



# THE QUARTERLY JOURNAL

CHATTANOOGA CHAPTER OF THE FEDERAL BAR ASSOCIATION

October 2014

Volume 3, Issue 2

## THE COURT AND THE FBA SET TO HONOR JUDGE COLLIER

Please join the Chattanooga Chapter of the Federal Bar Association in honoring United States District Judge Curtis L. Collier's nineteen years of distinguished service on the federal bench.

Judge Collier's life and career reflect his dedication and commitment to public service. A native of Marianna, Arkansas, he was one of eight children raised on a small farm. He attended Tennessee State University and Duke Law School, and he started his legal career as a summer intern for the Patent Law Department at the Eastman Kodak Company in New York. Upon his graduation from law school, Judge Collier entered active duty service with the United States Air Force. As a Captain in the Judge Advocate General's Department, he successfully tried cases before Courts-Martial at stations including California, Georgia, and the Republic of the Philippines. He remained affiliated with the Air Force Reserves, ultimately attaining the rank of Lieutenant Colonel.

Judge Collier served as an Assistant United States Attorney in the Eastern District of Louisiana from 1979 until 1987. There, he tried high-profile public corruption and white-collar criminal

cases, served as chief of special prosecutions and deputy chief of the Criminal Division, and taught trial advocacy at Tulane Law School. Beginning in 1987, he continued his already-distinguished career and moved to the Eastern District of Tennessee, where he served as the supervisory Assistant United States Attorney in charge of the Chattanooga division.



In 1994, on the recommendation of United States Senator James Sasser, President Bill Clinton submitted Judge Collier's name to the United States Senate for confirmation as a District Court Judge in the Eastern District of Tennessee. The Senate confirmed Judge Collier in May 1995, and he assumed office the same month.

On October 10, 2014 at 3:30 p.m., the Court will host a portrait unveiling ceremony for Judge Collier in the third floor courtroom of the United States Courthouse, at which the Federal Bar Association will make a special presentation. The FBA will be co-hosting a reception to follow at the Lindsay Street Hall. All FBA members are invited and encouraged to attend in a show of our sincere gratitude to Judge Collier for his many years of service and dedication to the Eastern District of Tennessee.



### AREA YOUTH ARTFULLY EXPRESS CIVIL RIGHTS THEMES

In partnership with the City of Chattanooga Youth and Family Development Department, the Chapter hosted a city-wide Civil Rights Art contest. The winning submissions were painted by sixth graders Mansi Patel (left) and Breana Gravitt (right).



## SUPPLEMENTAL JURISDICTION

At their core, federal courts are institutions of limited jurisdiction. A federal judge is only empowered to make rulings in a case if it falls within the scope of Article III of the Constitution and a statutory grant of authority. Consequently, in order to litigate in federal court, a plaintiff—or a removing defendant—must identify an independent basis for federal subject matter jurisdiction. In the vast majority of cases, litigants will rely on 28 U.S.C. § 1331 (federal question) or § 1332 (diversity) as the basis for the court’s jurisdiction.

Often, though, a case involves two types of claims: those that independently satisfy federal jurisdiction requirements and those that do not. For example, Tennessee citizen John Smith may sue his Tennessee-based employer in federal court, claiming that his termination violated both Title VII of the Civil Rights Act (a federal law) and the Tennessee Human Rights Act (a state law). Federal question jurisdiction gives the district court the ability to hear Mr. Smith’s Title VII claim, but what about his non-diverse THRA claim? For that, the court may exercise its supplemental jurisdiction via 28 U.S.C. § 1367.

Section 1367 grants district courts the ability to exercise supplemental jurisdiction over “all other claims that are so related to claims in the action . . . within such original jurisdiction that they form part of the same case or controversy.” 28 U.S.C. § 1367(a). Put simply, “[c]laims form part of the same case or controversy when they derive from a common nucleus of operative facts.” *Harper v. Auto Alliance Int’l, Inc.*, 392 F.3d 195, 209 (6th Cir. 2004). In Mr. Smith’s case, assuming his THRA and Title VII claims both related to the same events, the district court would be empowered to hear and decide both. If he tried to lump a dog-bite claim in with his Title VII claim, he almost certainly would find the court less than receptive.

In federal court, attorneys often hear the terms “pendent jurisdiction,” “ancillary jurisdiction,” and “supplemental jurisdiction” interchangeably discussed (and often misused) without much explanation. The distinction can be confusing: more than one court has been left scratching its head trying to parse among them. *See, e.g., Aldinger v. Howard*, 427 U.S. 1, 13 (1976) (concluding, prior to passage of § 1367, that “there is little profit in attempting to decide, for example, whether there are any ‘principled’ differences between pendent and ancillary jurisdiction”); Fed. Courts Study Comm., Part III, at 546 (1990). The difference is often immaterial. As the Sixth Circuit summed up: “In 1990, Congress passed 28 U.S.C. § 1367, which replaced the concepts of ‘pendant’ and ‘ancillary’ jurisdiction with ‘supplemental’ jurisdiction.” *Kauffman v. Allied Signal, Inc., Autolite Div.*, 970 F.2d 178, 187 n.2 (6th Cir. 1992). This isn’t exactly true, but while ancillary jurisdiction still exists, it is unusual and somewhat esoteric. The Sixth Circuit has traced the

current contours of it in *United States v. Field*, 756 F.3d 911, 914 (6th Cir. 2014). As a practical matter, it will suffice to note that, since Congress passed § 1367, the vast majority of cases calling on a federal court to decide a state claim have required the court to exercise “supplemental” jurisdiction.

Turning back to Mr. Smith, let’s say that Mr. Smith initially filed suit in federal court. His Title VII claim is subject to the court’s original jurisdiction, and his THRA claim is subject to its supplemental jurisdiction. Assuming both get past summary judgment, the case will likely proceed to trial. But what if his federal claim does not make it? Must the Court dismiss the state law claim now that the basis for its original jurisdiction is gone? No: The court’s supplemental jurisdiction is not extinguished, even after it dismisses the federal causes of action. It has discretion to either hear the state law claims or to dismiss them. *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639-40 (2009). That said, Mr. Smith might reasonably expect his THRA claim to be dismissed without prejudice, since “[w]hen all federal claims are dismissed before trial, the balance of considerations usually will point to dismissing the state law claims . . .” *Musson Theatrical, Inc. v. Fed. Exp. Corp.*, 89 F.3d 1244, 1254–1255 (6th Cir.1996).

Had Mr. Smith’s suit been removed from state court, the same principle applies: when the federal claims are dismissed, the relevant considerations will generally weigh in favor of remand (rather than dismissal). *Id.* But don’t be fooled into thinking that Mr. Smith can force the court to remand merely by voluntarily dismissing his federal causes of action. Even though it is usually appropriate to remand the state claims after the federal claims are dismissed, under some circumstances, a court may deem it appropriate to retain jurisdiction. One such circumstance is forum manipulation (e.g., attempting to “voluntarily dismiss your way out of federal court”). *See, e.g., Gamel v. City of Cincinnati*, 625 F.3d 949, 952 (6th Cir. 2010). Other circumstances weighing in favor of the court retaining its supplemental jurisdiction include timing (e.g., whether the parties have already completed discovery, the age of the lawsuit, etc.) and ripeness of the state law issues *Id.*

In short, supplement jurisdiction is the doctrine by which federal courts will, in most cases, decide issues of state law that are intertwined with claims over which they have original jurisdiction. Although federal courts may adjudicate issues of state law after the federal claims are dismissed, they will generally decline to do so in the interests of comity, fairness, and judicial efficiency. Understanding this relatively straightforward jurisdictional concept may afford attorneys and litigants a clearer vision of what to expect in cases involving multiple claims.



## MOVING FORWARD 50 YEARS LATER: THE FBA CELEBRATES THE CIVIL RIGHTS ACT

The Civil Rights Act was signed into law on July 2, 1964. To commemorate the 50<sup>th</sup> anniversary of this momentous occasion, the Chattanooga Chapter hosted a two-day observance at Second Missionary Baptist Church. In partnership with the City of Chattanooga, the Chapter assembled a dynamite committee of community leaders, governmental officials, judges, attorneys, and students, all from diverse backgrounds, who worked in harmony to plan and execute this event.

The Chapter kicked off the festivities on July 7, 2014. The Chapter treated 200 Chattanooga teenagers to lunch by Herman's Soul Food and an inspiring talk by local attorney Micah Guster. The youth were entertained with Civil Rights era music performed by the Howard High School band and the Stars of Chattanooga. With the goal of educating and invigorating the youth, the Chapter itself was actually inspired by the kids who participated. One thirteen year old attendee's feedback form said that he learned that he, "had a chance to do anything [he] wanted and that [he] can change the world."

Prior to the event, the Chapter held a Civil Rights art contest and the sixty submissions were of excellent quality. Both winning artists received iPads from the Chapter and are both sixth graders who participate in the City's Youth and Family Development Centers. The event left the Chapter very hopeful about our youth and, in turn, fostered respect in the youth for

our federal courts.

Day two of the celebration was held July 8. A festive dinner banquet was held to honor those heroes who undertook great sacrifice to accomplish the passage of the Act and how their memory should push all of us to become our very best.

All 250 seats were filled. United States District Court Judge Curtis Collier was the lead keynote speaker. Judge Collier's thoughtful speech highlighted the contributions of the many people who breathed life into the Civil Rights laws. South Carolina State Representative Bakari Sellers followed Judge Collier with a moving talk highlighting how we must all persist in demanding excellence in ourselves and equality in society. Representative Sellers is the son of renowned Civil Rights activist Cleveland Sellers and was one of the youngest ever elected representatives when he first won the bid at the age of 21, when he was in his first year of law school. Representative Sellers is currently running for Lieutenant Governor of South Carolina. THE CREATIVE UNDERGROUND delivered an uplifting medley of spirituals, and local youth performing ensemble, The Stars of Chattanooga, performed original material written for the event. The Chapter's hope of reinvigorating the community and engendering respect for our federal bar was fulfilled. Credit can only be bestowed upon those who gave all to deliver us equality.



Howard High School Dance Team

Left—Art Contest Winners: 1st Place Mansi Patel; 2nd Place Breana Gravitt

# Youth Luncheon



Rising Howard Senior Jessica Cummings delivered an exceptional oration describing the movement.



Top Left— Committee Members Student Derelle Roschell and Keynote Speaker Micah Guster

Top— Committee Members Deborah Maddox, Micah Guster, Barbara Reidnower, John Edwards, Donna Mikel, Derelle Roschell, Boyd Patterson, and Katharine Gardner



Left— Stars of Chattanooga Performing Black and White by Roddie



Keynote Speaker South Carolina Rep. Bakari Sellers



Keynote Speaker United States District Court Judge Curtis L. Collier



Top— Community Members

Bottom— Tennessee Court of Appeals Judge John McClarty

Bottom Right — Marc and Holly Harwell

# Celebratory Banquet



Top — Chapter President Gary Henry, and Social Chair Justin Faith, joined by David McDowell

Bottom— Chattanooga Councilman and Committee Member



# Pardon Me?

by Tom Greenholtz

Shareholder, Chambliss, Bahner & Stophel

In April of this year, the Obama Administration announced that it would be pursuing a new clemency initiative aimed at non-violent drug offenders. Under this initiative, the Office of the Pardon Attorney will prioritize pardon applications from inmates who, among other things, have served at least 10 years, lack “a significant criminal history,” and “have no history of violence” before or during imprisonment. It has been reported that this new policy could grant immediate release to “hundreds, if not thousands” of people, and the initiative may be important for practitioners on the District’s CJA Appointment panel.

The clemency initiative was greeted with accolades by some, particularly those who believed that the president’s exercise of the pardon power occurred too infrequently during his first term. Other reactions were less kind. A few notable commentators, and even one United States Senator, for example, have either stated or suggested that the president’s actions are unconstitutional.

As there have been in previous administrations, serious constitutional questions have been raised with respect to some of this administration’s actions. This time, however, the president is on solid constitutional ground.

In Article II, section 2 of the Constitution, the president is given the “Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.” The language of the Pardon Clause is broad, and it admits only of two limitations: the offense must be a federal offense, and the offense cannot be related to impeachment. Otherwise, the Constitutional text places no limits on the proper exercise of the power.

This virtually unlimited nature of the pardon power was purposeful. During the Federal Convention, the delegates rejected attempts to require Senate approval of pardons or to except treason from its reach. Thus, as the Supreme Court has recognized, the Convention intended to extend to the president a power that was nearly identical to the King’s prerogative as it existed prior to the Revolution. See *Ex parte Grossman*, 267 U.S. 87, 113 (1925).

Thus, the pardon power is a “plenary authority in the president” that works to “‘forgive’ the convicted person in part or entirely,

to reduce a penalty in terms of a specified number of years, or to alter it with conditions which are in themselves constitutionally unobjectionable.” See *Schick v. Reed*, 419 U.S. 256, 266 (1974). As the Supreme Court has noted,

The power thus conferred is unlimited, with the exception stated. It extends to every offence known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment.

See *Ex parte Garland*, 71 U.S. 333, 380 (1866). The Garland Court also noted the corollary: that the pardon power “is not subject to legislative control,” and that “Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders.” See *id.*

In the case of the new clemency initiative, the policy is squarely within the president’s pardon powers, even under a narrow view of the power. Only federal drug offenses are subject to the policy, and the power is being exercised, if at all, only well after conviction. Moreover, the policy does not change the enforcement of the underlying law, though it does affect the penalty imposed for the unlawful conduct—a consequence precisely contemplated by the pardon power.

To be sure, the Administration’s policy focuses upon systemic, rather than individual, concerns. However, this fact hardly renders the exercise of the power any more unconstitutional than the general amnesties granted by presidents following the Civil and Vietnam Wars. Although reasonable people can perhaps disagree on whether the new clemency initiative is sound public policy, the initiative seems plainly within the president’s constitutional powers.

The important lesson here that we should be wary of causally throwing around claims of unconstitutionality to obtain perceived political advantage. It cheapens us as a people whose political creed claims commitment to the rule of law. Moreover, in so doing, we ignore the teachings of Aesop: frequent and superficial cries of unconstitutionality will mask more legitimate times when a wolf may be near the flock. Indeed, let’s hope that we’re not already past that point.

WE ARE ON FACEBOOK!

Please “like” us at <https://www.facebook.com/#!/pages/Chattanooga-FBA/459343364183532>

## JUDICIAL PREFERENCES IN FEDERAL COURT

Have a question you need to check with chambers about? We won't discuss *ex parte* implications here, but what is the judge's preference regarding such communications? You can find the answer on the court's web site by going to the Attorney→Judicial Officers page and then clicking on the "View" button for the judge:

Judge	Judicial Preferences	Judicial Assistant	Courtroom Deputy
<a href="#">Thomas A. Varlan - Chief United States District Judge</a>	<a href="#">View</a>	Lori Gibson (865)545-4762	Julie Norwood (865)545-4234 ext. 2285
<a href="#">Curtis L. Collier - United States District Judge</a>	<a href="#">View</a>	Sheila Hendrix (423)752-5287	De'Andra Hinton (423)752-5285 ext. 3211
<a href="#">J. Ronnie Greer - United States District Judge</a>	<a href="#">View</a>	Deborah Daugherty (423)639-0063	Kathy Hopson (423)639-6235 ext. 1206
<a href="#">Harry S. Mattice, Jr. - United States District Judge</a>	<a href="#">View</a>	Martha Cortis (423)752-5184	Stefanie Capetz (423)752-5285 ext. 3303

Here is what you will find regarding the Chattanooga district judges:

### Judge Collier:

Judge Collier discourages written correspondence from counsel. However, if correspondence is written, copies should be sent to counsel for all parties. Judge Collier prefers counsel communicate with his judicial assistant, Sheila Hendrix, rather than with his law clerks. If the communication concerns a case, counsel should be prepared to provide the case name and number. Law clerks will occasionally communicate with counsel on purely administrative matters when Judge Collier's staff finds it useful.

### Judge Mattice:

Counsel should not contact chambers by phone. While written correspondence (via U.S. mail or e-mail) is discouraged, any party submitting written communication to the Court must send copies to counsel for all parties.

The preferred method of communication with the Court is always a formal written motion, filed on the Court's electronic case filing system. Any information obtained by any means other than a court order - including, but not limited to, telephone or e-mail messages transmitted by employees of the Clerk's Office or chambers staff - is not a part of the record and in no way binds the Court.

Judge Mattice strongly discourages *ex parte* communication between counsel and his law clerks. Any communication that does occur shall not address the merits of the case or any pending motion.

The judicial preferences are a great resource on a wide range of topics.



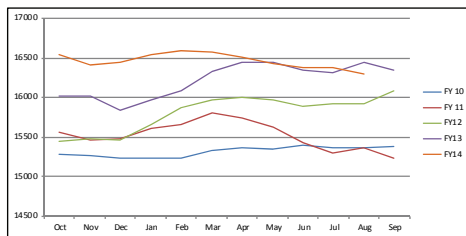
# FEDERAL BAR ASSOCIATION

AT A GLANCE

Federal Bar Association

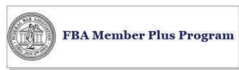
## Monthly Membership Counts FY 2010-2014

Monthly Membership Counts FY 2010-2014



Federal Bar Association

## What's New? – Member Plus Program



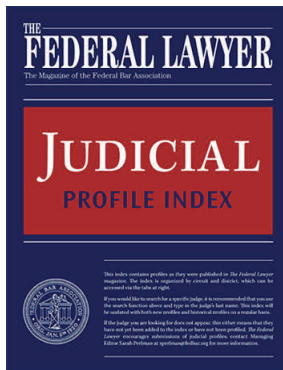
DISCOUNTS FROM OUR PARTNERS TO YOU

<b>AVIS</b> Up to a 25% discount on car rental services.	<b>Budget</b> Up to a 25% discount on car rental services.	<b>CHECKER</b> Discount of 10% from published rates.
<b>FedEx</b> Up to 25% savings on select shipping services.	<b>HP</b> Discounts on inkjet, wireless, network, tablets, and printers.	<b>InterCall</b> Discount of 40% off the standard rental rate for full-time audio conferencing.
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- FBA members receive discounts from over 25 companies.
- Participating organizations include: *Avis, Budget, FedEx, Liberty Mutual, UPS, OfficeMax, Visa* and more.
- For a full list of participating partners please visit [fedbar.org](http://fedbar.org).

Federal Bar Association

## What's New? - Judicial Profile Index



- Contains profiles published in *The Federal Lawyer* magazine
- All profiles from 2007 to present
- Organized by circuit and district
- Search by keyword
- Updated quarterly with both new profiles and historical profiles

Federal Bar Association

## FBA Sections and Divisions

### Sections

- Admiralty
- Alternative Dispute Resolution
- Antitrust and Trade Regulation
- Banking Law
- Bankruptcy Law
- Civil Rights Law
- Criminal Law
- Environment, Energy and Natural Resources
- Federal Litigation
- Government Contracts
- Health Law
- Immigration Law
- Indian Law
- Intellectual Property
- International Law
- Labor and Employment Law
- Taxation
- Securities Law
- Social Security Law
- State and Local Government Relations
- Transportation Law
- Veterans and Military Law

### Divisions

- Corporate & Association Council
- Federal Career Services
- Judiciary
- Senior Lawyers
- Younger Lawyers

Federal Bar Association

## FBA Sections and Divisions

### Career Divisions

\*Percentage of all division memberships



Federal Bar Association

## What Next ? – Coming Soon!



BECOME A MEMBER TODAY AT <http://www.fedbar.org/Membership/Membership-Application.aspx?FT=.pdf>

## CHATTANOOGA CHAPTER

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*Journal Editors:* Donna J. Mikel and Kyle Wilson

**WE ARE ON THE WEB:**  
[www.fcdbar.org/chattanooga](http://www.fcdbar.org/chattanooga)

## UPCOMING EVENTS

October 10 3:30 Third Floor Courtroom  
Judge Collier Portrait Unveiling Ceremony

October 16 10:30 1:30  
Immigration and Naturalization Ceremonies

**THE QUARTERLY JOURNAL IS THE PROUD  
RECIPIENT OF THE 2013 AND 2014 MERITORIOUS  
NEWSLETTER RECOGNITION AWARDS FROM  
THE NATIONAL FEDERAL BAR ASSOCIATION.**

## MESSAGE FROM THE CHAPTER PRESIDENT

By Gary Henry

2014 has been an extraordinary year for our Chapter. We kicked off our active year hosting Former United States Attorney General Alberto Gonzales at our annual meeting. With 70 members and individuals in attendance, the first Latino U.S. Attorney General delighted our guests with behind-the-scenes stories and spread hope about the future of our Country.

In partnership with the City of Chattanooga, Blue Cross Blue Shield of Tennessee, Carta, and area lawyers and law firms, the Chapter invested significant time and resources in planning our two-day intensive Civil Rights celebration. It was an honor to have our Chapter involved in such a worthy commemoration that reached over 500 members of our community and bar.

In early September, Donna Mikel and I represented our Chapter as delegates at the National Council Meeting in Providence, Rhode Island. While there, the Chapter received the Chapter Activity Presidential Achievement Award and the Meritorious Newsletter Award.

Our Chapter held its annual Constitution Day celebration at the Federal Courthouse on September 12, 2014. During the event, 150 area students were entertained by the federal judges in a fun and educational workshop aimed at highlighting Constitutional history and rights.

Overall, 2014 has been marked with events and activities aimed towards the FBA's mission of fostering respect in the community for our federal judiciary. If you are not a member or if you would like to become more actively involved in our organization, please contact one of our Chapter leaders listed above.





# THE QUARTERLY JOURNAL

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**UNITED STATES DISTRICT JUDGE CURTIS COLLIER  
PORTRAIT UNVEILING CEREMONY**

**OCTOBER 10, 2014      3:30 P.M.**

**UNITED STATES DISTRICT COURT, THIRD FLOOR  
COURTROOM**

**RECEPTION TO FOLLOW AT THE LINDSAY STREET  
HALL**

*THE QUARTERLY JOURNAL*

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ATTN: JOURNAL EDITOR