiction.”

Given that the district court’s decision in *Union Home Mortgage* does not have the force of precedent, the issue remains an open one in Ohio. Significantly, the majority of states that have considered the issue, including those having registration statutes more similar to Ohio’s than Pennsylvania’s, have concluded that mere registration and appointment of an in-state statutory agent is sufficient to subject the foreign corporation to general personal jurisdiction. *See, e.g.: Cooper Tire & Rubber Co. v. McCall*, 312 Ga. 422 (1923), cert. denied; *Spanier v. Am. Pop Corn Co.*, 2016 WL 1465400 (N.D. Iowa); *Butler v. Daimler Trucks N. Am., LLC*, 433 F. Supp. 3d 1216 (D.Kan. 2020); *Knowlton v. Allied Van Lines, Inc.*, 900 F.2d 1196 (1990) (Minnesota); *Rykoff-Sexton, Inc. v. American Appraisal Assoc., Inc.*, 469 N.W.2d 88 (Minn. 1991); *contra: Chavez v. Bridgestone Americas Tire Op., LLC*, 503 P.3d 332 (N.M. 2021).

The final observation for this supplemental note focuses on Justice Alito’s concurrence with the Supreme Court’s judgment in *Mallory* to remand the case to the Pennsylvania courts. Alito focuses on his concern that states could well be foreclosed by the dormant commerce clause in the U.S. Constitution (Art. 1, §8, cl.3) from mandating that foreign corporations consent to general personal jurisdiction in order to register to do business. In *Mallory*, the case was sent back to the Pennsylvania Supreme Court for consideration of that issue. However, instead of dealing with it directly, the Pennsylvania Supreme Court elected to remand the case down to the Philadelphia trial court to address the Commerce Clause issue in the first instance. Given the renewed interest in the dormant commerce clause, this may be an issue to watch. *See, National Port Producers Council v. Ross*, 598 U.S. 356 (2023); and *Truesdell v. Friedlander*, 80 F.4th 762 (6th Cir. 2023).

John B. Pinney, Partner
Bricker Graydon LLP
Cincinnati, Ohio
November 15, 2023

6TH CIRCUIT JUDICIAL CONFERENCE

Talia Sukol Karas

Associate, Porter Wright

The 77th Judicial Conference of the Sixth Circuit took place in Cleveland, Ohio from September 6-8 at the Hilton Cleveland Downtown. Federal judges and practitioners from across the circuit converged upon Cleveland for three special days of keynote lunches, panel discussions, and excursions into Cleveland highlighting our city's culture and legal history. I share a few of my highlights here.

The first full day began with a Supreme Court Review by Stanford Professor, and Co-Director of the Supreme Court Litigation Clinic, Pamela Karlan and Jones Day's Washington Office Partner-in-Charge Noel Francisco. Moderated by the Sixth Circuit's Judge Karen Nelsen Moore, Karlan and Francisco at times reflected upon their experiences across the aisle from one another. They also spoke about the kinds of cases in which they extend offers of representation to parties. The Stanford Supreme Court Clinic looks for opportunities to make a difference and is cautious about wading into cases that might create nationwide bad law. Jones Day looks for opportunities for its younger lawyers to gain experience before the highest court where the parties are not contrary to the interests of firm clients. They also commented that the role of the shadow docket, previously used largely for final chance death penalty appeals, has grown considerably.

The Keynote Speaker on Day 1 was Solicitor General Elizabeth Prelogar. Solicitor Prelogar's background was as a journalist, and she had a Fulbright Scholarship in Russia studying freedom of the press. The Solicitor General's Office is heavily involved in the Supreme Court term, in as much as 85% of cases. In addition to appearing as a party before the Supreme Court, her office also files amicus briefs as well as briefs in opposition to the Supreme Court's hearing of cases.

Solicitor Prelogar herself must approve whether to appeal, seek rehearing, or seek Supreme Court review for every case in which her office is involved. In deciding how to proceed with an adverse judgment, she considers the investments of resources, concerns about creating adverse law, and concerns about competing or cross-cutting interests across divisions. For example, the EEOC or civil rights division may seek to enforce equity in employment decisions while the defensive civil division is interested in protecting the largest employer in the United States, *i.e.*, the federal government. When there are agency disagreements, she gathers a range of viewpoints, but ultimately she must make a judgment about how best to proceed.

Solicitor Prelogar personally argues the biggest cases for her office each term. She prepares by working through all possible questions and will send batches of questions to substantive experts to learn what she needs to know to understand the details of each particular case. For example, in an EPA matter, she sends hundreds of cases to experts. She has the weight of the federal government behind her in terms of its resources and skill. Her night before argument ritual is to go home early, eat dinner with her family and then deliver her introduction to them, after which her children rate her and give her feedback. She can trust them to be honest. The morning of her argument, she arrives at the office early, wearing her grandmother's pearls and always the same suit, eats four to five bananas for breakfast, and gets warmed up.

Arriving to the crucial five justices in order to secure the win is hard, but her advice is to be true to yourself and your style. There is always work to be done in shaping opinion, rationale, and making sure the justices know about possible impacts on other areas. Solicitor Prelogar voiced that representation matters and that she is the second woman ever to be the Solicitor General, following Justice Elena Kagan's one year in the position.

The Keynote on Day 2 was a conversation with Associate Justice Brett Kavanaugh by Chief Judge Jeffrey Sutton and Judge Stephanie Dawkins Davis, both of the Sixth Circuit. Justice Kavanaugh spoke about the shadow docket and its evolving role from the death penalty docket to ruling on election issues and national programs. Kavanaugh also spoke about the influence of his mother, an attorney and then judge in Washington, D.C.

One of Justice Kavanaugh's favorite parts of his job is the lunch following oral arguments that the nine justices attend. They do not discuss work. This helps foster collegiality. In their professional conduct towards one another, there is incentive to listen and be reasonable with the other justices.

Justice Kavanaugh was very inspired by his time clerking for Justice Kennedy and working for President George W. Bush. When Justice Kavanaugh worked in the White House, another staffer made a major error, causing a significant issue for President Bush. Before the staffer was terminated and escorted from the grounds, President Bush called him into his office and told the staffer, "I forgive you."

Justice Kavanaugh commented on the ethics questions that recently surrounded the court, stating that the justices are nine hard working public servants who want respect for the institution by the American people. He reiterated a previously published statement from Chief Justice John Roberts that the court was working on a statement. (Ed note: A statement was issued by the Supreme Court on 11/13/23. Supreme Court, Statement of the Court Regarding the Code of Conduct (Nov. 13, 2023), https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf.)

Justice Kavanaugh said that being a judge is like being an umpire. Be prepared. Work hard. Keep your eye on the ball. Tune out the noise. Have a thick skin. Make tough calls. Be consistent. Provide clarity when explaining your call. Hustle. And call against the home team when the situation requires.

Congratulations to Kip Bollin who was instrumental in planning this major event, and thank you to Chief Judges Sara Lioi and Mary Ann Whipple for leading the Ohio Northern District session, as well as Professor Jonathan Entin for leading the charter bus tour to the Supreme Court landmark cases that arose in Cleveland (*Terry v. Ohio*, *Mapp v. Ohio*, *Cleveland Board of Education v. LaFleur*, just to name a few.)

Ads, Announcements & Membership Benefits

**Ethics CLE – FBA NDOH
Reforms and Recent Developments in Judicial Ethics
Friday, December 15, 2023
(2.5 Hours Professional Conduct CLE Credit)**

Speaker: Professor Jonathan L. Entin
David L. Brennan Professor Emeritus of Law at Case Western Reserve University

**Carl B. Stokes U.S. Court House
801 West Superior Avenue, Cleveland OH
7th Floor Auditorium**

This CLE will focus on issues of judicial ethics. Professor Entin will discuss his forthcoming article “Judicial Ethics and Judicial Competence,” which focuses on the use of ethics complaints against judges based on their rulings. The Judicial Conduct and Disability Act excludes such ethics complaints, and the piece explores where the exclusion comes from. It focuses on the ethics complaints that were filed against Judge Aileen Cannon after she was appointed a special master to review the documents that federal agents seized from President Trump's Mar-a-Lago estate, an order that the Eleventh Circuit quickly overturned. It also addresses other ways that judges can be held accountable, evaluates a suggestion that the JCDA exclusion can be traced to a highly publicized fugitive-slave case from the 1850s, and examines the use of ethics as an issue in judicial confirmation proceedings when the ethics concerns are a proxy for disagreement with a nominee's rulings.

Professor Entin will also explore other recent developments in judicial ethics and ethics reform such as the Supreme Court's recently adopted code of ethics, and will explore the debate over whether Congress can legislate with respect to the Justices' ethics.

AGENDA

1:30 Registration
2:00 Discussion regarding Prof. Entin's article “Judicial Ethics and Judicial Competence”
3:30 Break
3:40 Discussion of recent developments in judicial ethics and reform including the Supreme Court's Code of Ethics
4:10 Moderated Question and Answer
4:40 End of Program

REGISTRATION

**FBA Member: Pre-Registration - FREE, Walk In- \$25
Non-Member: Pre-Registration - \$75, Walk In - \$125**

Online registration only & payment must be received at time of registration.
Online Pre-Registration deadline is December 12, 2023.
Registration [here](#) to register.

Annual Meeting & Convention

September 5, 2024 - September 7, 2024

Save the Date

The Kansas and Western District of Missouri Chapter is excited to host the FBA 2024 Annual Meeting & Convention in Kansas City, MO.

Continue to check this [page](#) for updated information.

- CLE sessions will feature a variety of legal topics that peak the interest of attorneys in a focused practice area, or want to expand their knowledge in other specialties;
- Celebrate the accomplishments of FBA members during three awards luncheons and welcome the FY25 National President on Saturday's Installation Luncheon;
- Embrace the what's unique about the local city with evening social events, including the WWI Museum on Thursday night.

Join the New FBA Law Clerk Directory!

The Judiciary Division's Federal Judicial Law Clerk Committee launched the first searchable national database of current and former federal law clerks who opt-in to the directory. The Law Clerk Directory, which is accessible only by FBA Members, serves as a robust resource to maintain contact between judges and former clerks, creates bridges for law students to learn more about federal clerkships and the application process, and connects practitioners with current and former clerks for networking opportunities.

The FBA encourages all former and current clerks to opt-in to the directory and has created a page to allow you to easily input your clerkship information. If you are a current or former federal law clerk and wish to be included in the directory, log into www.fedbar.org and follow these instructions.

Select "Update My Profile"

Select "My Clerkship" from the right-hand navigation ("My Account Links")

Select "+ Add"

Complete the form contents and select "Save"

Note: Leave the End Year blank if you are currently in a clerkship or if the end year is undetermined

To enter additional clerkships, simply repeat the process. You can also edit entries if needed. The details you enter will then be visible in the Law Clerk Directory. If you ever decide to opt out of the directory, simply select "Edit Demographics" from your "My Profile" page, check the box at the bottom labeled "Law Clerk Directory opt-out" and then select "Save". For further assistance entering your clerkship information, you can access these [instructions with screenshots](#).

To use the new Law Clerk Directory, login to your profile at www.fedbar.org with your email and password. You will see several search options available including the following: Clerk Name, Judge Name, Jurisdiction, State, and Year(s) of Clerkship. Search results will display clerk name, email, state, and jurisdiction. For additional details, including the Judge's name and the relevant start and end years, select the clerk's name.

If you have questions about accessing or joining the directory, please email sections@fedbar.org

Federal Bar Association

www.fedbar.org | (571) 481-9100 | fba@fedbar.org

FBA-NDOH Calendar of Events:

December 20, 2023 FBA-NDOH Board Meeting

December 15, 2023 Professionalism CLE

January 17, 2024 FBA-NDOH Board Meeting

February 21, 2024 FBA-NDOH Board Meeting

March 20, 2024 FBA-NDOH Board Meeting

We add events to our calendar often so please check our website for upcoming events that may not be listed here.



**Federal Bar
Association**

STATEMENT OF THE FEDERAL BAR ASSOCIATION BOARD OF DIRECTORS ON JUDICIAL INDEPENDENCE

Judicial independence, free of external pressure or political intimidation, lies at the foundation of our constitutional democracy. An independent judiciary needs to remain free of undue influence from the legislative and executive branches and to remain beholden only to the maintenance of the rule of law and the protection of individual rights and personal liberties. We affirm the right to challenge a judge's ruling for reasons based in fact, law or policy. However, when robust criticism of the federal judiciary crosses into personal attacks or intimidation, it threatens to undermine public confidence in the fairness of our courts, the constitutional checks and balances underlying our government and the preservation of liberty.

The Federal Bar Association is comprised of over 19,000 public and private sector lawyers practicing in our federal courts, hailing from all fifty states and the U.S. Territories. The Federal Bar Association is a non-partisan professional organization created to promote the sound administration of justice and integrity, quality and independence of the judiciary.



Our Chapter supports the FBA's SOLACE program, which provides a way for the FBA legal community to reach out in small, but meaningful and compassionate ways, to FBA members and those related to them in the legal community who experience a death, or some catastrophic event, illness, sickness, injury, or other personal crisis. For more information, please follow this link:

<http://www.fedbar.org/Outreach/SOLACE.aspx>

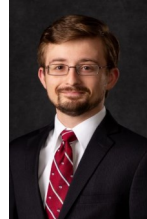
Co-Editors for the Fall 2023 Newsletter:



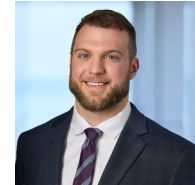
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INTER ALIA is the official publication of the Northern District of Ohio of the Federal Bar Association.

If you are a FBA member and are interested in submitting content for our next publication please contact Stephen H. Jett, James Walsh Jr., Benjamin Reese or Andrew Rumschlag no later than January 15, 2023

Next publication is scheduled for Winter 2024.

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