Federal Bar Association
Northern District of Ohio Chapter

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Spring 2023
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President's Podium—Hon. Amanda Knapp

It's spring! D.H. Lawrence called spring a "conflagration of green fires lit on the soil of the earth," a "blaze of growing, and sparks that puff in wild gyration." I love this imagery because it perfectly captures what spring is like here in Northern Ohio. We bide our time through the long grey winter, and then—almost from one day to the next—our world turns a vibrant green, and everything that has been hiding or sleeping through the winter months comes awake and alive.

Spring is a time of renewal, reawakening, and reopening. That idea is particularly poetic this year, as we all—in our personal and professional lives—find ourselves passing more of the crossroads that mark the path back from the isolation and closure of the Covid-19 pandemic.

It was early spring three years ago when the pandemic forced our schools, businesses, and courts to close to the public. What was first announced as an extended spring break for Ohio's school children turned into an unprecedented series of events that fundamentally changed the way we all lived and worked. The daily operations of our courts had to be restructured and reimagined so that their essential functions could continue in extraordinary times.

The judges and court staff in the Northern District of Ohio were equal to those challenges. The Coronavirus Aid, Relief, and Economic Security (or "CARES") Act facilitated the transition of vital court functions from the real world to the virtual world, and the business of our courts got underway again. Civil and criminal proceedings, and even trials, continued by video and telephone so that the protections ensured by our legal system would not be denied.

As our courts continued their important work, another vital function continued as well—the appointment of new federal judges. From the beginning of the pandemic until today, eleven new judges have been sworn in to serve the constituents of the Northern District of Ohio. This includes five District Judges, one Bankruptcy Judge, and five Magistrate Judges. Each of these judges joined the Court during times of uncertainty and isolation, and each charted a path forward in ways that were necessarily different from their predecessors.

Because of the public health limitations in place when they were appointed, none of these judges had the opportunity to host a formal investiture where they could be introduced to, and recognized by, the broad legal communities they serve. That is why our federal bar chapter and other local bar associations are so pleased to host receptions this spring to recognize and welcome these new judicial officers. We honor the Western Division judges at an event in Toledo on April 25th, and the Eastern Division judges at an event in Cleveland on May 2nd.

On May 10th, the last of the pandemic-era changes to our court operations under the CARES Act will expire. It will be back to business as usual, but probably not in exactly the same way that business was done before. It's spring. A time of change and renewal. And I for one am looking forward to watching our world and our communities as they awaken, reopen, and come alive.

Our New Northern District of Ohio Judges

MEET OUR NEW WESTERN DIVISION JUDGES

James R. Knepp, II
U.S. District Judge
Sworn November 19, 2020

Darrell A. Clay
U.S. Magistrate Judge
Appointed May 14, 2021

Federal Bar Association
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MEET OUR NEW EASTERN DIVISION JUDGES

Carmen E. Henderson
U.S. Magistrate Judge
Appointed July 1, 2020
Youngstown

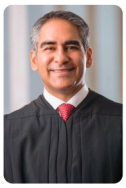
Amanda M. Knapp
U.S. Magistrate Judge
Appointed October 1, 2021
Akron

Tiiara N.A. Patton
U.S. Bankruptcy Judge
Appointed August 17, 2020
Youngstown

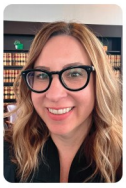
Federal Bar Association
Northern District of Ohio Chapter

MEET OUR NEW EASTERN DIVISION JUDGES

J. Philip Calabrese
U.S. District Judge
Sworn December 5, 2020
Cleveland



David A. Ruiz
U.S. District Judge
Sworn February 10, 2022
Cleveland



Jennifer Dowdell Armstrong
U.S. Magistrate Judge
Appointed August 25, 2022
Cleveland

Federal Bar Association
Northern District of Ohio Chapter

MEET OUR NEW EASTERN DIVISION JUDGES

Bridget Meehan Brennan
U.S. District Judge
Sworn February 10, 2022
Cleveland

Charles Esque Fleming
U.S. District Judge
Sworn March 11, 2022
Cleveland

James E. Grimes Jr.
U.S. Magistrate Judge
Appointed September 12, 2022
Cleveland

Federal Bar Association
Northern District of Ohio Chapter

FBA News

Jacqueline A. Johnson was the keynote speaker at the Cleveland State University College of Law Black Law Students Association's Annual Scholarship Banquet on April 1. The theme of the Banquet was "The Year of the Black Woman."

A Conversation with a Local Legend

Jacqueline Johnson
Chair, FBA Diversity Committee

On March 3, 2023, the FBA Diversity Committee hosted the first Affinity Bar outreach CLE approved program with the Norman S. Minor Bar Association (NSMBA) in honor of Black History Month. The program was entitled "A Conversation with Local Legend Attorney James R. Willis." Judge Dan A. Polster hosted the CLE in his courtroom.

The program included a United States Marines Color Guard presentation during the national anthem. FBA Chapter President Magistrate Judge Amanda M. Knapp presented Mr. Willis with a plaque recognizing his military service and contribution to the local and national legal communities. NSMBA President Delonte S. Thomas addressed the importance of joint programming efforts of local bar associations.

Mr. Willis was interviewed by Jacqueline A. Johnson, First Assistant Federal Public Defender for the Northern District of Ohio. Mr. Willis, age 96, is a renowned criminal defense litigator who handled six cases in the Supreme Court of the United States in addition to maintaining a robust trial and appellate practice. He remains an active member of the bar and was scheduled to begin a federal trial a week later.

He was a member of the United States Marines Montford Point regiment, which was the first all-black regiment permitted to enlist in the Marine Corps, much like the Tuskegee Airmen of the United States Army Air Forces. He eagerly recalled and shared in detail how the horrendous segregated military training prepared him for his trailblazing career as the first African American president of the National Association of Criminal Defense Lawyers and repeated appearances before the United States Supreme Court.

The CLE included a short video clip of the ABC documentary *Our America: Montford Point Mission*, in which Mr. Willis was heavily featured, that described the discrimination against African American recruits. He along with 22 other living Marines from that regiment were finally recognized in 2012 for their stellar service with a Congressional Gold Medal in Washington, D.C. Mr. Willis also recalled his rigorous Supreme Court oral argument preparation and identification of appellate issues in landmark criminal cases *Beck v. Ohio*, 379 U.S. 89 (1964), which held that a warrantless search violated the Fourth Amendment; *Doyle v. Ohio*, 426 U.S. 610 (1979), which held that the prosecution could not impeach a criminal defendant at trial for not having made exculpatory statements after receiving *Miranda* warning following his arrest; and *Martin v. Ohio*, 480 U.S. 228 (1987), which allowed states to place the burden of proof for self-defense claims on the defendant.

The hour-long CLE was capped off with a reception that allowed the attendees to engage with Mr. Willis, who impressed everyone with his photographic memory and passion for the law.

The United States District Court for the Northern District of Ohio

FOR IMMEDIATE RELEASE Tuesday, April 4, 2023

U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO SELECTS

CHIEF PRETRIAL SERVICES AND PROBATION OFFICER

Judge Patricia A. Gaughan, Chief Judge of the United States District Court for the Northern District of Ohio, has announced the promotion of Deputy Chief United States Pretrial Services and Probation Officer Suzanne L. Evans to Chief United States Pretrial Services and Probation Officer for the Northern District of Ohio. She will replace Chief United States Pretrial Services and Probation Officer Robin K. Grimes, who will retire effective June 1, 2023. Judge Gaughan said, “Suzanne Evans has the experience, passion, and intelligence necessary to serve the Court and community in this very important position.”

Ms. Evans has been employed with the U.S. Pretrial Services and Probation Office in the Northern District of Ohio for the past twenty years, handling investigations and supervising high risk cases. She has received many promotions during her tenure, including Aftercare Treatment Specialist, Supervisor, Assistant Deputy Chief and Deputy Chief. Since 2018, she has worked on the Administrative Team handling day-to-day operations across the district.

The United States District Court for the Northern District of Ohio has court locations in Cleveland, Akron, Toledo, and Youngstown and serves 5.9 million citizens in the 40 northernmost counties in Ohio.

Clerk's Corner

Sandy Opacich
Clerk of Court, U.S. District Court for the Northern District of Ohio

Civil Pro Bono Program

The Northern District of Ohio is in need of additional attorneys to support our civil pro bono program.

The Court adopted a Civil Pro Bono Protocol in February 2007. Under this Protocol, a judicial officer may instruct the Clerk's Office to select counsel with experience in the subject matter of the case from the list of attorneys who have volunteered to provide Pro Bono services.

In turn, the Court will reimburse assigned counsel, pursuant to the Pro Bono Civil Case Protocol, up to $1,500 for expenses incurred in providing representation. (Additional expenses can be reimbursed upon the approval of the Presiding Judge.) Local rules pertaining to Pro Bono are contained in Local Rule 83.10 and Appendix J to the Local Civil Rules.

Volunteer attorneys are also eligible to receive continuing legal education (CLE) credit through the Ohio Supreme Court as follows:

One (1) general CLE credit for every six (6) hours of free service provided

Up to six (6) CLE credits per biennial reporting period

Attorneys who wish to receive CLE credit for their pro bono legal service will complete Ohio Supreme Court Form 23 for each pro bono assignment and submit it to the Pro Bono Department by December 31 of each year.

In 2022 the Federal Bar Association implemented an annual award/recognition program for attorneys that participate in the Pro Bono program. Attorneys who provide pro bono service to the Court are eligible for nomination by any of our Judges. Awards are presented at the annual State of the Court Luncheon.

Attorneys are needed in all court locations. If you are interested or have questions about serving, please contact our Court Services Administrator, Cylenthia Woodford at 216-357-7017.

Articles

The East Palestine Derailment: Maximizing Shareholder Value Once Again Debated

Brendan Mohan*

The lives of 4,500 individuals came to a sudden halt with the derailment of a train in East Palestine, Ohio on February 3, 2023 as an environmental catastrophe began to unfold in the small Ohio town. The derailment led to 10 cars full of hazardous materials, including carcinogenic or potentially carcinogenic chemicals, leaking into the surrounding rivers and ecosystems. After the event of what many call the "New Chernobyl," questions have arisen as to who should be held accountable for the fallout.[1] The blame has been passed between politicians, the state, and federal agencies, but experts and locals are pointing to the railroad company Norfolk Southern as the party at fault.[2] This is because in recent years while Norfolk has cut down its workforce, closed rail yard inspection centers, and lobbied against stricter railway regulations, it has attempted to maximize shareholder profits through short-term paybacks and buyouts.[3] The idea of maximizing shareholder value is not a new concept; in fact, several courts have held in past decisions that directors have an obligation to maximize shareholder wealth.[4] Events like East Palestine, however, call into question the original theory of maximizing short-term shareholder value at the expense of safety and environmental concerns, as well as the federal regulations surrounding corporations.

The theory of maximizing shareholder value has continued to divide commentators and scholars, with several disagreeing with the theory.[5] Instead, these scholars argue for the opposing theory of stakeholder capitalism: that managers should make decisions to consider all of the interests of all stakeholders in a firm.[6] The idea of considering other interests outside of the shareholders' originated in the 1930s,[7] but has begun to resurface again in the form of environmental, social and corporate governance (ESG) issues.[8] Several factors have led to a change in attitude by some U.S. corporations.

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* J.D. expected 2024, University of Akron School of Law; incoming President of the University of Akron School of Law FBA chapter; and current Sixth Circuit Representative for the Law Student Division of the FBA.

[1] Hannah Getahun, *Rural Ohio is facing comparisons to Chernobyl after a massive chemical leak caused by a train derailment*, Bus Insider (Feb. 14, 2023), https://www.businessinsider.nl/rural-ohio-is-facing-comparisons-to-chernobyl-after-a-massive-chemical-leak-caused-by-a-train-derailment-heres-what-the-disaster-really-has-in-common-with-the-nuclear-accident/.

[2] Peter Eavis & Mark Walker, *Norfolk Southern's Profits and Accident Rates Rose in Recent Years*, N.Y. Times (Feb. 17, 2023), https://www.nytimes.com/2023/02/17/business/energy-environment/norfolk-southern-derailment-safety.html.

[3] *Id.*

[4] Dodge v. Ford Motor Co., 170 N.W. 668, 684 (Mich. 1919) ("A business corporation is organized and carried on primarily for the profit of the shareholders. The power of the directors are to be employed for that end."); *see also* eBay Domestic Holdings, Inc. v. Newmark, 16 A.3d 1, 34 (Del. Ch. 2010) ("Having chosen a for-profit corporate form, the craigslist directors are bound by the fiduciary duties and standards that accompany that form. Those standards include acting to promote the value of the corporation for the benefit of its stockholders.").

[5] *See, e.g.,* Steve Denning, *Why Maximizing Shareholder Value Is Finally Dying*, Forbes (Aug. 19, 2019), https://www.forbes.com/sites/stevedenning/2019/08/19/why-maximizing-shareholder-value-is-finally-dying/.

[6] Stakeholder capitalism is referred to as maximizing stakeholder value. Klaus Schwab, *What is Stakeholder Capitalism?*, World Econ. F. (Jan. 22, 2021), https://www.weforum.org/agenda/2021/01/klaus-schwab-on-what-is-stakeholder-capitalism-history-relevance/. Stakeholders include not only financial claimants, but also employees, customers, communities, governmental officials, and, under some interpretations, the environment, terrorists, blackmailers, and thieves. Michael Jensen, *Value Maximization and Stakeholder Theory*, Harv. Bus. Sch. (July 24, 2000), https://hbswk.hbs.edu/item/value-maximization-and-stakeholder-theory.

[7] Henry Lindborg, *Stake Your Ground: Unearthing the origins of stakeholder management*, Quality Progress, at 54 (June 2013), https://asq.org/quality-progress/articles/career-corner-stake-your-ground?id=58082c9791654be59af3a27a6152cf0c

[8] Celia A. Soehner & Elizabeth S. Goldberg, *ERISA and the challenges of using ESG in retirement plan investing*, Reuters (Sept. 20, 2021), https://www.reuters.com/legal/legalindustry/erisa-challenges-using-esg-retirement-plan-investing-2021-09-20/.

Among them are the creation of entities like Public Benefit Corporations, the COVID-19 pandemic, and the market pushing towards environmental and social initiatives.[9] Further highlighting the debate between the two theories is the recent controversy surrounding a Department of Labor rule that allows investors and shareholders to consider ESG issues for investments and shareholder rights decisions.[10] With events like East Palestine still occurring and controversy surrounding how the federal government regulates ESGs, the debate between the two theories once again takes the forefront.

Maximizing Shareholder Profit

The duty of directors to maximize shareholder profits derives from the Michigan Supreme Court's decision in *Dodge* v *Ford Motor Co*.[11] Scholars like Nobel Prize-winning economist Milton Friedman have continued to shape and develop the theory presented in this case. Friedman's 1962 book *Capitalism and Freedom* is one of the leading works on the subject. Eight years later, Friedman penned a famous essay in *The New York Times*, in which he stated that "[a corporate executive's] responsibility is to conduct the business in accordance with [shareholder's] desires, which generally will be to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom."[12] The impact of the doctrine has allowed corporations and lawmakers to push against federal regulations and agencies in the past for a more *laissez-faire* approach.[14] The doctrine and maximizing shareholder value are often viewed as one and the same and have been used interchangeably.

According to Friedman, an entity's greatest responsibility lies in the satisfaction of the shareholders, so the business should always endeavor to maximize its revenues to increase returns for the shareholders, and an entity has no social responsibilities unless the shareholders decide to that effect. Corporations should be free from government regulation, as this will allow them to maximize shareholder value. Researchers and academic have confirmed the Friedman Doctrine's influence on present-day corporations and the financial community both in the United States and around the world. In a study of S&P 500 companies, the share of profits going to stockholders increased from 50% in the early 1980s to 86% in 2013. According to a recent report, during COVID-19, company shareholders grew $1.5 trillion richer.[15] Thus, while the Friedman Doctrine and maximizing shareholder value are often viewed in a negative manner, corporations continue to focus on maximizing shareholder value.

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[9] PBCs are corporations that align their corporate purpose with a particular public benefit, typically one of governance, environmental, or social importance. Marc Rossell et al., *Public Benefit Corporations: Intersection of Delaware Corporate Law, ESG, and Related Considerations*, NAT'L L. REV. (Feb. 22, 2023), https://www.natlawreview.com/article/public-benefit-corporations-intersection-delaware-corporate-law-esg-and-related; Denning, *supra* note 5; Ciara Linnane, *Maximizing shareholder value can no longer be a company's main purpose: top CEOs*, MARKETWATCH (Aug. 24, 2019), https://www.marketwatch.com/story/maximizing-shareholder-value-can-no-longer-be-a-companys-main-purpose-business-roundtable-2019-08-19 (noting that top CEOs are moving away from maximizing shareholder value and reasons as to why).

[10] Soehner & Goldberg, *supra* note 8.

[11] 170 N.W. 668 (Mich. 1919).

[12] Milton Friedman, *A Friedman Doctrine—The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES, Sept. 13, 1970 (§ 6), at 32, 33.

[13] Denning, *supra* note 5.

[14] Scott Tong, *How shareholders jumped to first in line for profits*, MARKETPLACE (Apr. 25, 2022), https://www.marketplace.org/2022/04/25/how-shareholders-jumped-to-first-in-line-for-profits-rerun/.

[15] Molly Kinder et al., *Profits and the Pandemic: As shareholder wealth soared, workers were left behind*, BROOKINGS (Apr. 21, 2022) https://www.brookings.edu/research/profits-and-the-pandemic-as-shareholder-wealth-soared-workers-were-left-behind/.

Critics consider the doctrine defective legally, morally, economically, socially, and financially. They have blamed the single-minded idea of focusing on profits for causing the degradation of nature and biodiversity, contributing to global warming, stagnating wages, and exacerbating economic inequality.[16] When events like East Palestine occur, scholars who oppose the idea of maximizing shareholder profit point to the theory as the reason why the event occurred, especially when regulations could have curbed the event.[17] Several critics also argue that the doctrine gives shareholders an unfair advantage over local communities by allowing them to weaken wages, worker protections, and environmental protection. Even though the Friedman Doctrine requires directors to follow laws and basic rules of society, the doctrine's emphasis on limiting regulations allows corporations to promote changing laws and rules to fit their own agendas of maximizing profit. Thus, while appropriate regulations would likely fix many of these issues, the ability of corporations to skirt regulations through lobbying and political speech limits such an outcome.[18] Maximizing shareholder value is still a priority for corporations and directors today, but critics of maximizing shareholder value continue to argue its shortcomings.

Defenders of maximizing shareholder value contend that nothing in the Friedman Doctrine prevents companies from acting in a way that benefits the environment, gender equality, racial justice, or any other social concern. Instead, the urge that companies should do so not out of a sense of social obligation, but because in so doing they will maximize their long-term value.[19] If investing in social goods decreases risk, lowers costs, or attracts customers, those investments are consistent with Friedman's maxim.[20] However, it is important to point out that this is a shift away from one of the strategies often associated with the doctrine: short-termism.[21] Short-termism is viewed as a byproduct of maximizing shareholder value and the Friedman Doctrine.[22] Yet short-termism is often viewed negatively; many argue that it comes with negative outcomes that have led to an overall distrust in businesses that attempt to over-maximize short-term value.[23] On this view, short-term maximization turns into short-termism when a corporation begins to focus on immediate profit at the expense of long-term security and value.[24] A more sustainable approach of focusing on maximizing long-term shareholder value could help move away from the negatives of short-term value maximization while allowing companies to focus on shareholders and profit in a socially meaningful-way.[25]

Norfolk Southern's actions point to the corporation trying to maximize shareholder value in the short term without regard for long-term value. In recent years, Norfolk Southern has focused on increasing the length of its trains

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[16] Colin Mayer et al., *50 years later, Milton Friedman's shareholder doctrine is dead*, FORTUNE (Sept. 13, 2020), https://fortune.com/2020/09/13/milton-friedman-anniversary-business-purpose/.

[17] Gunther Capelle-Blancard, et al., *Shareholders and the environment: a review of four decades of academic research*, 16 ENV'T RSCH. LETTERS NO. 123005 (2021).

[18] *See* David Yosifon, *The Public Choice Problem in Corporate Law: Corporate Social Responsibility after* Citizens United, 89 N.C. L. REV. 1197, 1205 (2011) (noting that "politicians [and corporations] can engage in explicit or implicit quid pro quo arrangements, in which politicians influence legislation, rule-making, or enforcement, in exchange for contributions [from corporations] to their campaigns for political office").

[19] Amy Merrick, *Is the Friedman Doctrine Still Relevant in the 21st Century?,* CHI BOOTH REV. (May 24, 2021), https://www.chicagobooth.edu/review/friedman-doctrine-still-relevant-21st-century.

[20] *Id.*

[21] Martin Lipton, *Beyond Friedman's Doctrine: The True Purpose of the Business Corporation*, PROMARKET (Sept. 28, 2020) https://www.promarket.org/2020/09/28/friedman-doctrine-true-purpose-corporation-new-paradigm/.

[22] Martin Lipton et al., *The Friedman Essay and the True Purpose of the Business Corporation*, HARV. L. SCH. F. ON CORP. GOVERNANCE, Sept. 17, 2020, https://corpgov.law.harvard.edu/2020/09/17/the-friedman-essay-and-the-true-purpose-of-the-business-corporation/.

[23] Denning, *supra* note 5. However, it is essential to note that the empirical evidence for short-termism is contested. *See* Mark Roe, *Stock Market Short-Termism: What the Empirical Evidence Tells Policymakers*, HARV. L. SCH. F. ON CORP. GOVERNANCE (July 18, 2022) https://corpgov.law.harvard.edu/2022/07/18/stock-market-short-termism-what-the-empirical-evidence-tells-policymakers/.

[24] *What is short-termism? Definition and meaning*, MARKET BUS. NEWS, https://marketbusinessnews.com/financial-glossary/short-termism-definition-meaning/.

[25] I am arguing that corporations and directors should make a break from solely focusing on maximizing short-term value and deregulating often associated with the Friedman Doctrine and adopt a more "modern" approach to maximizing shareholder value that focuses on long-term value and societal issues through regulation. *See* Doug Sundheim & Kate Starr, *Making Stakeholder Capitalism a Reality*, HAR. BUS. REV**. (Jan. 22, 2020),** https://hbr.org/2020/01/making-stakeholder-capitalism-a-reality ("The widely accepted notion that regulation decreases competitiveness and is a drag on growth is too simplistic and short-term.").

for efficiency and cost savings; it was the leader in this category as of 2021, with an average train length of over 7,000 feet.[26] Norfolk has cut down exponentially on its workforce, closed rail yard inspection centers, and has continued to repurchase and buy back stock in an attempt to maximize shareholder profits and value.[27] All of these actions might be legal, but that could be attributed to Norfolk's influence on deregulation and union busting. Before the events of East Palestine, Norfolk Southern helped convince government officials to repeal brake rules and water down regulation of trains and certain hazardous materials.[28] And last fall, the railroad industry, led partly by Norfolk Southern, crushed an effort by rail workers to win paid sick leave.[29] These actions, as well as several others, clearly point to an attempt by Norfolk Southern and the railroad industry as a whole to maximize short-term shareholder value at the expense of long-term value.

The impact of the derailment has shaken the corporation and investors. Norfolk's stock price has dropped 10%, and it is likely to face millions of dollars in lawsuits, fines, and cleanup costs. Under the "modern" approach to maximizing shareholder value, such an outcome could have been avoided had the company just invested a marginal portion of its profits into safety and its workforce instead of solely focusing on buybacks for shareholders. Following the modern view could stay in line with the Friedman Doctrine while benefitting society.

Stakeholder Capitalism

An opposing view is the idea of stakeholder capitalism. Under stakeholder capitalism, companies seek long-term value creation by considering the needs of all their stakeholders and society at large.[30] The idea of stakeholder capitalism originated in the 1932 management classic, *The Modern Corporation and Private Property*, by Adolf A. Berle and Gardiner C. Means. Stakeholder capitalism gained traction in the 1950s and 1960s and has since spread into the social democracies of Northern and Western Europe.[31] The theory argues that managers should make decisions so as to take account of the interests of all stakeholders in a firm, including not only financial claimants, but also employees, customers, communities, and governmental officials.[32] While maximizing shareholder value emphasizes short-term value and disflavors regulations, stakeholder capitalism looks to create long-term sustainable value and argues that regulation is necessary to ensure a balance for stakeholders.[33] The idea of stakeholder capitalism has been endorsed by almost 200 CEOs of the largest corporations and was the theme of the Davos Manifesto 2020.[34] Further highlighting its impact, the federal government has adopted rules promoting stakeholder capitalism particularly for tackling ESG issues.[35]

The theory of stakeholder capitalism still faces heavy criticism. Skeptics argue that stakeholder capitalism is nothing more than an elaborate public relations stunt espoused by big businesses.[36] Another common concern is stakeholder capitalism's nebulousness, as there is little agreement about who counts as stakeholders, what counts as doing right by them, and how success should be measured.[37]

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[26] David Sirota et al., *Rail Companies Blocked Safety Rules Before Ohio Derailment*, THE LEVER (Feb. 8, 2023), https://www.levernews.com/rail-companies-blocked-safety-rules-before-ohio-derailment/.
[27] Eavis & Walker, *supra* note 2.
[28] Sirota et al., *supra* note 26.
[29] *Id.*
[30] Schwab, *supra* note 6.
[31] *Id.*
[32] Michael Jensen, *Value Maximization, Stakeholder Theory, and the Corporate Objective Function*, 22 J. APPLIED CORP. FIN. 32, 32 (2010).
[33] Denning, *supra* note 5.
[34] *See* Schwab, *supra* note 6.
[35] Soehner & Goldberg, *supra* note 8.
[36] Critics see stakeholder capitalism as a public stance that doesn't commit a corporation to do anything in particular and allows corporations to privately shovel money to their shareholders and executives while maintaining a public front of social sensitivity. Denning, *supra* note 5.
[37] Steve Denning, *Why Stakeholder Capitalism Will Fail*, FORBES (Jan. 5, 2020), https://www.forbes.com/sites/stevedenning/2020/01/05/why-stakeholder-capitalism-will-fail/.

The nebulousness of stakeholder capitalism is one of the theory's biggest flaws, as it is difficult for corporations to put the theory into action. Further, it is extremely difficult to measure if a corporation is successful under stakeholder capitalism because it is based not on profits but on the corporation doing good for its stakeholders. Finally, allowing managers to make decisions taking account of the interests of all stakeholders could lead to fraud, overspending, and waste. Critics of stakeholder capitalism believe corporate directors and managers are self-serving and would enrich themselves if allowed to control the purpose and role of companies.[38] The idea of "doing good" could easily be a tool for managers and directors to enriching themselves at the expense of the corporation.

Those who promote stakeholder capitalism often point to its success in European countries. They argue that fraud and unjust enrichment have been reduced by laws and regulations.[39] Further, it is important to note that fraud still occurs at a high level under the Friedman Doctrine. Supporters highlight the universal metrics and disclosures recently created by the World Economic Forum and the Big Four accounting firms that companies can include in their annual reports to measure their social and environmental performance.[40] This allows corporations and directors to pursue ESG issues and stakeholder maximization while reducing potential blowback.[41] While corporations can use stakeholder capitalism as a public relations front, it could also be used as a tool to promote lasting impact on the environment, workforce, and community.

The nebulousness of stakeholder capitalism makes it difficult to know the standards that Norfolk Southern might have enacted under a stakeholder model.[42] However, it is likely that Norfolk would not have pushed against regulations that could have potentially avoided the catastrophe of East Palestine. Norfolk's disregard for workers' rights and safety also likely has a direct role in the event.[43] Had Norfolk implemented a stakeholder approach and focused on safety concerns or environmental protection, the East Palestine disaster could have been avoided. After the derailment, Norfolk pushed for the chemicals to be released through a controlled burn as a cheaper cleanup alternative.[44] Norfolk could have explored other options that were safer for the environment and first responders, but instead chose a controlled burn to get the railroad back online.[45] The company's approach directly conflicts with the stakeholder capitalism theory. Under the stakeholder theory, Norfolk likely would have chosen the more timely and costly option over the cheaper and quicker option, as it would have taken into account the local community and environment. While it is unknown how the events of East Palestine would differ had Norfolk implemented a stakeholder capitalism approach instead of maximizing shareholder value, the likelihood of a different outcome is high.

The Federal Government's Role

The federal government and its agencies play a critical role in regulating businesses by ensuring fair competition, protecting consumers, and promoting public welfare. The government commonly does this through regulatory agencies, which are tasked with enforcing regulatory laws and ensuring that businesses are in compliance with these laws. As discussed above, the Friedman Doctrine opposes federal regulations on corporations, while stakeholder capitalism favors regulation as a long-term necessity for protecting stakeholder interests. Both theories of maximizing shareholder value and stakeholder capitalism have dominated in different eras, based in part on governmental

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[38] Deborah D'Souza, *What is Stakeholder Capitalism*, INVESTOPEDIA, (Oct. 3, 2022), https://www.investopedia.com/stakeholder-capitalism-4774323.
[39] Richard Howitt, *Companies Should Embrace Europe's Roadmap to Stakeholder Capitalism*, BOARD AGENDA (Aug. 4, 2020), https://boardagenda.com/2020/08/04/companies-should-embrace-europes-roadmap-to-stakeholder-capitalism/.
[40] D'Souza, *supra* note 38.
[41] Soehner & Goldberg, *supra* note 8.
[42] Hindsight is 20/20. It is difficult to know exactly what Norfolk would have focused on under a stakeholder capitalism approach. However, the two particularly relevant issues often focused on under a stakeholder capitalism approach are safety and environmental protection.
[43] Sirota et al., *supra* note 26.
[44] *Id.*
[45] Andrea Salcedo et al., *Officials burned off toxic chemicals from Ohio train. Was it the right move?*, WASH. POST (Feb. 17, 2023), https://www.washingtonpost.com/climate-environment/2023/02/17/ohio-derailment-controlled-burning-toxic/

regulation and action.[46] When events like East Palestine occur, the government's role in protecting consumers and promoting public welfare becomes inherently apparent and important, and it is not uncommon for blame to be shifted to the government and its regulatory agencies.[37] It is important then to understand how the federal government enforces and upholds its regulatory laws, and how it impacts the two discussed theories.

The government and its agencies have passed laws and regulations for several years that regulate both theories and impact how corporations pursue profits. The Federal Trade Commission (FTC), the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), the Department of Labor (DOL), and the Securities and Exchange Commission (SEC) all directly influence through regulation how corporations and their directors function. Recently controversy has arisen around the idea of "ESG investing," which is the consideration of factors related to the environment, social goals, or corporate governance when investing in retirement plans or investment plans. This issue started, in part, because the DOL has provided conflicting guidance in the past 25 years on how to apply ERISA's fiduciary standards to ESGs.[48] During Democratic administrations, the DOL generally viewed ESG more favorably under ERISA's fiduciary duties and ERISA plan interests. Conversely, under Republican administrations, the DOL has been more resistant to ESG and more cautious that using ESG factors could violate ERISA's duties and therefor violate federal law. The DOL recently issued a rule under the Biden administration that makes it easier for fund managers to consider environmental, social, and corporate governance issues for investments and shareholder rights decisions.[49] In response the Congress passed a bill to overturn the DOL rule.[50] On March 20, 2023 President Biden vetoed the bill.[51] On March 23, Congress sustained the veto keeping the DOL rule in place.[52] The rule makes it easier for corporations to pursue a focus on ESG and stakeholder capitalism, instead of focusing solely on maximizing shareholder value.

Conclusion

The validity of the Friedman Doctrine and maximizing shareholder value often gets called into question after major environmental disasters like the derailment in East Palestine and when controversy arises surrounding federal agencies rules and regulations. Critics of the Doctrine argue that corporations should instead follow the theory of stakeholder capitalism, yet this theory also leaves several issues for corporations to contend with. While it does have its benefits, stakeholder capitalism is difficult to implement, enforce, and measure and could lead to potentially large amounts of waste and unjust enrichment. Corporations have begun to find a happy medium between the two by modernizing the theory of maximizing shareholder value to focus on long-term value over short-term value. This happy medium has come about, in part thanks, to friendlier government regulations and federal agencies concentration on ESG issues. Although it is not perfect, a more "modernized" theory allows corporations to easily measure success and implement policies that are beneficial for communities and social issues while still focusing on profits. Even though the fallout and impact of the East Palestine events on how corporations view short-term maximization of shareholder value are unknown, corporations are hopefully taking a lesson and modernizing their approach to focus on maximizing long-term value by dealing with environmental, safety, and social issues.

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[46] *See* Sundheim & Starr, *supra* note 25.

[47] *See* Aleks Phillips, *America Has Lost Faith in the EPA*, NEWSWEEK, Mar. 15, 2023, https://www.newsweek.com/america-lost-faith-epa-east-palestine-toxic-spill-poll-1787710.

[48] *Id.*

[49] 29 C.F.R. § 2550 (2022).

[50] H.J. Res. 30, 118th Cong. (2023).

[51] Veto Message, Joseph R. Biden Jr., President, Message of the President to the House of Representatives—President's Veto of H.J. Res. 30, Mar. 20, 2023, https://www.whitehouse.gov/briefing-room/presidential-actions/2023/03/20/message-to-the-house-of-representatives-presidents-veto-of-h-j-res-30/.

[52] See H.J. Res. 30—Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of labor relating to "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights": Actions Overview, CONGRESS.GOV (last visited Apr. 8, 2023).

A District Court Dilemma: Solving the Self-Representation Problem for Single-Member LLCs in Federal Court

Benjamin R. Syroka*

The Dilemma

Picture this. It's 3:30 PM on a Friday, and you're a newly sworn law clerk for a district judge. The clerk's office calls—you've been assigned a case with a pending motion for a temporary restraining order and preliminary injunction. You've been trained for times like these—no sweat!

You contact the parties to set a phone call with the judge. But there's one problem—Defendant, a single-member LLC that runs a small storage yard in rural Ohio, does not have counsel. Defendant has never used an attorney, isn't sure where to find one, and doesn't have the cash flow to pay one until the end of the month. Plaintiff's counsel is unmoved: If his client isn't allowed to retrieve his trailers from the storage yard *today*, there will be significant money damages (allegedly). Plaintiff's counsel also rightfully points out that the owner of Defendant LLC, who is not an attorney, cannot appear or make arguments on behalf of the company; if the company doesn't respond to the request for injunctive relief, Plaintiff's counsel says, his client wins automatically.

Your boss turns to you, "Is he correct?" "Well, yeah . . . " you respond. What now?

Background

In 1824, the Supreme Court held that "[a] corporation, it is true, can appear only by attorney, while a natural person may appear for himself."[1] Two hundred years later, it's time for some slight revision.

Throughout the nation's history, corporate entities could not be represented by non-lawyers in court proceedings.[2] This ancient rule[3] has now run into a modern phenomenon–the limited liability company (LLC). Federal courts treat LLCs the same as traditional corporate entities, meaning LLCs cannot represent themselves in federal court because they are legal entities distinct from their owners.[4]

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[1] Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738, 830 (1824).

[2] *See* Jones v. Niagara Frontier Transp. Auth., 722 F.2d 20, 22 (2d Cir. 1983) ("Since, of necessity, a natural person must represent the corporation in court, we have insisted that that person be an attorney licensed to practice law before our courts.") (citing Shapiro, Bernstein & Co. v. Continental Record Co., 386 F.2d 426, 427 (2d Cir. 1967) (per curiam)); Bennie v. Triangle Ranch Co., 216 P. 718, 719 (Colo. 1923) ("It is elementary that a corporation can only appear by attorney. A corporation is incapable of personal appearance, and the complaint must purport to be by attorney, whose authority to appear is presumed.").

[3] *See Osborn*, 22 U.S. (9 Wheat.) at 830 (noting the necessity for a distinction between the agent and the entity, the Court offered little reasoning other than it being a doctrine that "has existed from the first establishment of our Courts").

[4] *See* United States v. Hagerman, 545 F.3d 579, 581–82 (7th Cir. 2008).

Why does this matter? The *pro se* prohibition creates a significant challenge for small, single-member LLCs unable to afford legal representation.[5] Large corporations can exploit this vulnerability, using threats of litigation to pressure smaller contractors or competitors.

This article outlines the basic justification behind the self-representation prohibition in federal court, the problems faced by small LLCs, and the solutions adopted by some state courts. It then proposes a solution that will enable single-member LLCs with limited capital to represent themselves in federal court, provided they demonstrate their financial constraints. Finally, it explains why affording district judges the flexibility to allow self-representation of single-member LLCs in appropriate cases will promote the "just, speedy, and inexpensive resolution" of cases under Federal Civil Rule 1.[6]

LLCs: The New Kid on The Block

LLCs were created to provide a flexible and efficient business structure for entrepreneurs and small business owners, combining the limited liability benefits of a corporation with the tax flexibility and simplicity of a partnership.[7] The structure was first introduced in the United States by the state of Wyoming in 1977.[8] The LLC provides owners, or "members," with limited liability protection, similar to that of a corporation.[9] This means members' personal assets are generally protected from the debts and liabilities of the company, reducing the financial risk associated with running a business.[10] This protection is the primary reason entrepreneurs and small business owners choose the LLC structure over a traditional sole proprietorship or partnership.

Several states adopted the LLC structure to encourage entrepreneurship, reduce barriers to entry, and provide a more accessible legal structure for businesses. Usage has spread like wildfire—over the past three decades, LLC filings have exploded. In 2023, "more than two-thirds of all new companies formed in Delaware, often called the Home of the Corporation, will be [LLCs]."[11]

While LLCs share some similarities with corporations, such as liability protection, there are several key differences. Unlike corporations, which are managed by a board of directors and have shareholders, LLCs can be managed by their members or by appointed managers.[12] This simplifies day-to-day business operations. More importantly, "corporations [generally] have a more standardized and rigid operating structure and more reporting and recordkeeping requirements than LLCs," which gives LLC owners "greater flexibility in how they run their business."[13] Less-stringent regulatory requirements and the lack of corporate formalities also result in lower administrative costs and greater operational efficiency.[14]

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[5] The Hartford, *Is Your Small Business Prepared for a Lawsuit?*, SCORE (Jan. 26, 2023), https://www.score.org/resource/blog-post/your-small-business-prepared-lawsuit (noting that "the cost of litigation for small firms can range anywhere from $3,000 to $150,000" and that "a poll found 43 percent of small-business owners reported having been threatened with or involved in a civil lawsuit").
[6] Fed. R. Civ. P. 1.
[7] *See generally* Robert R. Keatinge et al., *The Emergence of the Limited Liability Company: A Study of the Emerging Entity*, 47 BUS. LAW. 375 (1992).
[8] *Id.* at 379.
[9] *History of the Limited Liability Company (LLC)*, https://www.delawareinc.com/llc/history-of-delaware-llc/ (last visited April 14, 2023).
[10] *Id.*
[11] *Id.*
[12] Rob Watts & Jane Haskins, *LLC vs. Corporation*, FORBES (Aug. 1, 2022, 4:09 PM), https://www.forbes.com/advisor/business/llc-versus-corporation/.
[13] *Id.*
[14] *Id.*

Another significant difference between the way we treat LLCs and corporations is taxation.[15] Corporations are "double taxed"—the company's profits are taxed at the corporate level and then again when distributed to shareholders as dividends.[16] In contrast, LLCs with multiple owners may elect to be treated as pass-through tax entities, meaning that their income, deductions, and credits flow through to the members, who report this information on their individual tax returns.[17] A single-member LLC "is treated as an entity disregarded as separate from its owner," meaning it is automatically taxed as an individual.[18] However, LLCs have the option to elect corporate taxation if more advantageous for their specific situation.[19]

Overall, LLCs have less formalities and more management flexibility—allowing owners to adapt more easily to their specific needs and business circumstances.

The Problem: The Prohibition of Self-Representation for LLCs in Federal Court

As outlined above, outside of federal court, we treat LLCs and traditional corporations differently in many ways: management structure, regulatory compliance, and taxation. But when LLCs are pulled into court, most distinctions are left at the courthouse steps.

Under 28 U.S.C. § 1654 , "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." "Corporations and partnerships, by their very nature, are unable to represent themselves and the consistent interpretation of [Section] 1654 is that the only proper representative of a corporation or partnership is a licensed attorney, not an unlicensed layman, regardless of how close his association with the partnership or corporation."[20] This principle is based on the entity's legal existence, which is separate from its individual members or owners, requiring a qualified advocate in court proceedings.[21] Put more simply, as distinct entities, LLCs cannot represent themselves in federal court—they must be represented by a licensed attorney.[22]

Federal courts have chosen to disregard the unique, flexible nature of the LLC, opting instead to throw it into the same bucket as traditional legal entities. In *Lattanzio v. COMTA*, the Second Circuit provided a simple rationale: "Because both a partnership and a corporation must appear through licensed counsel, and because [an LLC] is a hybrid of the partnership and corporate forms, [an LLC] also may appear in federal court only through a licensed attorney."[23]

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[15] Carter G. Bishop & Daniel S. Kleinberger, *An SMLLC Conundrum: Disregarded For Federal Tax Purposes But Not In Federal Court*, BUS. ENTITIES**,** Jan./Feb. 2010, at 4, 6–7.

[16] *Elke Asen, Double Taxation of Corporate Income in the United States and OECD*, TAX FOUND. (Jan 13, 2021), https://taxfoundation.org/double-taxation-of-corporate-income/.

[17] Bishop & Kleinberger, *supra* note 15, at 6–7.

[18] *Single Member Limited Liability Companies*, IRS, https://www.irs.gov/businesses/small-businesses-self-employed/single-member-limited-liability-companies (last visited April 17, 2023).

[19] *Id*.

[20] Turner v. Am. Bar Ass'n, 407 F. Supp. 451, 476 (N.D. Tex. 1975).

[21] Rowland v. Cal. Men's Colony, 506 U.S. 194, 201–03 (1993).

[22] *Turner*, 407 F. Supp. at 476.

[23] 481 F.3d 137, 140 (2d Cir. 2007) (citation omitted).

Some courts have given more nuanced explanations, such as the complexity of federal litigation and the necessity of professional legal representation to ensure effective use of court resources.[24] Others have justified the self-representation prohibition as a cost of doing business:

> There are many small corporations and corporation substitutes such as limited liability companies. But the right to conduct business in a form that confers privileges, such as the limited personal liability of the owners for tort or contract claims against the business, carries with it obligations one of which is to hire a lawyer if you want to sue or defend on behalf of the entity. Pro se litigation is a burden on the judiciary, and the burden is not to be borne when the litigant has chosen to do business in entity form. He must take the burdens with the benefits.[25]

Why is this a problem? Legal representation costs can be overwhelming for small businesses with limited capital.[26] Consequently, these entities may be unable to defend themselves against claims by larger companies, who can exploit the threat of litigation to force unfavorable settlements or drive smaller competitors out of the market.[27] This undermines the purpose of the LLC structure, which aims to provide small businesses with a flexible, cost-effective means of limiting personal liability.[28]

For instance, think of a contract dispute between a large corporation and one of its contractors over a breach of a Master Services Agreement. The corporation files for injunctive relief in federal court; the contractor, who is a small-business owner, must respond. What if the contractor can't immediately afford representation? The contractor has no opportunity to present a case, and the court is left with half of the story. Or imagine a multinational brand sending a cease-and-desist letter to a recently opened local diner for alleged trademark infringement. The owner of the diner knows they will be unable to afford counsel to appear on the business's behalf. Regardless of the merits of the suit, the small business owner may be forced to opt for a name change, rather than face an undefendable federal lawsuit.

Recognizing the difficulties faced by small businesses, some non-federal jurisdictions have modified their rules in an attempt to balance the interests of these entities with the need to maintain the integrity of the legal system. For example, the Ohio Supreme Court has held that "[i]n small claims cases, where no special legal skill is needed, and where proceedings are factual, non-adversarial, and expected to move quickly, attorneys are not necessary."[30] Therefore, business entities need not hire attorneys—an exception to the state's general rule.[31] That is because "by design, proceedings in small claims courts are informal and geared to allowing individuals to resolve uncomplicated disputes quickly and inexpensively. Pro se activity is assumed and encouraged."[32]

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[24] *See Jones*, 722 F.2d at 22–23.
[25] United States v. Hagerman, 545 F.3d 579, 581–82 (7th Cir. 2008) (citations omitted).
[276] C. Daniel Baker, *Many Small Businesses Don't Seek Legal Help Despite Risks*, BLACK ENTER. (Oct. 25, 2013), https://www.blackenterprise.com/small-businesses-need-legal-help/.
[27] *See, e.g.*, Tri-State Hosp. Supply Corp. v. Medi-Pac, LLC, 2007 WL 3146553, at *1 (S.D. Ohio Oct. 25, 2007) (in which the plaintiff filed for default judgment while, "the parties are 'involved in negotiations for settlement' and [defendant] [did] not have the funds available to hire counsel").
[28] Watts & Haskins, *supra* note 12.
[29] Clev. Bar Ass'n v. Pearlman, 832 N.E.2d 1193, 1198 (Ohio 2005).
[30] *Id.*
[31] *Id.* at 1196.
[32] *Rowland*, 506 U.S. at 215 (Thomas, J., dissenting).

Moreover, while an entity may not be a "person," Section 1654 states that all "*parties* may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein."[33] For all intents and purposes, the owner of a single-member LLC is a "party" in the same way as an individual sole proprietor, whom courts allow to appear *pro se*.[34] Federal courts already recognize this reality when it comes to analyzing jurisdiction: "[I]t has been clear for more than four years that the place of organization and principal place of business of [an LLC] are irrelevant, for the relevant citizenship as to [an LLC] is essentially equivalent to the relevant citizenship where a partnership or other unincorporated association is a litigant[.]"[35] Is the profession too provincial to acknowledge the same reality under Section 1654?

The Solution: Self-Representation for LLCs with Limited Capital and Demonstrated Financial Need

This article proposes a simple yet flexible solution: grant district judges the discretion to allow single-member LLCs with limited capital to represent themselves in federal court, provided the LLC submits an affidavit and supporting documentation (e.g., account statements) demonstrating sufficient financial constraints.

This proposed solution aligns with Federal Civil Rule 1—the timely and efficient resolution of proceedings.[36] By allowing self-representation for small LLCs that meet the financial criteria, we can foster a more effective and efficient legal system for small businesses.

To implement this proposal, federal courts could establish a threshold for capital funding, below which single member LLCs would be eligible for self-representation. This threshold should be set at a level that reflects the financial constraints faced by truly small businesses in that district while ensuring that larger, more sophisticated entities continue to be represented by counsel.[37]

But there's a better way: allow district judges to address the funding issue on a case-by-case basis. Or, as I like to call it: "IFP for the LLC."

Form AO 239, promulgated by the federal judiciary, is used by indigent parties requesting to avoid paying filing fees at the outset of a case.[38] Parties must sign the form's supporting affidavit, which reads:

> I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested. I declare under penalty of perjury that the information below is true and understand that a false statement may result in a dismissal of my claims.

The form then lists spaces for all streams of income:

> For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

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[33] 28 U.S.C. § 1654 (emphasis added).
[34] *Lattanzio*, 481 F.3d at 140 (citing Nat'l Indep. Theatre Exhibitors, Inc. v. Buena Vista Distrib. Co., 748 F.2d 602, 610 (11th Cir. 1984)).
[35] Trowbridge v. Dimitri's 50's Diner L.L.C., 208 F. Supp. 2d 908, 910 (N.D. Ill. 2002).
[36] Fed. R. Civ. P. 1.
[37] A. Victor & Co. v. Sleininger, 9 N.Y.S.2d 323, 326 (App. Div. 1939) ("The dangers [of allowing corporate representation] are more theoretical than substantial. Few corporations will do without the services of licensed attorneys in their litigations [if they can afford them].").
[38] Application to Proceed in District Court Without Prepaying Fees or Costs, Form AO 239 (Rev. 01/15).

With a few minor tweaks, this form could function in the same way for single-member LLCs. They would simply submit the affidavit, account statements, and a list of all business assets.[39] The district judge would then review the filings to determine if the LLC demonstrates an inability to afford legal counsel.

The proposed solution could significantly improve access to justice for single-member LLCs facing federal litigation. By enabling these financially constrained entities to actively defend themselves in court, the legal system can help prevent large corporations from using the threat of litigation to bully smaller competitors into unfavorable settlements or drive them out of the market.

Potential Challenges: The Cost of Doing Business?

Despite obvious benefits, the proposed solution is not without objections. "Two grounds for the rule [against pro se corporate appearances] can be identified: first, that nonlawyers burden the system with poorly conducted proceedings; and second, that the interests of an association of individuals cannot be represented by any single member."[40]

Ground two is irrelevant in this context, as an LLC would need to be owned by a single member to qualify. With respect to ground one, courts have discussed at length the principle against laypersons acting as lawyers:

> [T]he conduct of litigation by a nonlawyer creates unusual burdens not only for the party he represents but as well for his adversaries and the court. The lay litigant frequently brings pleadings that are awkwardly drafted, motions that are inarticulately presented, proceedings that are needlessly multiplicative. In addition to lacking the professional skills of a lawyer, the lay litigant lacks many of the attorney's ethical responsibilities[.][41]

Do *pro se* filers sometimes make the litigation process more tedious for district courts? Yes. But an equally arduous burden for the court is trying to come to an efficient and fair resolution where only one side is represented by counsel.[42] This is particularly true with respect to motions for injunctive relief. District judges are also hesitant to issue default judgments.[43] Allowing district judges to approve *pro se* representation for single-member LLCs, on a case-by-case basis, would alleviate these constraints.

Practically, there may be a concern for the quality of representation that single-member LLC owners can provide for themselves in complex cases given their lack of formal legal training. This could lead to difficulty for district judges, as inexperienced litigants may struggle to navigate the complex procedural rules and substantive legal issues that arise in federal court cases.[44] On the other hand, the proposed solution could afford judges flexibility to resolve simple cases in an inefficient manner—without needing to waffle over motions for default.

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[39] It is important to note that the business owner would be signing the affidavit in their individual capacity. *See Rowland*, 506 U.S. at 204 ("Because artificial entities cannot take oaths, they cannot make affidavits.").

[40] Fraass Survival Sys., Inc. v. Absentee Shawnee Econ. Dev. Auth., 817 F. Supp. 7, 10 (S.D.N.Y. 1993).

[41] *Jones*, 722 F.2d at 22.

[42] *See, e.g.*, Polston v. Millennium Outdoors, LLC, 2017 WL 878230 (E.D. Ky. 2017). One of the defendants, a small business, was unable to acquire counsel. The business owner "consented" to removal, on behalf of the business. A string of motions over multiple months followed, leading to plaintiff filing a default judgment based on defendant's failure to secure counsel. The court then realized the "larger issue." "Because a corporate entity 'cannot appear in federal court except through an attorney,' [the owner's] actions on [the business's] behalf [were] ineffective." Therefore, the consent to removal was invalid. *Id.* at *1–2.

[43] *See, e.g.*, First Franklin Fin. Corp. v. Rainbow Mortg. Corp., 2010 WL 4923326 (D.N.J. 2010) (finally entering default after waiting two years for defendant to retain counsel).

[44] Suzannah R. McCord, Comment, *Corporate Self-Representation: Is It Truly the Unauthorized Practice of Law?*, 67 ARK. L. REV. 371, 386 (2014) ("The main goal of prohibiting the unauthorized practice of law is protecting the public from incompetent, unethical, or irresponsible representation.").

Either way, the advantages of allowing LLCs to be formally heard, especially in injunctive-relief proceedings, outweigh the concerns.[45] Bottom line: what's better in a simple contract-dispute case, self-representation or no representation at all?

Conclusion

The use of LLCs has exploded nationwide, allowing for new avenues of small-business ownership and entrepreneurship. Federal courts have failed to keep up.

Courts need not introduce a one-size-fits-all approach, but rather, give district judges the opportunity to allow self-representation where appropriate. The proposed solution seeks to strike a balance between the need to maintain the integrity of the legal system and the desire to provide small business with equal footing in federal litigation. Allowing single-member LLCs with limited capital to represent themselves in federal court, provided they submit an affidavit and supporting documentation to demonstrate their financial constraints, has the potential to significantly improve access to justice for small businesses facing potential lawsuits. The benefits to small businesses are significant: they no longer have to choose between limiting personal liability and retaining the ability to defend themselves from lawsuits.

By giving district judges the flexibility to efficiently resolve disputes, we can better serve the needs of small businesses, promote the goals of Federal Civil Rule 1, and level the playing field for small businesses facing litigation in federal court.

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[45] Matthew Cormack, Note, *The Cost of Representation: An Argument for Permitting Pro Se Representation of Small Corporations in Bankruptcy*, 2011 COLUM. BUS. L. REV. 222, 256–57 ("[J]udges may dismiss a pro se corporate case if the representative is truly incapable of representing the corporation. Thus, the risks of allowing pro se corporate representation are manageable and the benefits, in terms of assets saved from attorney's fees, are concrete and large.").

Death by a Thousand Paper Cuts: The Copyright Claims Board and Lessons Learned from State Small Claims Courts

Meritt Salathe*

Copyright enforcement in the United States is challenging for high-volume, low-value creators like photographers, who earn a living from many smaller works rather than discrete large projects.[1] In 2020, Congress passed the Copyright Alternative in Small Claims Enforcement Act (CASE Act or the Act) to establish a more accessible copyright enforcement mechanism for creators of low-value works.[2] The Act provided the statutory framework for the U.S. Copyright Office to create the Copyright Claims Board (CCB), an "alternative forum" for parties to resolve copyright disputes worth less than $30,000. Three copyright claims officers, appointed by the Librarian of Congress, oversee CCB proceedings.[3]

The CCB became fully operational in June 2022 and decided its first claim on the merits on February 28, 2023.[4] It is still too early to tell whether the CCB will be an effective copyright enforcement mechanism. However, much can be learned from state small claims courts, which were established over a century ago for a similar purpose.[5]

I. Copyright Enforcement in the United States

A. "Notice and Takedown" and Federal Litigation

Prior to June 2022, high-volume, low-value creators had two statutory enforcement mechanisms to choose from: they could ask the Online Service Provider (OSP) hosting an infringing work to take it down (a process called "notice and takedown"), or they could sue the infringer in federal court. The notice and takedown process allows OSPs to avoid secondary liability for hosting infringing content if they: (1) do not benefit from the infringing activity, and (2) either do not have actual or circumstantial knowledge of the infringing activity, or "act[] expeditiously to remove, or disable access to" the allegedly infringing material once they have notice.[6]

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* Editor in Chief, Case Western Reserve Law Review. This is an abridged version of the author's Note, which will be published in Volume 73, Issue 4 and appears here with permission from the Law Review.

[1] Adelaide Dunn, *The New Copyright Small Claims Bill: A Ray of Hope for Independent Photographers*, Ctr. for Art L. (Oct. 17, 2016), https://itsartlaw.org/2016/10/17/the-new-copyright-small-claims-bill-a-ray-of-hope-for-independent-photographers/ [https://perma.cc/N8CL-S5QU] (citing Professional Photographers of America, *Understanding the Need for a Copyright Small Claims System*, YouTube (June 8, 2016) https://www.youtube.com/watch?v=1ZM-YCyAx3A&t=34s [https://perma.cc/TMX5-97D6]).

[2] Pub. L. No. 116–260, § 212, 134 Stat. 1182, 2176–2200 (2020) (codified at 17 U.S.C.A. §§ 1501–1511 (West Supp. 2021)); Andrew Albanese, *CASE Act Set to Pass as Part of Omnibus Bill*, Publishers Wkly. (Dec. 22, 2020), https://www.publishersweekly.com/pw/by-topic/digital/copyright/article/85202-case-act-set-to-pass-as-part-of-omnibus-bill.html [https://perma.cc/4J2C-RTAM].

[3] *See* 17 U.S.C. §§ 1502(a), 1503(a); *About the Copyright Claims Board*, Copyright Claims Bd., https://ccb.gov/about/ [https://perma.cc/3VK4-QALN] (last visited Mar. 15, 2023).

[4] *See Copyright Office Announces Claims Board Is Open for Filing*, U.S. Copyright Off. (June 16, 2022), https://www.copyright.gov/newsnet/2022/969.html [https://perma.cc/2986-EGJA]; Oppenheimer v. Prutton, No. 22-CCB-0045 (CCB, Feb. 28, 2023); *see also* Eileen McDermott, *Copyright Claims Board Finds for Photographer on Infringement But Curbs Damages in First Final Decision*, IPWatchdog (Mar. 5, 2023, 12:15 P.M.), https://ipwatchdog.com/2023/03/05/copyright-claims-board-finds-photographer-infringement-curbs-damages-first-final-decision/id=157397 [https://perma.cc/F37K-Y7MZ].

[5] Steven Weller, John C. Ruhnka & John A. Martin, *American Small Claims Courts*, *in* Small Claims Courts: A Comparative Study 5, 5 (Christopher J. Whelan ed., 1990).

While there is some evidence that the fear of secondary liability motivates OSPs to act quickly to remove infringing content, notice and takedown is ultimately ineffective and insufficient.[7] It is ineffective because even if OSPs remove infringing content, infringers can repost the content on another website. And it is insufficient because the notice and takedown process does not provide any monetary compensation to creators whose works are infringed. Federal litigation presents its own set of problems. The median cost to litigate copyright claims worth less than $1 million through appeal is $350,000, making litigation an unrealistic enforcement mechanism for low-value, high-volume creators like photographers, who report that most claims are worth less than $3,000. Individual instances of infringement may be low value, but viewed collectively, low-value infringement is "death by a thousand paper cuts" for most creators. Rights that are unenforceable eliminate the purpose of copyright in the first place: to encourage the production of creative works by giving creators property rights that they can monetize.

B. The Copyright Claims Board

The CCB streamlines the copyright claims process by providing efficient mechanisms for resolution. To initiate a proceeding, a claimant must file a claim with the CCB that includes "a statement of material facts in support of the claim," a certification of accuracy and truthfulness, and a filing fee.[11] A copyright claims attorney will then review the claim to determine whether it meets the formal requirements for CCB proceedings. If the claim is compliant, the copyright claims attorney will notify the claimant, at which point the claimant has ninety days to serve the alleged infringer with a copy of the claim and "notice of the proceeding." The notice must explain that the CCB process is not mandatory and that the respondent may opt out.[12] To opt out, the respondent must send written notice to the CCB within sixty days of service. If that happens, the claimant must then bring the claim in federal court if she wishes to recover. If respondents fail to opt out within sixty days, the dispute goes to the CCB.[13]

II. State Small Claims Courts

Like the CCB, small claims courts in the United States were developed to provide individuals with an efficient mechanism to pursue claims.[14] Most small claims involve eviction or debt collection. Defendants in debt collection cases are disadvantaged by the pervasive and unethical tactics that debt collection companies use.[15]

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[7] *See Google Search Removals Due to Copyright Infringement FAQs*, GOOGLE, https://support.google.com/transparencyreport/answer/7347743?hl=en#zippy=%2Chow-quickly-do-you-remove-search-results-after-a-request-is-made [https://perma.cc/GB5W-VVSC] (last visited Mar. 26, 2023) (stating that the average time it takes Google to remove infringing content is six hours).

[8] *See* Alex Wild, *Bugging out: How Rampant Online Piracy Squashed One Insect Photographer*, ARS TECHNICA (Sept. 24, 2014, 9:00 P.M.), https://arstechnica.com/tech-policy/2014/09/one-mans-endless-hopeless-struggle-to-protect-his-copyrighted-images/ [https://perma.cc/YY74-4EHC]; Marti Cuevas & Carlos Martin Carle, *Creators in Support of the CASE Act – It's a No Brainer*, COPYRIGHT ALL. (July 1, 2020), https://copyrightalliance.org/support-of-the-case-act-its-a-no-brainer/ [https://perma.cc/NHH8-Y9AV].

[9] AM. INTELL. PROP. L. ASS'N, REPORT OF THE ECONOMIC SURVEY 64 (2021); Dunn, *supra* note 1.

[10] Wild, *supra* note 8 ("Too little copyright protection carries a pervasive chilling effect . . . . We simply do not see the creative works that are not shared.").

[11] 17 U.S.C. § 1506(e).

[12] *Id.* § 1506(f)–(g).

[13] *Id.* §§ 1506(i), 1507(f), 1506(g)(1).

[14] JOHN C. RUHNKA, STEVEN WELLER & JOHN A. MARTIN, SMALL CLAIMS COURTS: A NATIONAL EXAMINATION 1 (1978).

[15] Jessica K. Steinberg, *A Theory of Civil Problem-Solving Courts*, 93 N.Y.U. L. REV. 1579, 1584, 1591 (2018).

In the past, creditors collected debts themselves or used a third party to collect on their behalf. In recent years, however, creditors have turned to a third option: selling the debt to a debt buyer.[16] Debts are bundled and sold multiple times, and important information about the debtors' identities gets lost along the way. Debt buyers sometimes "robo-sign" affidavits stating that they personally verified a debtor's records, when in fact they had only a printout of the purported debtor's name and the amount of the debt. This leads to default judgments for claims that should have been barred by the statute of limitations or for debts that have already been resolved through bankruptcy proceedings.[17]

Additionally, some debt buyers engage in a tactic called "sewer service"— a practice where debt buyers assert to the court that they properly served defendants when in fact they intentionally failed to serve them. Defendants who were not served do not appear in court because they are unaware of the lawsuit against them, which leads the court to enter a default judgment in the debt buyer's favor.[18]

The CCB may enter a default judgment against a party who fails to opt out or fails to appear, and some argue that this could lead to claimants exploiting the CCB the same way that debt buyers exploit state small claims courts.[19] Claimants could potentially obtain $30,000 default judgments against individuals who merely circulated memes—judgments that are "small" as the CASE Act defines them, but are anything but "small" to individuals.[20]

However, unlike small claims courts, the Act has built-in protections that may prevent this exploitation. First, the Copyright Office may limit the number of cases that the same party can file each year. Second, the CCB has discretion to impose monetary sanctions on parties for claims filed to harass the respondent or claims "without a reasonable basis in law or fact." Parties who pursue more than one such improper claim within a twelve-month period will be banned from using the CCB process for one year, and if a party "demonstrate[s] a pattern or practice of bad faith conduct" the CCB has discretion to award more than the $5,000 statutory limit for attorneys' fees and costs.[21]

Another lesson from state small claims courts is that defendants who lack access to legal information, either because they do not have the means to hire an attorney or because courts do not provide them with adequate resources to prepare them for trial, often lose their small claims cases. To win, a defendant needs to either prove that the plaintiff's claim is invalid or present a valid defense to the plaintiff's claim. A defendant who is not aware of defenses or the steps she needs to take to disprove a plaintiff's claim typically loses, especially if the judge does not intervene and raise a defense on the defendant's behalf.[22]

This issue is especially prevalent in eviction cases, where many tenants are not aware that their leases include the implied warranty of habitability and that they can use substandard living conditions as a defense or to mitigate the amount of rent they owe to their landlords.[23] Similarly, many defendants in debt collection cases are not aware

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[16] FED. TRADE COMM'N, THE STRUCTURE AND PRACTICES OF THE DEBT BUYING INDUSTRY 11 (2013), https://www.ftc.gov/sites/default/files documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf [https://perma.cc/2C4P-S4QL].
[17] Steinberg, *supra* note 15, at 1582, 1601.
[18] *Id.* at 1584.
[19] 17 U.S.C. § 1506(u); Mitch Stoltz & Corynne McSherry, *Congress Shouldn't Turn the Copyright Office into a Copyright Court*, ELEC. FRONTIER FOUND. (Nov. 29, 2017), https://www.eff.org/deeplinks/2017/11/creating-copyright-court-copyright-office-wrong-move [https://perma.cc/52BF-NFLV].
[20] PATREON, COMMENT OF PATREON 1–2 (2021), https://www.regulations.gov/comment/COLC-2021-0001-0037 [https://perma.cc/K59F-4BUN].
[21] 17 U.S.C. §§ 1504(g), 1506(y)(2).
[22] RUHNKA ET AL., *supra* note 14, at 70, 192–93.
[23] Steinberg, *supra* note 15, at 1592–93.

that they can raise fraud as a defense. Small claims court judges seldom call debt buyers' affidavits and service tactics into question, "even in informal courts that may permit such intervention." Indeed, a study found that debtors lost 94 percent of consumer debt collection cases, "despite widespread evidence that many collections suits were premised on procedural and substantive law violations."[24]

Repeat plaintiffs' familiarity with the small claims process also puts defendants at a disadvantage. For example, landlords gain knowledge about the small claims process with each eviction.[25] It follows that someone familiar with the small claims court system would have a competitive advantage over someone using it for the first time. High-volume, low-value creators are likely to become repeat claimants if the CCB proves to be an efficient copyright enforcement mechanism, and will thus become more familiar with the process than a respondent who improperly shared one photograph online.

Admittedly, the small claims court analogy is not a perfect fit. The nature of claims brought in state small claims courts—debt collection and eviction—indicates that the defendants are disadvantaged economically. In contrast, the claims brought in the CCB involve the respondent using another's intellectual property, which is not necessarily indicative of financial hardship. But if the Copyright Office cares about equity, it would be wise to hedge against imbalances before they occur.

III. Practical Solutions

In order to make sure that the CCB is not only efficient, but equitable to all parties involved, the Copyright Office should require the CCB to automatically apply the fair use defense and increase the educational resources available to respondents.

A. Automatic Application of the Fair Use Defense

The doctrine of fair use evolved as courts began to recognize that "[s]ome copying was necessary to promote the very creativity that copyright law was designed to promote."[26] The defense is codified in section 107 of the U.S. Copyright Act, which contains a nonexclusive list of purposes that potentially qualify for the defense: criticism, comment, news reporting, teaching, scholarship, or research. In order to determine whether the fair use defense applies, courts balance the following factors: (1) "the purpose and character of the use"; (2) "the nature of the copyrighted work"; (3) "the amount and substantiality" of the work "used in relation to the copyrighted work as a whole"; and (4) "the effect of the use on the potential market for or value" of the original.[27] If a use is fair, then the defendant has not infringed the plaintiff's work. In other words, the plaintiff has failed to meet the burden of proof for her infringement case.[28]

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[24] *Id.* at 1584, 1592–93, 1595.

[25] *See* MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY 100 (2016) ("Sherrena . . . remembered her first eviction . . . . Everything went her way. Soon after, she filed another eviction, then another. When filling out the court papers, Sherrena learned to put 'et al.' after a tenant's name so that the eviction judgment covered everyone in the house . . . . She learned that the correct answer on the documents asking her to estimate damages was 'not over $5,000,' the maximum amount allowed; learned that commissioners frowned on late fees in excess of $55; learned that dragging slow-paying tenants to court was usually worth the $89.50 processing fee because it spurred many to find a way to catch up.").

[26] MICHAEL C. DONALDSON & LISA A. CALLIF, CLEARANCE & COPYRIGHT 22 (4th ed. 2014).

[27] 17 U.S.C. § 107.

[28] Brad A. Greenberg, *Copyright Trolls and Presumptively Fair Uses*, 85 U. COLO. L. REV. 53, 56 (2014); Lydia Pallas Loren, *Fair Use: An Affirmative Defense?*, 90 WASH. L. REV. 685, 698 (2015).

The idea of applying the fair use defense prior to a CCB proceeding is in line with some courts' treatment of the fair use defense. The Ninth Circuit, for instance, requires copyright holders to evaluate whether the infringing use is subject to a fair use exception before sending a takedown notification to the OSP.[29] And the CASE Act appears to give copyright claims officers the latitude to apply the defense: the CCB may "render determinations with respect to . . . defenses," which include "legal or equitable defense[s] under this title or otherwise available under law, in response to a claim or counterclaim asserted under this subsection."[30] Fair use qualifies as a defense "under this title," as fair use and the Act are both codified in Title 17. Additionally, the Act's wording is ambiguous— "in response to a claim" does not indicate that a respondent must first raise a defense before the CCB can apply it.

Not only does it appear that the Act authorizes the application of the fair use defense—it may even require it. The CCB must dismiss a claim if it concludes that the claim is "unsuitable for determination." Unsuitability includes a "lack of . . . evidence."[31] A finding of fair use would indicate that the claimant has failed to provide enough evidence to support an infringement claim,[32] which would fit the CASE Act's definition of "unsuitability." Thus, the CASE Act seems to give copyright claims officers the discretion to apply defenses like fair use.

B. Respondent Education

Another option that may help remedy the asymmetry between claimants and respondents would be providing more educational materials for respondents. Studies show that defendants in state small claims courts are unprepared compared to plaintiffs because most resources are targeted at plaintiffs.[33] There is already evidence that the CCB is failing respondents the same way state small claims courts fail defendants. The CCB website provides information for claimants and defendants, such as a handbook and webpages that walk the reader through the CCB process step by step.[34] But the vast majority of these resources are tailored to claimants. For instance, the only video on the CCB website's home page addresses claimants and only briefly references fair use in the context of discussing a creator's exclusive rights.[35] And the information that is tailored to respondents is sparse and complicated. The guidance for responding to infringement claims contains fewer pages than the guidance for infringement claimants (fifteen pages versus twenty pages),[36] and the section on fair use sets out the four-factor test, links readers to the U.S. Copyright Office's Fair Use Index (a database containing wordy summaries of complicated fair use cases), and provides only four short examples that are intended to help respondents determine whether the fair use defense applies.[37] To counteract this imbalance, the CCB should update its education program to include more materials that are tailored to respondents and written in straightforward, easy-to-understand language.

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[29] Lenz v Universal Music Corp., 815 F.3d 1145, 1157 (9th Cir. 2016).
[30] 17 U.S.C. § 1504(c).
[31] *Id.* § 1506(f)(3).
[32] There is debate about whether fair use is a defense or affirmative defense. *See generally* Loren, *supra* note 28. The logic above assumes that fair use is a defense.
[33] RUHNKA ET AL., *supra* note 14, at 78; *see generally* U.S. DEP'T OF JUST., CONSUMERS TELL IT TO THE JUDGE: SMALL CLAIMS COURTS AND CONSUMER COMPLAINTS (1980), https://www.google.com/books/edition/Consumers_Tell_it_to_the_Judge/eg3oTjpHiUQC?hl=en&gbpv=0 [https://perma.cc/JJ68-AL6S] (providing consumer plaintiffs with fifteen pages of information about how to navigate small claims courts and providing defendants with a scant four paragraphs of relevant information).
[34] *See* SMALLER CLAIMS, COPYRIGHT CLAIMS BOARD HANDBOOK 1, 3 (2022), https://www.ccb.gov/handbook/Smaller-Claims.pdf [https://perma.cc/S6QF-2F9Q]; *see, e.g., CCB Proceeding Phases*, COPYRIGHT CLAIMS BD., https://ccb.gov/proceedings/ [https://perma.cc/ED22-CR5J] (last visited Mar. 15, 2023).

But the vast majority of these resources are tailored to claimants. For instance, the only video on the CCB website's home page addresses claimants and only briefly references fair use in the context of discussing a creator's exclusive rights.[35] And the information that is tailored to respondents is sparse and complicated. The guidance for responding to infringement claims contains fewer pages than the guidance for infringement claimants (fifteen pages versus twenty pages),[36] and the section on fair use sets out the four-factor test, links readers to the U.S. Copyright Office's Fair Use Index (a database containing wordy summaries of complicated fair use cases), and provides only four short examples that are intended to help respondents determine whether the fair use defense applies.[37] To counteract this imbalance, the CCB should update its education program to include more materials that are tailored to respondents and written in straightforward, easy-to-understand language.

* * *

It is clear that high-volume, low-value creators need a forum like the CCB in which they can efficiently resolve infringement claims. But it is equally clear that the CCB will not be an equitable forum for respondents if the Copyright Office does not take action to correct the imbalance that favors claimants.

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[35] *Learn About Copyright: Exclusive Rights*, COPYRIGHT CLAIMS BD., https://ccb.gov [https://perma.cc/35HH-PYSR](last visited Mar. 15, 2023).

[36] *Compare* RESPONDING TO AN INFRINGEMENT CLAIM, COPYRIGHT CLAIMS BOARD HANDBOOK (2022), https://ccb.gov/handbook/Response-Infringement.pdf [https://perma.cc/26AW-25DG], *with* STARTING AN INFRINGEMENT CLAIM, COPYRIGHT CLAIMS BOARD HANDBOOK (2022), https://ccb.gov/handbook/Infringement-Claim.pdf [https://perma.cc/RMX5-D43G].

[37] RESPONDING TO AN INFRINGEMENT CLAIM, *supra* note 36, at 11–13; *see also U.S. Copyright Office Fair Use Index*, COPYRIGHT.GOV, https://www.copyright.gov/fair-use/ [https://perma.cc/5PQY-PTGE] (last updated Feb. 2023).

RECEPTION FOR FEDERAL JUDGES

Federal Bar Association
Northern District of Ohio Chapter

TUESDAY
MAY 2, 2023
5:00 - 7:00 PM

Music Box Supper Club
148 Main Ave.
Cleveland, OH 44113

Please register
by APRIL 28 via
https://fba-ndohio.wildapricot.org/event-5241884

Law Students: Free
All Others: $10

Hors d'oeuvres provided and cash bar available.

Join Chief Judge Patricia A. Gaughan and Chief Bankruptcy Judge Mary Ann Whipple in recognizing the following Judges appointed to the Northern District of Ohio, Eastern Division bench during the COVID-19 pandemic:

Judge J. Philip Calabrese

Judge Bridget Meehan Brennan

Judge David A. Ruiz

Judge Charles Esque Fleming

Bankruptcy Judge Tiiara N.A. Patton

Magistrate Judge Carmen E. Henderson

Magistrate Judge Amanda M. Knapp

Magistrate Judge Jennifer Dowdell Armstrong

Magistrate Judge James E. Grimes Jr.

Federal Bar Association
Northern District of Ohio Chapter

Introduction to Federal Practice Seminar

Wednesday, May 17, 2023
Time: 9:00 a.m. - 12:25 p.m.
Carl B. Stokes U.S. Court House - Courtroom 19B
Registration starts at 8:30 a.m.
This seminar satisfies Local Rule 83.5 Admission of Attorneys to Practice in the Northern District of Ohio.

Join us for this informative seminar covering federal practice in the Northern District of Ohio. Topics discussed include: the role of the magistrate judge; court programs, accessing court information and electronic filing; local rules and practice; and electronic courtrooms.

Participants who have completed the course and otherwise met the requirements of Local Rule 83.5 will be sworn in to practice in the Northern District of Ohio immediately following the seminar. A tour of the courthouse will also follow the program.
Total of 2.25 hours of credit.

Please click **here** for the agenda.

New Lawyer Training Seminar

Wednesday, May 17, 2023
Time: 1:00 p.m. - 5:00 p.m.
Carl B. Stokes U.S. Court House - Courtroom 19B
Registration starts at 12:45 p.m.

Course Description:
This seminar will provide new attorneys with training on law office management, professional conduct and relationships, and client fund management. It fulfills the three hours of NLT classroom instruction on professionalism, law office management, and client fund management required by the Ohio Supreme Court of all newly admitted Ohio attorneys.
Total of 3.00 credit hours.

Both Introduction to Federal Practice and the New Lawyer Training seminars are pending approval by the Supreme Court of Ohio.

Registration Fees are as follows:

Introduction to Federal Practice Seminar (only)
(Registration includes continental breakfast with seminar.)
$100 FBA Member
$115 Non-Member

New Lawyer Training Seminar (only)
$100 FBA Member
$115 Non-Member

* ***New Lawyer Training & Introduction to Federal Practice Seminars***
(Registration includes continental breakfast with seminar.)
$165 FBA Member
$190 Non-Member

Online registration via credit card only.
Registration deadline is May 12, 2023
Please review cancellation policy on our website..
WWW.FBA-NDOHIO.ORG

SAVE THE DATE

Please Join the FBA Northern District of Ohio Chapter for a

Brown Bag Luncheon with

U.S. District Judge Charles Esque Fleming, United States District Court for the

Northern District of Ohio

Thursday, May 18, at Noon

Carl B. Stokes U.S. Courthouse

801 West Superior Avenue

Cleveland, Ohio 44113

Courtroom 17-A
FBA members only event.

More information and registration to follow.

Save the Date

2023 Summer Associate Reception

will be held on Thursday, July 13, 2023
More information to follow.

Save the Date

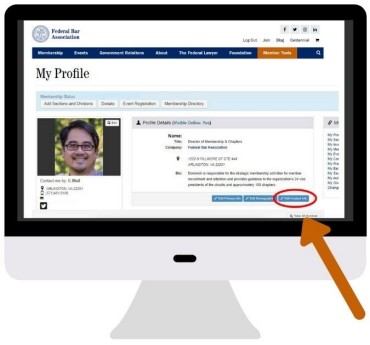
2023 State of the Court Luncheon & Installation of FBA Board Officers

will be held on Monday, October 2, 2022.

More information to follow.

Membership Information

Here's How to Renew your membership:
1) Log in to www.fedbar.org with your email and password.
2) Confirm your contact information in "My Profile."
3) Click **PAY NOW** next to your national membership invoice (located mid-page in My Profile). During checkout, please consider a donation to the FBA Foundation.



Log in at fedbar.org to update your profile

Annual Meeting and Convention
Memphis, TN

Thursday, September 21– Saturday, September 23, 2023
The Peabody Memphis
149 Union Avenue, Memphis, TN 38103

More information to be posted Spring 2023.

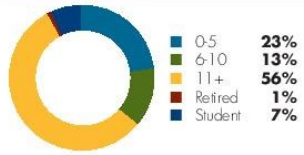
Federal Bar Association

Benefits of Membership

Joining the FBA entitles you to membership within the national organization as well as within your local FBA chapter. Members receive a host of special benefits designed to uphold the mission of the FBA and support each member's career within the federal legal system. Association activities and member benefits are organized into five primary categories.

You're in Good Company

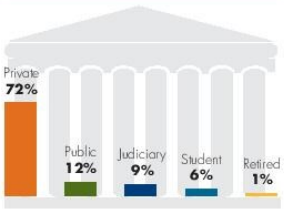
Years in Practice



Note: Chart only includes practicing attorney members of the Association.

Gender

Types of Practice



Advocacy

The organization's headquarters are located outside of Washington, D.C., in Arlington, Va., giving it the proximity necessary to remain engaged on behalf of its members.

- government relations efforts as defined by the FBA Issues Agenda
- annual Capitol Hill Day
- monthly updates on recent government relations developments

Networking and Leadership

The FBA is large enough to have an impact on the federal legal profession, but small enough to provide opportunities for networking and leadership. The FBA is governed by a 15-member, elected, Board of Directors and numerous volunteer members.

- more than 95 chapters across all federal circuits
- 22 practice area sections
- five career divisions
- volunteer leadership opportunities within each chapter, section, and division

Education

The FBA offers more than 700 credit hours of continuing legal education (CLE) at both the national and local level throughout the year.

- national CLE conferences
- bimonthly CLE webinars
- local chapter-sponsored CLE events

Publications and Communication

As part of your membership, you will receive and have access to:

- FBA website (www.fedbar.org)
- The Federal Lawyer magazine (10x per year)
- bimonthly eNewsletter
- section, division, and chapter newsletters (printed)
- Judicial Profile Index (archived)

Legal Career Center

The Legal Career Center is an online resource for both employers looking to hire and job seekers looking for a position within the federal legal community. Employers have the option of posting jobs available to the FBA Legal Career Center only, or to the Legal Job Exchange Network that reaches thousands of potential candidates through the network of partner job boards. Job seekers have free access and can use the Legal Career Center to post resumes, search for jobs, and prepare for interviews, as they launch their careers.

Member-Only Advantages

- Member Plus affinity program
- online membership directory
- optional public directory listing
- online specialty items catalog
- discounted rates for CLE, networking events, publications, and other services

Become a Sustaining Member

Support

Sixty dollars of every sustaining membership is used to support educational programs and publications of the FBA.

Save

Sustaining members save five percent on national event registrations and publications orders, and are recognized annually in *The Federal Lawyer* and at FBA events.

Sustaining Members also receive one free CLE webinar per year—a $99 value!

Make your mark within the federal legal community.
Sign up for membership today at www.fedbar.org/join.

Contact the FBA at (571) 481-9100 or membership@fedbar.org for more information.

Federal Bar Association

FBA-NDOH Calendar of Events:

April 28, 2023 *Spring Virtual Book club Meeting*

May 2, 2023 *Reception for New Federal Judges EASTERN Division*

May 17, 2023 *Introduction to Federal Practice & New Lawyer Training seminars*

May 17, 2023 *FBA-NDOH Board Meeting*

June 2, 2023 *My Day in Court –Civics event*

June 21, 2023 *FBA-NDOH Board Meeting*

July 13, 2023 *Summer Associate Reception*

July 19, 2023 *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
Northern District of Ohio Chapter

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.

SOLACE
Support of Lawyers/Legal Personnel – All Concern Encouraged

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

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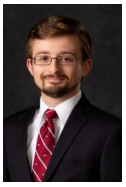

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INTER ALIA is the official publication of the Northern District of Ohio of the Federal Bar Association.

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

Next publication is scheduled for Summer 2023

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