



Fall 2018

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Lawyer –Civil Rights
2019

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PRESIDENT'S PODIUM

Bar Associations: Why Bother?

In this day and age, are bar associations still relevant? Do we need them anymore? What can a bar association offer to me? I am incredibly busy: Is it worth my time and money?

I have heard—and asked—these same questions. I have also heard the argument that bar associations have a low “ROI” for law firm lawyers because membership does not translate well into generating business. In fact, I have heard many, many reasons why not to get involved with your local bar associations.

May I offer two reasons why you should? (1) Your well-being; and (2) The commitment you made when you were sworn in.

Like Moore’s law, the demands of the job seem to have increased exponentially; we are on call 24/7 and expected to respond within moments. We have little control over deadlines and demands from Courts and clients. We are pressured to bill, indict, generate business, and do it all faster, better, and error-free. We are in a profession that challenges to maintain stability in a state of constant conflict and chaos.

As a profession, we are in a well-being crisis.

Now, I am not suggesting that being a part of a bar association can neutralize the negatives of our profession. That is far too simplistic.

So how can a bar association help your well-being? Experts tell us that one of the key elements of a joyful life is being part of a community. A real community: where people with common interests actually meet one another face-to-face on a regular basis. A community where the members of your community are there for you when you need help. A community that is genuine; authentic; organic.

Want proof? See:

Dalai Lama, Archbishop Desmond Tutu, Douglas Carlton Abrams, The Book of Joy: Lasting Happiness in a Changing World, 2016;

Putnam, Robert, Bowling Alone: The Collapse and Revival of American Community, 2001;

Umberson, Debra and Montez, Jennifer Karas, “Social Relationships and Health: A Flashpoint for Health Policy”, J HEALTH SOC. BEHAV., 2010;

The Happiness Research Institute: www.happinessresearchinstitute.com

When we became lawyers, each of us affirmed “A Lawyer’s Creed,” which declares:

To the public and our system of justice, I offer service. I shall devote some of my time and skills to community, government and other activities that promote the common good. I shall strive to improve the law and to make the law and our legal system available to all.

The Northern District of Ohio Chapter of the Federal Bar Association is an active, hands-on association of lawyers and judges that work together on projects that matter. We are glad that you are a part of this community. If you want to become more involved, send me an email at rebecca.bennett@ogletree.com and let’s talk.

Continued on next page...



Rebecca J. Bennett
FBA-NDOH President
Ogletree Deakins Nash
Smoak & Stewart PC
www.ogletreedeakins.com

Our projects and committees:

Bench-Bar Wellness Program: We are developing a program for next year that will allow our members to get together and participate in a lawyer health and well-being project.

SOLACE: “Support of Lawyers/Legal Personnel – All Concern Encouraged.” This program, led locally by Rob Chudakoff, provides a way for the federal 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.

CLE: This committee develops, plans, and hosts robust continuing legal education programs that are live, local, and relevant for civil and criminal federal practitioners. Topics planned for this year include: Brandenburg at 50; the Kavanaugh Selection Process; Whose Constitution is it Anyway? Lori Riga and Jeremy Tor lead the committee.

Membership: Led by Alex Dattilo, the committee develops programs to attract new members and engage current members.

Program Committee: Our program committee, led by Bruce Wilson and Deneen LaMonica, puts on the annual state of the court luncheon, the members-only summer social, brown bag luncheons with the bench and federal agencies, judicial investitures, the annual summer associate reception, and networking programs in Toledo, Youngstown, Akron, and Canton.

Newsletter Committee: Steve Jett captains the newsletter committee that publishes a regular newsletter that reaches more than 1000 lawyers that practice in the Northern District of Ohio. We share news about our members and the courts, and we analyze recent legal developments. Our newsletter is a platform for our members to publish their work on topics of interest for the federal practitioner.

Trial Skills Academy Project: Phil Calabrese, John McCaffrey, and Georgia Hatzis, with the assistance of the bench, are developing a skill-based trial academy program that will allow lawyers to get on-their-feet courtroom experience.

Law School Liaisons: We have the privilege of having deans of our local law schools sit on our board and work with our committees. As a result, we weave strong ties with our local legal scholars and the next generation of lawyers.

Practice Area Committees: We have substantive practice area committees that focus resources toward programming geared to those specialties, including bankruptcy (Rocco Debitetto) and criminal law (Christian Grostic).

Veterans Programs: Stephen Newman and Max Chandler have developed programs that match federal practitioners with programs that help veterans, including the growing and impactful “Wills for Veterans” program.

Rising Lawyers Committee: Eleanor Hagan chairs this committee, which focuses on the needs of new and rising federal practitioners, and represents at our Chapter at the annual rising lawyers meeting.

Government Relations and Lobbying: Members of our chapter participate in national government relations and lobbying efforts with special focus on legislation that affects the judiciary, the court system, and the judicial nomination and confirmation process. We send local representatives to lobby Capitol Hill every year.

Community Outreach: Our community outreach committee, led by Jennifer Lesny Fleming, develops and organizes programming that promotes access to justice in our community, including the Reach Out legal clinics that provide legal information to non-profits, and partnering with the Legal Aid Society of Cleveland’s brief advice clinics.

Mentoring Program: Erin Brown and Marisa Darden have spearheaded our local arm of the new national mentoring program that pairs recent law school graduates with experienced practitioners.

National Civics Program: Sarah Cleves and Sean Kelly are responsible for our Chapter’s civics outreach programming, which includes a program with local schools on Civil Discourse and Debate.

Make time to get involved in your federal bar community, and I promise it will pay you back in dividends.

Be well,

Rebecca Bennett

President, FBA Northern District of Ohio Chapter

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

Members in the News

★ Subodh Chandra was selected by his peers for inclusion in Best Lawyers in America for civil rights, 2019.

Welcome New Officers and Board Members Installation - September 28, 2018

President-

Rebecca J. Bennett, Ogletree Deakins Nash Smoak & Stewart PC

President Elect-

Deneen LaMonica, Ziccarelli & Martello

Vice President-

Hon. Amanda Knapp, Social Security Administration

Secretary-

Derek E. Diaz, Federal Trade Commission

Treasurer-

Erin Brown, Robert Brown LLC




Federal Bar Association
Northern District of Ohio Chapter

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Awards and Events in the News

State of the Court Luncheon October 9, 2018



NDOC OF THE FBA PARTNERS WITH CMBA AND VA TO HOLD 2D ANNUAL “WILLS FOR VETERANS” EVENT AT STOKES VA HOSPITAL

BY Stephen C. Newman

Veterans Day is a time for us to reflect on the contributions our women and men in uniform have made to our Country. Originally known as “Armistice Day,” Veterans Day was established as a legal U.S. holiday to honor the end of The Great War, World War I. This year it happened to fall on the one-hundredth anniversary of the Armistice which ended that war—an event which occurred on the eleventh hour, of the eleventh day, of the eleventh month of the year 1918. Our local FBA Chapter recognized Veterans Day in our own way: By applying our skills and capabilities as legal professionals where the rubber hits the road—the Stokes Veterans Administration Hospital.

The Wills for Veterans Program was a 2016 initiative of Past FBA President the Honorable Michael Newman. While it originated at the local Dayton chapter of the FBA, it grew outward from there. In partnership with the Cleveland Metropolitan Bar Association (CMBA) and the Stokes Veterans Hospital, our Chapter put on a successful program in November of last year. The CMBA provided us with the volunteers, the VA provides us with the “clients,” and the Dayton Metropolitan Bar provided us with laptops, printers, and software. This year we “advanced the ball” a little further by again partnering with CMBA and the VA, but receiving some additional contributions and support from both *Porter Wright* and *Jones Day*.

As noted, last year’s program couldn’t have happened without the help of the Dayton Metropolitan Bar. This year we were met with two immediate challenges—the Dayton Bar was unavailable to help, and the software we had previously used was out of date. Not to be deterred, we began working with some veteran friends at *Porter Wright*, who in turn connected us with friends at *Jones Day*. *Jones Day* then generously lent us four laptop computers, additionally purchasing new estate planning software and installing it on the laptops for us. This gave us the immediate capacity to generate wills, powers of attorney, directives to physicians, and other associated documents tailored specifically for the State of Ohio. With laptops and software in hand, and with attorney and paralegal volunteers from the CMBA, on November 14th of this year we were able to successfully generate nearly 20 estate planning documents for veterans in need.

Attorney Maryann Thomas of MTD Holdings, Inc., along with Paralegals Theresa Bernhardt and Robin Cottrill, volunteered in support of the 2018 Wills for Veterans Program at the Stokes VA Hospital. Here Ms. Thomas works with a client.

Our local Chapter of the FBA is grateful for the support of organizations like the CMBA, the Stokes VA Hospital, *Porter Wright*, and *Jones Day*, not to mention the many individual volunteers who gave their time to make the second year of this program a success. With the support of friends like these in the local community, and with renewed effort, we intend to build on that success for the future.



JOHN MARSHALL IT GIVES LAWYERS TECH SUPPORT

This story is from the New Bureau of the <http://www.clevelandmetroschools.org>

From left, attorney J. Philip Calabrese, Tech Corps instructor David Kelly and John Marshall School of Information Technology students Devon Harris, Jonah Medina and Nadia Triggs. Calabrese is immediate past president of the Federal Bar Association's Northern District of Ohio Chapter, CMSD NEWS BUREAU



10/9/2018 Lawyers who practice in Cleveland's federal court came together for a big annual event Tuesday, and their agenda showcased work by students from the John Marshall School of Information Technology.

Seven students spent virtually all of last school year upgrading the website used by the Federal Bar Association's Northern District of Ohio Chapter and linking it to an app that made the site mobile friendly. The FBA, which has more than 500 members, rolled out the work Tuesday during its annual State of the Court luncheon at the downtown Hilton hotel.

The chapter contacted Principal Chelsey Cook after hearing about John Marshall IT, which opened in 2015 as the first school in the state with a focus on computer science. Rather than hire a private company, the organization opted to give the students some paid on-the-job experience. "The kids did great," said Immediate Past President J. Philip Calabrese, who made several visits to the school during the project to give the students feedback. "They invested a lot of time. They had a lot of ideas."

Four team members – Katie Ayala, Liban Abdi, Hajar Rouiha and Siera Rivera – have graduated and gone on to college. Seniors Nadia Triggs and Devon Harris and junior Jonah Medina remain at the school and attended the luncheon.

Meet the website development team.

The crew labored three hours after school, two days a week, from October through May. They received guidance from instructor David Kelly of Tech Corps, which works with K-12 schools and students to integrate and use technology.

Devon started out as a content manager, deciding what went where on the website, and later moved to a design role, choosing colors, fonts and photos. He wants to pursue a career in video game design. "I'm a huge computer freak," he said.

Jonah served as a developer, formatting, debugging and repairing the website. He also aspires to a career in game design, saying he enjoys the "creative aspect of it" and the opportunity to "make anything I want."

As the school's community and business coordinator, Krystle Rivera works with students on internships and selecting one of its three pathways: cyber security, software development and health IT. Rivera described the students as funny and a "ball of personality." She credited them for balancing the project with Advanced Placement classes, sports and part-time jobs.

Nadia, who is president of her senior class, said the team frequently engaged in give-and-take with the bar association. She said the experience taught her lessons in time management and meeting deadlines while also feeding her interest in computer science. "I realized I have potential in IT," she said. "When I get older, I want to pursue this."

A DAY ON (OR BEHIND) THE BENCH

By Judge Zouhary

How do I spend most of my time as a federal district judge? The best part of my job is presiding at a trial with good trial lawyers. But unfortunately that does not happen as often as I would like, because there has been both a decline in trials and, with that, a decline in lawyers who have trial experience.

So most of my time is spent on pretrial matters, and much of that time is spent encouraging lawyers for opposing sides to talk with each other. More formally, we call it “meet and confer.” For some time, judges in our District have asked lawyers to meet and confer when they have a discovery dispute. Instead of filing a motion, counsel set forth their disagreement in a short writing -- email or fax -- and the matter is resolved promptly. This process has worked well for many years and is now part of the Federal Civil Rules. The process resolves discovery disputes in less time and with less expense. And, it is easy to make a record of the dispute and its resolution, if needed for appeal purposes.

In my newest civil case management protocol, I invoke the meet-and-confer requirement before filing *any* motion -- including motions to dismiss and motions for summary judgment. Some lawyers seem reluctant to give opposing counsel a “heads up” on the merits of the motion. But today, with a “turn up your cards” approach to civil case management, I find opposing counsel are often willing to agree to some points and thereby reduce the scope of a motion. If a defendant points out a deficiency in a complaint, plaintiff can take the initiative to amend the complaint, saving three rounds of briefing. (Most judges will allow at least one amendment following formal motion practice, so why not save time and money?) After some discovery, plaintiff may choose to voluntarily dismiss certain claims or counts, or defendant may not pursue certain affirmative defenses. No briefing needed!

The goal of Federal Civil Rule 1 is the “just, speedy, and inexpensive” resolution of cases. This goal requires a judge to be flexible in his or her approach. Each case has differences, and one size does not fit all. The meet-and-confer requirement allows counsel to highlight what may be special about their case, and may require special treatment by the judge. And, of course, the judge has an obligation, once a motion is decisional, to rule on it promptly. Managing a case through the court system is the joint responsibility of the lawyers and the judge’s chambers. Easy access to the judge is a necessary part of an efficient civil justice system. And the judge sets the tone. By encouraging counsel to cooperate, the judge reinforces that if counsel cannot talk with each other, they cannot represent their clients effectively.

For more on this topic, see:

- <http://iaals.du.edu/focus/delivery-justice>
- <http://www.ohnd.uscourts.gov/content/judge-jack-zouhary>

Standing Orders / Civil Case Management Procedures

FBA-NORTHERN DISTRICT OHIO CHAPTER INTRODUCES NEW APP TO MEMBERS

By Barbara Paynter

When members of the Federal Bar Association-Northern District Ohio Chapter gathered for this year's State of the Court luncheon, they learned about more than what's happening in U.S. District Court-Northern District of Ohio. Outgoing Chapter President J. Philip Calabrese introduced members to the Chapter's new app, developed by students at Cleveland's John Marshall School of Information Technology.

Three of the student developers – *Devon Harris, Jonah Medina and Nadia Triggs* – attended the luncheon, along with Instructors David Kelly, Lisa Chambers and Michelle Moore from Tech Corps, John Marshall's Community and Business Coordinator Krystle Rivera and Cleveland Metropolitan School District CEO Eric Gordon. (The other four student developers – Katie Ayala, Liban Abdi, Hajar Rouiha and Siera Rivera – are now in college and were unable to attend.) In addition to the students, Calabrese recognized Board members Georgia Hatzis and Barbara Paynter, who worked closely with the students throughout the year.

Before work on the app began, the Chapter reached out to members for suggestions to improve the website and to better understand how they might use an FBA app on their mobile devices. Ideas were submitted through a member survey, and members of the Law Clerk & Young Lawyers Sections met with committee members after a Brief Advice Clinic. Members expressed interest in being able to easily register for events from their mobile devices, add events to their calendars and easily check for updates. Their feedback informed the new design.

The student developers began work in the fall of 2017, gathering after school twice a week for from October through May to work on the website. They first reviewed the current website and made recommendations to streamline the design. They proposed and developed a design that is mobile-friendly, simplifies registration and payment for events, and improves the overall function of the website.

"Developing an app was one of my goals for the year because I believe we need to find more ways to engage with our members," Calabrese said. "We all spend much more time on our phones than we do in front of our desktop computers, and this will make it easier for our members to stay informed about all that our Chapter offers. We were especially pleased to be able to work with the students rather than hiring a company to do this work. We were not always the easiest client, but they worked very hard to make sure the site meets our needs."

To download the app:

Open the website on your mobile device (www.fba-ndohio.org). An option will pop up "To add this web app to the home screen: tap and then Add to Home Screen"

Alternatively, you can manually add the app to your home screen by opening the website on your mobile device.

On an Apple device, open the website in Safari, tap the AirDrop icon and select "Add to Home Screen."

On Android or Google devices, open the website in Google Chrome and open the menu (three vertical dots at the top right). Select "Add to home screen" then tap the "Add" button.

If you have suggestions for the Chapter, click "Contact" at the top of the page and submit your comments. We're always open to new ideas!

MASTERPIECE CAKESHOP: WHAT IT DIDN'T DO

By Heather E. Kimmel¹

The Supreme Court's 7-2 decision in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*² was one of the term's most anticipated opinions. The dispute highlighted one aspect³ of the growing societal tension between the religious beliefs of business owners and laws requiring businesses to act in a way the owners find to be in conflict with their religious beliefs: to what extent are business owners holding particular religious beliefs exempt from compliance with laws⁴ designed to protect the dignitary rights of same-sex couples? The Court side-stepped these issues and instead issued an opinion that warned states they have an obligation not to exhibit hostility to religion in applying a neutral and generally applicable public accommodations law. Practitioners of constitutional and civil rights law as well as attorneys representing religious organizations and closely-held for-profit companies that qualify as public accommodations should be aware of the impact of the decision on the current landscape of public accommodations laws. This article briefly reviews the facts of the case and identifies what the Court did, and did not do, in addressing the questions presented.

Masterpiece Cakeshop is a bakery in Colorado owned by Jack Phillips. Phillips refused to create a wedding cake for a same-sex wedding celebration. The Colorado Civil Rights Commission (the "Commission") found that Phillips violated the Colorado Anti-Discrimination Act (the "Act") by refusing to create the cake. The Act prohibits discrimination on the basis of sexual orientation in a place of public accommodation, which includes any place of business engaged in sales to the public and any place offering services to the public.⁵

¹Heather E. Kimmel is the General Counsel for the United Church of Christ, a Protestant religious denomination headquartered in Cleveland, Ohio, with approximately 5000 churches and 900,000 members in the United States.

²*Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719 (2018).

³Another aspect is healthcare, as in *Burwell v. Hobby Lobby, Inc.*, 134 S. Ct. 2751 (2013), in which the Supreme Court held that the contraceptive mandate of the Affordable Care Act violated the Religious Freedom Restoration Act by requiring owners of a closely-held business with sincere religious objections to certain forms of contraception to provide health insurance for employees that included those forms of contraception. Federal, state, and municipal laws have been all been subject to these challenges. A case arising under municipal and state law held that a business owner with religious objections to same-sex marriage could not refuse to create custom wedding invitations for same-sex couples. The business challenged a Phoenix ordinance prohibiting discrimination on the basis of sexual orientation in places of public accommodation, arguing that the ordinance violated the Arizona Constitution's free speech clause, religious toleration clause, equal protection clause, due process clause, and the Arizona Free Exercise of Religion Act. The Arizona Supreme Court held that the ordinance regulated conduct—discrimination—not speech, and that the business owners were not being penalized for their religious beliefs. The ordinance required the business to provide goods and services equally to all persons, and the business was free to discontinue selling custom invitations to all customers: "What Appellants cannot do is use their religion as a shield to discriminate against potential customers. Although providing the same goods and services to same-sex couples might 'decrease . . . the satisfaction' with which Appellants' practice their religion this does not, *a fortiori*, make their compliance with Section 18-4(B) a substantial burden to their religion." *Brush & Nib Studio, LC v. City of Phoenix*, 418 P.3d 426, 444 (Ariz. 2018) (internal citation omitted).

⁴Twenty-one states have public accommodations laws that prohibit discrimination on the basis of sexual orientation. *State Maps of Laws and Policies: Public Accommodations Laws*, HUMAN RIGHTS CAMPAIGN, <https://www.hrc.org/state-maps/public-accomodations> (last visited October 11, 2018).

⁵*Masterpiece*, 138 S. Ct. at 1723. The Act excludes "a church, synagogue, mosque, or other place that is principally used for religious purposes." COLO. REV. STAT. § 24-24-601(1).

Phillips claimed the Commission's finding violated his First Amendment rights to free speech and free exercise of religion. Phillips' religious beliefs oppose same-sex marriage; he also claimed that creating a cake for a wedding was expressive conduct that implied his endorsement of the wedding.⁶ After the Colorado Court of Appeals affirmed the Commission's decision and the Colorado Supreme Court declined to hear the case, Phillips petitioned the Supreme Court for review.⁷

In part due to the parties' briefing, the legal community, practitioners and scholars alike, expected the Supreme Court to focus the decision in the case on the freedom of expression claim, and to perhaps avoid the freedom of religion claim altogether.⁸ Determining the religious freedom claim would have forced the Court to specify where the dignitary and legal rights of same-sex couples seeking goods and services for weddings ended and the free exercise rights of vendors that object to providing goods and services to same-sex couples for weddings began. But given the complex line-drawing the Court would have had to do among forms of expressive art in the wedding services context, the Supreme Court turned instead to the state's obligation of religious neutrality under the First Amendment (as applied to the states by the Fourteenth Amendment) to avoid both questions, holding that the Commission exhibited religious animus in adjudicating the application of the Act to Phillips' refusal to create the cake, and reversing the Colorado Court of Appeals.⁹

The Court's opinion, though, did not grant a free-exercise exemption from the public accommodations law to Phillips, and established no rule that a vendor subject to a state public accommodations law prohibiting discrimination on the basis of sexual orientation can refuse service because of the vendor's religious beliefs. Rather, Justice Kennedy, writing for the Court, acknowledged that "religious and philosophical objections to gay marriage are protected views and in some instances protected forms of expression," but "it is a general rule that such objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law."¹⁰ Many civil rights groups, in fact, emphasized the narrowness of the Court's ruling,¹¹ which was based on the very specific facts of the record below, and did not characterize the ruling as a limitation on the rights of same-sex couples.

⁶*Masterpiece*, 138 S. Ct. at 1723.

⁷*Id.* at 1727.

⁸See, e.g., First Mondays Podcast, *OT2017 #8: "Bespoke but Blank"*, SCOTUSBLOG (Dec. 4, 2017, 10:59 AM), <http://www.scotusblog.com/2017/12/ot2017-8-bespoke-blank/>.

⁹*Masterpiece*, 138 S. Ct. at 1732.

¹⁰*Id.* at 1727.

¹¹Nick Morrow, *Narrow Scope of SCOTUS Ruling in Masterpiece Cakeshop Case Does Not Change Civil Rights Laws*, HUMAN RIGHTS CAMPAIGN (June 4, 2018), <https://www.hrc.org/blog/narrow-scope-of-scotus-ruling-in-masterpiece-cakeshop-case-does-not-change>.

The Court instead looked to the state's duty to avoid religious animus. The Court held the Commission "violated the State's duty under the First Amendment not to base laws or regulations on hostility to a religion or a religious viewpoint."¹² Justice Kennedy pointed to several examples in the record of "a clear and impermissible hostility toward [Phillips'] sincere religious beliefs," such as a comment by a commissioner that religion has been used to justify discrimination and hurting others throughout history, including the Holocaust, and highlighting differences in the treatment of other bakers who refused to bake cakes they claimed to be offensive.¹³

The opinion for the Court also appeared to affirm the ability of states to pass robust anti-discrimination laws. The opinion cited to *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, noting that public accommodations laws "are well within the State's usual power to enact when a legislature has reason to believe that a given group is the target of discrimination, and they do not, as a general matter, violate the First or Fourteenth Amendments."¹⁴ Specifically, as to Colorado's law, the Court stated: "It is as just as unexceptional that Colorado law can protect gay persons, just as it can protect other classes of individuals, in acquiring whatever products and services they choose on the same terms and conditions as are offered to other members of the public."¹⁵

In the midst of restating the general rule that states can pass laws prohibiting discrimination on the basis of sexual orientation and that ordinarily the religious objections of vendors to same sex marriage are not a basis for exemption from those laws, the Court appeared to recognize a need for judicial line-drawing on the continuum of free religious exercise, with the right of clergy not to perform same-sex marriages being absolute, and a religiously-based refusal of vendors providing any wedding-related goods and services to serve gay persons being an unacceptable affront to human dignity. Some of these goods and services, the Court warned, "no one could argue implicate the First Amendment."¹⁶

¹²Some scholars have noted that the Court's inference of hostility from the record in *Masterpiece* marks a change in free exercise jurisprudence. See, e.g., Ira C. Lupu & Robert W. Tuttle, *Response, Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n: A Troublesome Application of Free Exercise Principles by a Court Determined to Avoid Hard Questions*, GEO. WASH. L. REV. ON THE DOCKET (June 7, 2018), <https://www.gwlr.org/masterpiece-cakeshop-a-troublesome-application> ("The decision appears to extend free exercise norms in an uncertain, process-oriented way."); Roderick M. Hills, Jr., *SCOTUS Term: Does Masterpiece Cakeshop's Easy Inference of Hostile Intent Overturn Employment Division v. Smith?*, PrawfsBlawg (June 4, 2018, 4:43 PM), <http://prawfsblawg.blogspot.com/2018/06/scotus-term-does-masterpiece-cakeshops-easy-inference-of-hostile-intent-overturn-employment-division.html> ("*Masterpiece Cakeshop*, in short, seems to adopt a new and much more aggressive approach to inferring hostility to religion from mere "difference in treatment" than the Court's approach in *Employment Division v. Smith* by inferring anti-religious animus from any failure to extend to religious objections the benefits of exemptions for arguably 'analogous' non-religious activity."). Justice Ginsburg expressed this concern in her dissent as well. *Masterpiece*, 138 S. Ct. at 1749 (Ginsburg, J., dissenting) ("The different outcomes the Court features do not evidence hostility to religion of the kind we have previously held to signal a free-exercise violation, nor do the comments by one or two members of one of the four decision making entities considering this case justify reversing the judgment below.").

¹³The other bakers' objections to the proposed offensive cakes were not based on the bakers' religious beliefs. The bakers refused to create cakes that were derogatory to same-sex marriage, including cakes with religious text, because the messages were derogatory, hateful, and/or discriminatory. *Masterpiece*, 138 S. Ct. at 1730. The Court found that the distinction between these objections of conscience and Phillips' religious beliefs "elevates one view of what is offensive over another and itself sends a signal of official disapproval of Phillips' religious beliefs." *Id.* at 1731. See also *id.* at 1733 (Kagan and Breyer, JJ., concurring) ("The three bakers in the Jack cases did not violate that law. Jack requested them to make a cake (one denigrating gay people and same-sex marriage) that they would not have made for any customer. In refusing that request, the bakers did not single out Jack because of his religion, but instead treated him in the same way they would have treated anyone else—just as CADA requires. . . . The different outcomes in the Jack cases and the Phillips case could thus have been justified by a plain reading and neutral application of Colorado law—untainted by any bias against a religious belief."). But see *id.* at 1734 (Gorsuch and Alito, JJ., concurring) (disagreeing that the Commission could have come to the same resolution regarding the other bakers in a manner consistent with the First Amendment).

¹⁴*Id.* at 1727.

¹⁵*Id.* at 1727.

¹⁶*Id.*

The Court did not engage in any line-drawing—not even to address whether a custom-created wedding cake “implicate[s] the First Amendment.” The question remains as to when the necessary line drawing will occur, and how tailored it will be to the facts below.¹⁷

Whether any First Amendment exemptions from public accommodations statutes will be granted to business owners is an issue that will be decided by a different, more conservative Court, in the wake of Justice Kennedy’s retirement and Justice Kavanaugh’s confirmation. As Justice Kennedy noted, broad exemptions from public accommodations laws under a First Amendment free exercise theory will result in “a community-wide stigma inconsistent with the history and dynamics of civil rights laws that ensure equal access to goods, services, and public accommodations.”¹⁸

¹⁷The Court granted certiorari in the 2017 Term in a case presenting very similar issues, *Arlene’s Flowers Inc. v. Washington*, but remanded that case for reconsideration in light of the *Masterpiece* opinion. As in *Masterpiece*, the florist in *Arlene’s Flowers* also alleges that she was a victim of religious hostility. See Brief for Pet. at 2, *Arlene’s Flowers Inc. v. Washington*, 138 S. Ct. 2671 (2017). The Court may have the opportunity to address the issues as soon as the 2018 Term. On October 19, 2018, a petition for certiorari was filed in the case of *Klein v. Oregon Bureau of Labor and Industries*, which presents very similar facts to *Masterpiece*, in that a bakery refused to create a custom cake for the wedding of a same-sex couple because of the religious beliefs of the owners. *Klein v. Or. Bureau of Labor and Indus.*, 410 P.3d 1051 (Or. Ct. App. 2017), *petition for review denied*, 2018 Ore. LEXIS 505 (Or. 2018.) A future opportunity to address the issues could include a case on appeal in front of the Eighth Circuit, *Telescope Media Group v. Lindsey*, which brings a pre-enforcement challenge to the Minnesota Human Rights Act ban on discrimination in public accommodations based on sexual orientation. In that case, a wedding videography company is appealing the district court’s ruling that the Act survives the plaintiff’s free speech and free exercise claims. *Telescope Media v. Lindsey*, 271 F. Supp. 3d 90 (D. Minn. 2017).

¹⁸*Masterpiece*, 138 S. Ct. at 1727.

ERIE AT EIGHTY: CHOICE OF LAW ACROSS THE DISCIPLINES

University of Akron School of Law Center for Constitutional Law and the *Akron Law Review*

The University of Akron School of Law's Center for Constitutional Law and the *Akron Law Review* recently hosted a symposium on the 80th anniversary of *Erie Railroad Co. v. Tompkins* (1938). In this iconic case, the U.S. Supreme Court cast significant doubt on the federal courts' authority to make law absent express authorization. This conference brought together scholars from a range of legal disciplines to engage in a day of intensive scholarly discussion about the implications of *Erie* on choice of law issues that arise within specific fields including civil procedure, remedies, evidence, and intellectual property.

The lectures presented will be published in either the *Akron Law Review* symposium issue (<https://ideaexchange.uakron.edu/akronlawreview/>) or via the *ConLawNOW* online legal journal (<https://ideaexchange.uakron.edu/conlawnow/>) in the early spring. The authors who will be published include:

Keynote Speaker

- Prof. Ernest Young, Alston & Bird Professor of Law, Duke Law School
Erie as a Way of Life

Understanding Erie

- Prof. Brian Frye, Spears-Gilbert Associate Professor of Law, University of Kentucky
The Ballad of Harry James Tompkins
- Prof. Michael Green, Woodbridge Professor of Law, William & Mary Law School
The Erie Doctrine: A Flowchart
- Prof. Craig Green, James E. Beasley Professor of Law, Temple University School of Law
Erie and Constitutional Structure: An Intellectual History
- Prof. Megan LaBelle, Co-Director, Law and Technology Institute and Professor of Law, Catholic University of America, Columbus School of Law
An Erie Approach to Privilege Doctrine

Erie and Federalism

- Prof. Charlton Copeland, Professor of Law and M. Minnette Massey Chair in Law, Miami School of Law
Erie's Federalism and Ours
- Prof. Kermit Roosevelt, Professor of Law, University of Pennsylvania Law School
Adrift on Erie: Characterizing Forum Selection Clauses
- Prof. Jeff Rensberger, Vice President for Strategic Planning, Institutional Research and Professor of Law, South Texas College of Law Houston
- Prof. Laura Little, James G. Schmidt Professor of Law, Temple University School of Law
Erie's Unintended Consequences on State Law
- Prof. Alex Reinert, Professor of Law, Director, Center for Rights and Justice, Cardozo Law,
Erie Doctrine, State Law & Civil Rights Litigation in Federal Court

The *Erie* Effect in Remedies

- Prof. Caprice Roberts, Visiting Professor University of Florida Levin College of Law, *Remedies, Equity & Erie*
- Prof. Rachel Janutis, Dean and Professor of Law, Capital University
- Prof. Michael Morley, Assistant Professor, Florida State University College of Law
Beyond the Elements: Erie and the Standards for Preliminary and Permanent Injunctions

***Erie* and Intellectual Property**

- Prof. Joe Miller, Professor of Law, University of Georgia School of Law
Our IP Federalism: Thoughts on Erie at Eighty
- Prof. Sharon Sandeen, Director, Intellectual Property Institute, Robins Kaplan Distinguished Professorship in IP Law
Erie's Other Effects on Trade Secret Law
- Prof. Shubha Ghosh, Crandall Melvin Professor of Law and Director of the Syracuse Intellectual Property Law Institute, Syracuse University School of Law
A Path for Unlocking State Law Claims from Patent

For more information about the *Erie at Eighty* issue or the *Akron Law Review* more generally, contact Danielle Schantz, Editor in Chief, at ds215@zip.s.uakron.edu.

FBA - Federal Litigation Section - Comment on Proposed Amendments, Volunteers Needed for Task Force, and Call for Articles

CALL FOR COMMENT ON PROPOSED RULES

Litigators - Your comments are invited on the Proposed Amendments to the Rules of Appellate, Civil, and Bankruptcy Procedure and Rules of Evidence. A copy of the PROPOSED AMENDMENTS <[The Rules Committees have scheduled hearings for:](http://r20.rs6.net/tn.jsp?f=001TS3c13JY4FJziDnOtaywil9DnNDIqlmxTpZ2O9cOMHs5jEbnnliaovZcLF39alinPBA2DDvVukcwJ88oOuw_GGOeEB8w6YfvKIMSJ4obEitxKPPtNNifkXVe1lQlgayrrwmSyWP01HLgiCpeYPI3hnljjewZb0GvNYO-djUpSom-wyk848ayhWE6MNZevyHucCU_sE0pkIM70qN1onxvJ9Wm77JmZy6cgvP731ypb2OkZBloH1AxXCcA6eqn1P3Q&c=e7f8fMJNY-G38b8E2dxLdLkMf8_fDFCNoLTR6Km68pQX3z1Ajqu2cA==&ch=ZhJ061L9OID40plhwtDin67ZOq5oMtO-8DR0YaCR_afONhGnmBhihw==> is available for your review. The deadline for public comments on all of the rules amendments is Feb. 15, 2019.</p>
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- * Appellate Rules in Washington, DC, on October 26, 2018, and in Phoenix, Arizona, on January 4, 2019;
- * Bankruptcy Rules in Washington, DC, on January 10, 2019, and in Kansas City, Missouri, on January 26, 2019
- * Civil Rules in Phoenix, Arizona, on January 4, 2019, and in Washington, DC, on February 8, 2019; and
- * Evidence Rules in Phoenix, Arizona, on January 4, 2019, and in Washington, DC, on January 18, 2019.

Please direct your comments to Jeff Cox by email, jcox@ficlaw.com.

CALL FOR VOLUNTEERS

The FBA's Diversity and Inclusion Task Force is looking for section and division leaders to serve as delegates on their subcommittees. They are requesting one leader for each of the following subcommittees (5 volunteers in total):

- * Engage in ongoing and effective communication with diverse legal communities about what the FBA does (its mission, activities, programs, and opportunities) and why it is important (the value proposition).
- * Increase diversity of the FBA's membership.
- * Increase diversity of the FBA's leadership.
- * Integrate commitment to diversity and inclusion throughout the infrastructure of the FBA.
- * Leverage and build external partnerships to advance diversity and inclusion in the FBA.

Please contact Susan Pitchford at sdp@chernofflaw.com if you are interested in volunteering on behalf of the Federal Litigation Section.

CALL FOR ARTICLES

SideBAR, the award-winning quarterly newsletter of the FBA Federal Litigation Section, is seeking articles for inclusion in this Fall's edition. If you or a colleague is writing an article on a litigation-related topic, or about an emerging issue in the courts, or about a federal trial practice development, SideBAR is a great place to publish, immediately reaching over 4,000 FBA Federal Litigation Section members and beyond that the over 18,000 FBA members. The deadline for submission of content for the next edition is December 20, 2018! Submissions should be sent for consideration to SideBAR Editor Jeff Cox at by email, jcox@ficlaw.com. Articles typically run from 1,000-3,000 words. Any annotations should be by endnotes rather than footnotes, and submissions should be in .pdf format and include a suggested title, short bio of the author(s), head/shoulders photo (.jpeg).

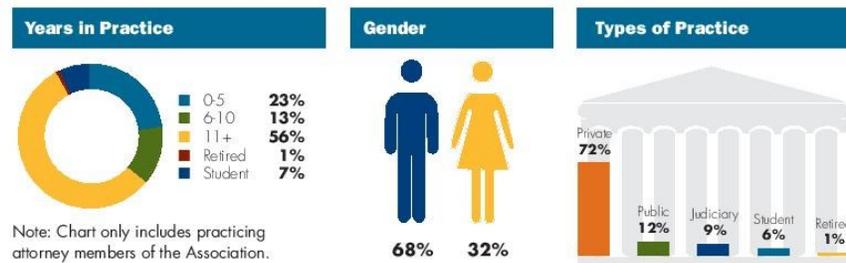
Get published!

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



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

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!



Federal Bar Association

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.

Calendar of Events:**December 19, 2018 FBA-NDOH Board Meeting****January 16, 2019 FBA-NDOH Board Meeting****February 20, 2019 FBA-NDOH Board Meeting****March 20, 2019 FBA-NDOC Board Meeting**

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

We' have a new look on the web check us out!

fba-ndohio.org



**Federal Bar
Association**

Northern District of Ohio Chapter

Editor for the Fall 2018 Newsletter:

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INTER ALIA is the official publication of the Northern District, Ohio Chapter 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 no later than March 1, 2019.

Next publication is scheduled for Winter 2019.



**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.

**Save The Date
2019 Annual Meeting and
Convention
Hilton Tampa Downtown**

A discounted block of rooms has been reserved for conference attendees at the Hilton Tampa Downtown (211 N Tampa Street, Tampa FL 33602) at the following rates (plus state and local taxes). Check-in time is 3:00 p.m. and check-out is 12:00 p.m.

\$159/night - Single/Double
\$169/night - Triple
\$189/night - Quad

Reservations must be made by 5:00 p.m. ET on **August 20, 2019**. Any reservations received after the above date or until the block is full, whichever is sooner, will be accepted based on a room-type and rate-available basis.

More information please click [here](#).

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