



FROM THE BAR

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PRESIDENT'S MESSAGE

Roberto A. Cámara Fuertes, Esq.

... it is an even bigger privilege, and surely a pleasure, to work alongside the current members of the Board of Directors. The current Board is quite diverse, boasting representatives from the private and public sector, major law firms and boutique firms. Quite impressive, indeed.



The view is a little bit different from the Big Chair. It seems that only yesterday, eight (8) years ago, I joined the Board of Directors of the Puerto Rico Chapter of the Federal Bar Association as a Director. Since then, I have served as National Delegate, Secretary (two times), and Vice President. It is my privilege to join such a distinguished roster of Presidents of this fine Organization. But it is an even bigger privilege, and surely a pleasure, to work alongside the current members of the Board of Directors. The current Board is quite diverse, boasting representatives from the private and public sector, major law firms and boutique firms. Quite impressive, indeed.

As you may surmise, we have had a busy agenda for this year. First and foremost, as is evident, I am fulfilling (at least partially) my compromise of publishing this Award-Winning Newsletter. I have placed an ambitious agenda over the current Editor-In-Chief, Luz C. Molinelli-González, and have asked her to publish at least two more issues before my tenure as President is over. I would also like to see more content from the Members within these

pages, so, please, submit your articles, notes and content for approval and publication.

By the time you receive this issue of FTB, the Chapter has already hosted its first luncheon highlighted by our special guest, the recently appointed Associate Justice of the Puerto Rico Supreme Court, the Hon. Maité D. Oronoz Rodríguez.

Additionally, we have completely redrafted our By-Laws to comply with certain regulatory requirements and to modernize our proceedings. This project started as a minor tweak of our statutes and ended up as a major task. Our thanks go to our Vice-President and in-house constitutional scholar, Mariano Mier-Romeu, for his work and able pen.

Without question, an important part of our yearly activities are practice-enhancing seminars and workshops. Last March we hosted Admiralty law and during April we also hosted a Seminar on Social Media. By next September, we are hoping to gather the majority of the U.S. District Judges and Magistrate Judges in a single event: "The Court Speaks." Stay tuned.

This year, our support to the furtherance of the federal practice does not stop at hosting social gatherings, luncheons or seminars. Therefore, I am calling upon the Board to form

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Hon. Raymond L. Acosta
Puerto Rico Chapter



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FROM THE
BAR

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MESSAGE FROM THE EDITOR

Luz C. Molinelli-González



I feel really pleased and honored to introduce myself as the incoming Editor-in-Chief of *From the Bar*. As you already may know, after serving as Editor in Chief for the last couple of years, Katherine González-Valentín has stepped down in order to undertake the role of member of the FBA's National Board of Directors. Thanks to Katherine's continuous efforts as Editor in Chief, *From the Bar* has become a

regular publication and has received the Newsletter Recognition Award from the FBA at national level. We are very appreciative of all the work that Katherine has put into this Newsletter and hope to continue her excellent work onwards.

We are also delighted to be presenting you with the redesigned issue of *From the Bar*, which features a very friendly and modern design for electronic distribution. My thanks to our Graphic Designer, Gina Robles-Villalba, whose artistry and hard work shows in this issue.

Lastly, we encourage you to submit your articles, book reviews, commentaries and notes for publication in upcoming issues. Submissions may be devoted to emerging legal trends or address specific areas of concern within the legal field, and must be sent via email to myself or any member of the Board of Directors.

We hope you enjoy this issue of *From the Bar*!

PRESIDENT'S MESSAGE...

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a Committee on Local Rules and Practice. I am asking this Special Committee to review and submit to the Standing Committee of the United States District Court on Local Rules proposed amendments and updates to the Local Civil, Criminal and Admiralty Rules. I am also encouraging the membership to submit to this Committee any ideas for amendments to the Local Rules. I hope this Committee will become a standing Committee of our Chapter that serves as a conduit of ideas from our Membership to the Court.

Last, but not least, we are hoping to host, after a hiatus of a few years, a Reception for the Judges of the First Circuit who shall be sitting in Puerto Rico as part of their bi-yearly visit. More details on both activities soon.

I am counting on your support for these activities and I look forward to personally speaking with you during all of them. Gracias a todos por su apoyo.

2014 MARKED THE 50TH ANNIVERSARY OF THE CRIMINAL JUSTICE ACT



By Frances Ríos de Morán, Esq., Clerk of Court, USDC-PR

On September 5, 2014, the United States District Court for the District of Puerto Rico, under the leadership and initiative of its Chief Judge, Aida M. Delgado-Colón, marked the 50th anniversary of the passage of the Criminal Justice Act (CJA) in an activity held at the Clemente Ruiz Nazario United States Courthouse. The Court recognized the work of CJA District Representatives, Mentors, Panel Members, and Federal Defenders in a ceremony during which Thomas W. Hillier, II, who retired as Federal Public Defender for the Western District of Washington after almost 36 years in office –32 as its chief– was the keynote speaker.

Special tribute was paid to the late Gerardo Ortiz del Rivero (1920–2014), who served as Federal Public Defender in the District (1979–1990), for his outstanding contribution in the representation of indigent defendants, as well as his character, reputation, and legal prowess – all of which epitomize the essence of criminal defense advocacy. The Court’s admiration and respect for his legacy was immortalized by dedicating the “Gerardo Ortiz del Rivero Attorney Lounge” facility at the Clemente Ruiz Nazario United States Courthouse. In her address to the members of the CJA Panel, Chief Judge Delgado-Colón stressed the important role of the Court in its oversight of CJA funds and praised the dedication of CJA Panel members in representing those unable to bear the cost of representation in criminal proceedings.

CHRISTMAS OCTAVITAS PARTY

On January 29, 2015, the Hon. Raymond L. Acosta Puerto Rico Chapter of the Federal Bar Association held its annual Christmas Party at the Club Náutico de San Juan. With the attendance of notable members and guests, the gathering was a complete success! We danced to the music of DJ RockHand and enjoyed the company. Special thanks to Mrs. Nicole Lliraldi for her impeccable coordination of this event.



Roberto A. Cámara Fuertes, Esq., Chapter President, addresses members and guests.



FBA NEWS: DID YOU KNOW?

Did you know? Our own Oreste R. Ramos serves the FBA at National Level as First Circuit Vice President.



Oreste served on the board of the Puerto Rico Chapter of the Federal Bar Association from 2006-2014 and as its president from 2012-13. He is also a life fellow of the Foundation of the Federal Bar Association.

As you already may know, Oreste's practice is focused on business disputes, securities litigation, sales representative and dealer and distributor agreements (under Act 21 and Act 75, respectively), intellectual property, and employment law. Since 2010 Chambers & Partners in its Global and Latin America Editions has listed Oreste as a leading individual for Dispute Resolution and Intellectual Property.


Clerk's Tidings




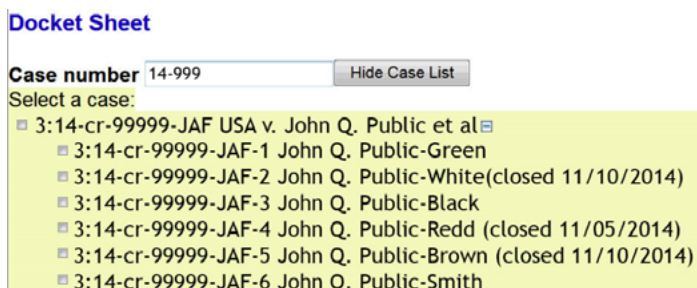
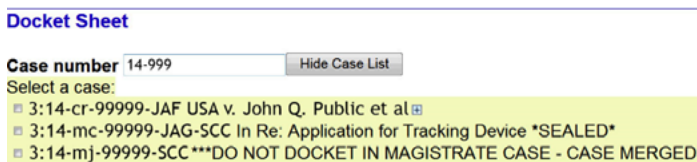
By Frances Ríos de Morán, Esq.
Clerk of Court, U.S. District Court for the District of Puerto Rico

This is a section with news items, notices, and general information from the Clerk's Office in the U.S. District Court for the District of Puerto Rico, as part of a joint effort with the FBA to keep the Bar appraised of events and provide a better, expedited service to its members. As part of this effort, we sometimes provide Internet link addresses to sites over which the Clerk's Office or the U.S. District Court exercise no control and thus take no responsibility for their organization, views, accuracy, contents, standards, copyright, or trademark compliance or legality.

New CM/ECF Expand/Collapse Feature in Criminal Multi-Defendant Cases

 The latest CM/ECF release added a new expand/collapse feature which affects criminal multi-defendant cases. This feature is visible when the system identifies two categories of cases (criminal and magistrate cases) with the same case number (for example, 15-cr-000 and 15-mj-000), and both cases are multi-defendant cases. If only one of the cases is a multi-defendant case, then the multi-defendant case will appear expanded. However, if both cases are multi-defendant cases then both cases will appear collapsed.

 Attorneys should exercise extreme caution when docketing in multi-defendant cases. If a case bears the expand sign, you must click on the expand button so that the list of defendant appears below and you can select the particular defendant as to whom the filing is pertinent. If you select the unexpanded reference to a case, you will be docketing the pleading as to each and every defendant. This practice is not only potentially detrimental to your individual client's interests but, particularly in large multi-defendant cases, creates a serious data quality control



Always click on the expand (+) button to view all the defendants in a case.

situation where “cleaning-up” the incorrectly docketed entries is complicated and time-consuming.

Civil Pro Bono Program

During Fiscal Year 2014, a total of sixty (60) attorneys were randomly selected to serve on the Civil Pro Bono Panel of which two were exempted pursuant to Local Civil Rule 83L(e). A total of twenty-two (22) Pro Bono appointments were made during Fiscal Year 2014. Upon commencement of Fiscal Year 2015, on October 1, 2014, the Clerk selected sixty-five (65) attorneys to the Pro Bono Panel. Since its inception, our Pro Bono Panel has been a success thanks to the dedication and commitment of the members of the Bar.

District Bar Examination

On November 1, 2014, the Court administered the District Court Examination (DCE) to 261 applicants. The results yielded 91 successful applicants for a 35 percent overall pass rate. As of December 8, 2014, a total of 100 attorneys have been admitted to practice in the District of Puerto Rico after April 28, 2014 (including attorneys who passed the DCE in previous years, as well as other admissions). The District Court Examination Committee is chaired by the Honorable Daniel R. Domínguez, United States District Judge.

Proposed Amendment to First Circuit Local Rule 46.5 – Appointment of CJA Counsel

The United States Court of Appeals has published a Notice of Proposed Amendment to Local Rule 46.5. Public comments on the proposed amendment should be received by the Office of the Clerk of the U.S. Court of Appeals for the First Circuit on or before January 7, 2014.

Continued on next page

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To review the First Circuit Court of Appeals' CJA Reference Manual and for more information, click [here](#).

Amendments to the Federal Rules

A number of amendments to the Federal Rules of Practice and Procedure took effect on December 1, 2014. The changes to the federal rules follow recommendations by the Judicial Conference of the United States, review by the Supreme Court, and consideration by Congress. The amendments affect the Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules.

Federal Rules

- ★ **Appellate Rule 6**
- ★ **Bankruptcy Rules 1014, 7004, 7008, 7054, 9023, and 9024**
- ★ **Civil Rule 77**
- ★ **Criminal Rules 5, 6, 12, 34, and 58**
- ★ **Evidence Rules 801(d)(1)(B) and 803(6)-(8)**

For more information on Federal Rulemaking, click [here](#).

Keep Your PACER Password Safe



Take the following steps to help keep your password safe:

- Make sure your computer is actively protected by keeping your anti-virus software up to date.
- Never share your PACER password. If anyone else knows your password, it's no longer secure.
- When an employee leaves your organization, use your PACER Administrative Account to deactivate their login.
- Change your PACER password regularly to prevent unauthorized use of your account.

Click [here](#) to log in to change your PACER password.

PACER v. ECF: What is the Difference?

PACER and CM/ECF are not the same. PACER allows public access while CM/ECF is the Federal Judiciary's case management system which allows online filing capability and access to case files. In other words, PACER is an access account while CM/ECF is a filer account.

User Accounts must be independently maintained as to both portals of information.



The Case Management/Electronic Case Filing (CM/ECF) system is the Federal Judiciary's comprehensive case management system for all bankruptcy, district and appellate courts. CM/ECF allows courts to accept filings and provide access to filed documents over the Internet.



Public Access to Court Electronic Records (PACER) is an electronic public access service that allows users to obtain case and docket information from federal appellate, district and bankruptcy courts, and the PACER Case Locator via the Internet. PACER is provided by the federal Judiciary in keeping with its commitment to providing public access to court information via a centralized service.

CM/ECF User Account Information

All attorneys admitted to practice before the U.S. District Court for the District of Puerto Rico have a continuing duty to keep the Court apprised of their contact information (current work address, telephone/fax numbers, and email address) and must notify the Clerk's Office of any change to information previously provided. This will ensure adequate receipt of time-sensitive notifications.

Always keep your  User Account Information up-to-date.

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Privacy Policy for Electronic Case Files



On December 1, 2007, the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure that implement the E-Government Act of 2002 became effective. Appellate Rule 25, Bankruptcy Rule 9037, Civil Rule 5.2, and Criminal Rule 49.1 require that personal identification information be redacted from documents filed with the court — Social Security

and taxpayer identification numbers, names of minor children, financial account numbers, dates of birth, and, in criminal cases, home addresses. Accordingly, Local Civil Rule 5.2 addresses privacy protection for filings. Members of the Bar are reminded that they are responsible for redacting personal identifiers.

For more information or for assistance with filings, contact the Clerk's Office CM/ECF Helpline at (787)772-3449.

The United States Court of Appeals for Veterans Claims

The United States Court of Appeals for Veterans Claims is a national court of record, established under Article I of the Constitution of the United States. The Court has exclusive jurisdiction to provide judicial review of final decisions by the Board of Veterans' Appeals, an entity within the Department of Veterans Affairs.



The Court provides veterans an impartial judicial forum for review of administrative decisions by the Board of Veterans' Appeals that are adverse to the veteran-appellant's claim of entitlement to benefits for service-connected disabilities, survivor benefits and other benefits such as education payments and waiver of indebtedness.

Attorneys who are in active status and good standing in the highest court of any state, the District of Columbia, or a United States territory or commonwealth may be admitted to practice before the U.S. Court of Appeals for Veterans Claims. Non-attorneys who meet certain requirements can also be admitted as non-attorney practitioners.

For more information on the Rules of Admission and Practice of the U.S. Court of Appeals for Veterans Claims, click [here](#).

WATCH OUT FOR THESE UPCOMING EVENTS!

Immigration Law Brown Bag Lunch

hosted by the Young Lawyers Division
Date to be announced

The Court Speaks Conference

September 4, 2015

About the Clerk

Date to be announced

“A PLANE TICKET TO FLORIDA IS A TICKET TO FEDERAL COURT”

Intentional Migration by Plaintiffs to Manufacture Diversity Jurisdiction: Puerto Rico’s Dilemma

By: Jorge Velázquez-Hernández, Esq. © 2015

It is a well-established constitutional doctrine that Puerto Rican citizens are entitled to the same fundamental rights as the citizens of any state or territory of the United States. *El Vocero de Puerto Rico v. Puerto Rico*, 508 U.S. 147, 150-51 (1993). Among these fundamental rights are: freedom of expression, the right to bear arms, the right to be free from unreasonable searches and seizures, the right to avoid self-incrimination, the right to jury trial in criminal proceedings, and the right to avoid cruel and unusual punishment upon a conviction. These enumerated rights have been granted to residents of Puerto Rico through the doctrine of “selective incorporation.” *Montalvo v. Hernández-Colón*, 377 F.Supp. 332 (D. Puerto Rico, 1974)

The U.S. Supreme Court has held that the Due Process Clause of the Fourteenth Amendment incorporates particular rights against the States, contained within the Bill of Rights of the U.S. Constitution.¹ To determine whether the particular right should be incorporated, the court must determine “whether a particular Bill of Rights guarantee is fundamental to our scheme of ordered liberty and system of justice.” In other words, once the court determines that a particular right is a “fundamental right”, no state or territory may abridge that right.

However, as noted by the Hon. Gustavo Gelpí in *González-Oyarzun v. Caribbean City Builders, Inc.*, Civil. No. 14-1101 (GAG), “[t]he Supreme Court has never explicitly ‘embraced [the] ‘total incorporation’ theory, which provides that the entire Bill of Rights has been incorporated.”

Among the rights which the Supreme Court has declined to incorporate as a fundamental right against the states or territories is the Seventh Amendment’s right to a jury trial in civil cases. See *Minneapolis & St. Louis RR v. Bombolis*, 241 U.S. 21 (1916); *Rivera v. Centro Médico de Turabo, Inc.*, 575 F.3d 10 (1st Cir. 2009). In the absence of such



constitutional mandate, the states and territories have been free to grant or decline to grant the right to jury trial in civil cases in their respective jurisdictions.

Given the “common law” tradition followed in most states, the vast majority of the states have granted a right to jury trial in civil cases within their jurisdictions. The sole “holdout” among the states has been Louisiana, which can be explained by its historical attachment to “civil law” tradition, which has never adopted the concept of jury trials in civil cases. Another “standout” jurisdiction is the Commonwealth of Puerto Rico, which, like Louisiana, has embraced its civil law roots and declined to grant jury trials in civil cases. *García-Mercado v. Tribunal Superior*, 99 D.P.R. 293, 297 (1970) (“neither our Constitution nor the laws of Puerto Rico provide for jury trials in civil litigation. Cases of a civil nature are heard and decided in Puerto Rico by a Judge.”) It is to this jurisdictional anomaly in Puerto Rico which we now turn.

One of the consequences of failing to grant jury trials in civil cases in Puerto Rico is the disparity in the amount of compensation granted in the Commonwealth Courts *vis-a-vis* the jury verdicts granted in the U.S. District Court

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¹ In *Montalvo v. Hernández-Colón*, 377 F.Supp. at 1339, the U.S. District Court of Puerto Rico declined to decide whether the “selective incorporation” doctrine applied to Puerto Rico by means of the Due Process Clause of the Fifth or Fourteenth Amendment: “the people of Puerto Rico, who remain United States citizens, are entitled to invoke against the Commonwealth of Puerto Rico the protection of the fundamental guarantee of due process of law, as provided in the federal Constitution. For our present purposes **it is unnecessary to determine whether it is the due process clause of the Fifth Amendment or that of the Fourteenth Amendment which is now applicable**; the important point is that there cannot exist under the American flag any governmental authority untrammelled by the requirements of due process of law as guaranteed by the Constitution of the United States.” (Quoting *Mora v. Mejias*, 206 F.3d 377, 382 (1st Cir. 1953).

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of Puerto Rico, for analogous claims.² In other words, an award granted by a Commonwealth of Puerto Rico Judge for a broken leg, will often be substantially lower than an award granted by a jury in the U.S. District Court for the same broken leg. This substantial disparity for the same claims in diverse jurisdictions leads to the predictable and foreseeable consequence of “forum-shopping” by practicing attorneys in the U.S. District Court. The obvious question they ask is: **why should I file my state claim in the Commonwealth Court, if I can file same claim before a jury in the U.S. District Court and get twice as much?**

The Source of Federal Jurisdiction to Litigate State Claims in Federal Court: Diversity Jurisdiction/28 U.S.C. 1332

Article III of the U.S. Constitution indicates that the judicial power of the United States shall extend to **all cases arising between citizens of different states**. This source of federal jurisdiction mandated by the U.S. Constitution was eventually codified in 28 U.S.C. 1332.

The two essential elements that a party must establish to invoke diversity jurisdiction in federal court are:

- 1) **diversity of citizenship** between plaintiffs and defendants;
- 2) the claim in the dispute **must exceed \$75,000**, excluding costs and attorneys’ fees.

The main reason for diversity jurisdiction is to provide **a neutral forum for non-resident litigants**. For example, if John Smith, a tourist from New York, was “run over” by a driver from Puerto Rico in the Condado area, he would, as a general rule, have to file a tort lawsuit for negligence under Article 1802 of the Puerto Rico Civil Code in San Juan Superior Court, since that would be the proper venue to litigate a Puerto Rico tort claim. However, John Smith, as a non-Spanish speaker, and a non-resident plaintiff, might feel that the Superior Court Judge might not provide a fair trial. The “diversity jurisdiction” doctrine provides Mr. Smith an alternative federal forum to the same Puerto Rico claim under Article 1802.³ Mr. Smith might be

more comfortable with the federal forum for two reasons: first, the proceedings would be held in English, and second, the proceedings would be presided by a federal judge with a lifetime appointment, which presumably makes him less subject to external pressures, and thus more impartial in his rulings.

This diversity jurisdiction, while proving non-resident litigants a “neutral forum” to protect them from a hostile jurisdiction that would presumably favor the local litigant, has become a double-edged sword in Puerto Rico, since for the last thirty years, practicing attorneys in Puerto Rico have invoked diversity jurisdiction to obtain a jury trial for their state claims which they would not otherwise receive in the Commonwealth Courts. This “creative” use of “diversity jurisdiction” has flooded the U.S. District Court of Puerto Rico with claims that should be litigated exclusively in Puerto Rico, draining the federal courts of precious time and judicial resources that would be better served in claims of legitimate federal jurisdiction.

Requisites to invoke federal jurisdiction through “diversity jurisdiction”

The party invoking diversity jurisdiction —usually the plaintiff— has the burden of proof to establish federal jurisdiction by preponderance of evidence.

For purposes of diversity jurisdiction, **a person is a citizen of the state in which he is domiciled**. *Bank One v. Montle*, 964 F.2d 48, 49 (1st Cir. 1992). Accordingly, a citizen of Puerto Rico may sue a citizen of New York, since both parties are citizens of “diverse” states.

However, to prove the element of “domicile” in a particular state, as prescribed by the diversity statute, the party invoking jurisdiction must establish:

- a. physical presence in the state; and
- b. intention to reside indefinitely in the state.

The Court of Appeals explains that **“a person’s domicile is the place where has a true, fixed home and principal establishment, and to which, whenever he is absent he has the intention of returning.”** *Rodriguez-Diaz v. Sierra-Martinez*, 853 F.2d 1027, 1029 (1st Cir. 1988); *Garcia-Perez v. Santaella*, 364 F.3d 348, 350 (1st Cir. 2004); *Padilla-Mangual v. Pavia Hospital*, 516 F.3d 29, 32 (1st Cir. 2008).

Among the factors that the federal court must consider to determine the parties’ domicile are:

- 1) person’s place of voting;
- 2) the location of the person’s real and personal property;
- 3) state issuing the person’s license;
- 4) state where the person’s bank accounts are maintained;

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² In *Montalvo v. Hernández-Colón*, 377 F.Supp. at 1339, the U.S. District Court of Puerto Rico declined to decide whether the “selective incorporation” doctrine applied to Puerto Rico by means of the Due Process Clause of the Fifth or Fourteenth Amendment: “the people of Puerto Rico, who remain United States citizens, are entitled to invoke against the Commonwealth of Puerto Rico the protection of the fundamental guarantee of due process of law, as provided in the federal Constitution. For our present purposes it is unnecessary to determine whether it is the due process clause of the Fifth Amendment or that of the Fourteenth Amendment which is now applicable; the important point is that there cannot exist under the American flag any governmental authority untrammelled by the requirements of due process of law as guaranteed by the Constitution of the United States.” (Quoting *Mora v. Mejías*, 206 F.3d 377, 382 (1st Cir. 1953).

³ The Supreme Court ruled in *Erie v. Tompkins*, 58 S.Ct 817, 822 (1938), that “[e]xcept in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state.” Simply put, **in cases involving diversity jurisdiction, the federal courts must apply the substantive law of the state in which the federal court is located**. See *Gasparini v. Center for Humanities, Inc.*, 116 S.Ct. 2211, 2219 (1996) (“Federal diversity jurisdiction provides an alternative forum for the adjudication of state-created rights.”) See also *Katz v. Pershing, LLC*, 672 F.3d 64 (1st Cir. 2012).

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- 5) club or church memberships;
- 6) person's place of employment, and
- 7) other factors (family ties, where his children go to school)

Rodriguez v. Señor Frog's, 642 F.3d 28, 33 (1st Cir. 2011); *Palermo v. Abrams*, 62 F.Supp.2d 408, 410 (D. Puerto Rico, 1999).

The Court adds in *Bank One v. Montle*, 964 F.2d 48, 50 (1st Cir. 1992), that “the place a person is registered to vote is a ‘weighty’ factor in determining domicile.” The court also explains that “[w]hile the location of a person’s business is certainly probative of intent [to reside], **courts tend to emphasize the location of one’s domestic and social life over her business contacts.**” *Montle*, supra at 53.

When is a party’s domicile determined?

Domicile is **determined at the time the complaint is filed.** *Lundquist v. Precision Valley Aviation, Inc.*, 946 F.2d 8, 10 (1st Cir. 1991); *Rosado-Marrero v. Hospital San Pablo*, 927 F.Supp. 576 (D. Puerto Rico, 1996). And, as noted by Hamlet in Shakespeare’s work, **“there’s the rub.”**⁴

Ex. Egipciano, a resident of San Juan, Puerto Rico, is run over by a motorcycle driven by Juan Perez-Lopez, another resident of San Juan, Puerto Rico. Egipciano suffers a broken arm. The incident takes place on January 15, 2011.

According to the applicable statute of limitations, Egipciano has until January 15, 2012, to file a lawsuit against Perez-Lopez.

Egipciano, a resident of PR on January 2011, moves to Florida on December 15, 2011 and files a lawsuit against Perez-Lopez in federal court on Dec. 20, 2011, alleging diversity jurisdiction.

Can Perez-Lopez seek dismissal of the complaint, alleging lack of diversity jurisdiction, since both Egipciano and Perez Lopez were citizens of the same state (Puerto Rico) at the time of the accident?

No. In this case, Egipciano can establish diversity jurisdiction against Perez-Lopez, **even if he only lived in Florida for a month prior to filing his complaint.** Since domicile is determined at the time the complaint is filed, all Egipciano has to prove is physical presence in Florida and his intention to reside indefinitely in that state. **There is no minimum period of time required to establish domicile**, for purposes of Section 1332. “A citizen of the United States can **instantly transfer his citizenship from one state to another.**” *Hawes v. Club Ecuestre El Comandante*, 598 F.3d 698, 701 (1st Cir. 1979).

The liberal interpretation of a citizen’s domicile, for purposes of alleging federal “diversity jurisdiction”, has

created a perverse incentive by some practicing attorneys in the U.S. District Court of Puerto Rico to **encourage clients to move from Puerto Rico to Florida, prior to filing the complaint in federal court, then file and return to Puerto Rico.**

This trip to Florida creates a “domicile” for the plaintiff in Florida, and his return to Puerto Rico does not affect the “diversity jurisdiction” established for purposes of litigating in federal court. The First Circuit has unequivocally stated that: “[d]omicile is determined as of the time the suit is filed, and **once diversity jurisdiction jurisdiction is established, it is not lost by a later change in domicile.**” *Bank of Texas v. Montle*, 964 F.2d 48, 49.

Since Puerto Rico does not have a jury system in civil cases, and federal juries tend to award greater amounts in favorable verdicts than in equivalent cases tried before a judge in Puerto Rican courts, Puerto Rican plaintiffs and their attorneys have an incentive to file their tort claims in federal courts, where the Seventh Amendment of the U.S. Constitution guarantees a jury trial for civil cases filed in federal court.⁵

Even if this may look like a “dirty trick” by some plaintiff’s attorneys that will promote “forum shopping” to obtain the most favorable venue to their clients, it is perfectly legal. A **challenging party cannot impeach motivation for changing domicile.** *Bank One v. Montle*, 964 F.2d 48, 53 (1st Cir. 1992)(“[I]t has long been the rule that motive for the change in residence is irrelevant in determining domicile... **a change of domicile will be recognized even if it was made for the purpose of creating diversity jurisdiction.**” *Id.*

I propose that the time for determining domicile, for purposes of determining diversity jurisdiction, should be at the time of the accident, which generates the cause of action. Under this doctrine, there is no margin for “manufacturing” diversity jurisdiction, since the plaintiff did not know he was going to be involved in a lawsuit.

Some district court judges, aware of the abuse generated by this doctrine, have sought to determine whether a plaintiff genuinely intends to remain indefinitely in this new jurisdiction – whether it is Florida or any other jurisdiction. For example, Judge Salvador Casellas has issued an “order to show cause” whenever he has doubts about the legitimacy of a party’s claim to domicile. See *Palermo v. Abrams*, 62 F.Supp.2d 408, 411 (D. Puerto Rico, 1999):

“the Court ORDERS defendant Fred Abrams to provide the following information, to enable the Court to prepare for the hearing and make an educated ruling on the jurisdictional issue:

1. Where was Abrams registered to vote at the time of the filing of the complaint?

⁵ *Continental Ill. Nat’l Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co.*, 294 U.S. 648, 669 (1935).

Continued on next page

⁴ Act 3, Scene 1, line 66. *Hamlet*, William Shakespeare.

Continued from previous page

2. Where did he vote in the last election? (November 1996)
3. Did Abrams vote in the Puerto Rico plebiscite of December 1998?
4. If registered to vote in Puerto Rico, what is the number of Abram's electoral card?
5. Where has Abrams filed income tax returns for the last three (3) years (1996, 1997, 1998)?
6. If Abrams filed income tax returns in Puerto Rico, did he file them as a resident or as a non-resident?
7. Where has Abrams derived his principal source of income during the last three (3) years (1996, 1997, 1998)? Please specify the amount derived from business in Puerto Rico and from business in the continental United States or other countries.
8. State the residences where Fred Abrams resided at the date of the filing of the complaint, and since the filing of the complaint, whether houses or apartments, in Puerto Rico, the continental United States or other countries.
9. State whether Fred Abrams owns or rents the residences where he has resided from the date of the filing of the complaint, whether houses or apartments, in Puerto Rico, the continental United States or other countries.
10. State the official phone numbers, both for professional and personal use, which Fred Abrams has used from the date of the filing of the complaint, whether in Puerto Rico, the continental United States or other countries.
11. State the offices and addresses and phone numbers of the offices where he has conducted business from the date of the filing of the complaint, whether in Puerto Rico, the continental United States or other countries.
12. Did Fred Abrams own any motor vehicles at time of the filing of the complaint and after the filing of the complaint? If so, provide the license number of vehicle.
13. Did Fred Abrams hold any bank accounts in Puerto Rico at the time of the filing of the complaint and after the filing of the complaint? If so, provide descriptions and/or copies of the most recent statements of these accounts.
14. How long has Fred Abrams lived in Puerto Rico?
15. Provide a concise but clear description of the industry, trade or profession carried out by Fred Abrams in Puerto Rico, the continental United States or other countries at the time of the filing of the complaint and after the filing of the complaint."

Notwithstanding Judge Casellas's valiant effort to stem the jurisdictional flood of "diverse" Puerto Rican plaintiffs in Florida, this remedy is only a "patch-work" effort that does little to reverse the trend, which would require a Congressional or judicial mandate.

The recently amended laws to determine the proper venue in federal courts, provides a template to establish jurisdiction.

28 U.S.C. 1391(b)⁶ states:

(b) Venue in General.

A civil action may be brought in—

- (2) a judicial district **in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.**

Congress should amend Section 1332 of Title 28 of the United States Code to establish that the time to determine a party's domicile, for purposes of establishing diversity jurisdiction would be not at the time that the complaint is filed, but rather, at the time **in which a substantial part of the events or omissions giving rise to the claim occurred.**"⁷

Conversely, the Judges of the U.S. Court of Appeals of the First Circuit could reverse their decades-long rule of determining diversity at the time that the complaint is filed, for the more equitable doctrine of determining diversity jurisdiction at the time that **"a substantial part of the events or omissions giving rise to the claim occurred."** Perhaps one of our esteemed Judges of the U.S. District Court of Puerto Rico —which undoubtedly are aware of the substantial abuse generated by the liberal interpretation of the domicile requirement— shall force the issue by adopting my suggestion, and do away with a "jurisdictional shenanigan" that has no place in the hallowed halls of the federal courts. As noted by the Honorable Judge Salvador Casellas in another context: "As to fear of reversal, we believe our judges are made of sterner stuff..."

Ironically, this dilemma might become moot if the First Circuit Court of Appeals adopts Judge Gelpi's interpretation of the Seventh Amendment as a "fundamental right" that must be incorporated in Puerto Rico through the 14th Amendment. See *Gonzalez-Oyarzun v. Caribbean City Builders, Inc.*, Civil No. 14-1101 (GAG)(Ruling that 7th Amendment is a "fundamental right" that must be applied to the states, commonwealths, and territories of the United States); see also *Pérez-Toledo v. Quiñones-Rosario*, NSCI 2011-00096 (Fajardo Superior Court)(Estrella-Morales, J.) (Granting jury trial on Puerto Rico civil claim filed in

⁶ 28 U.S.C. 1391 (b); Venue Generally (As Amended Dec. 7, 2011 by Federal Courts Jurisdiction and Venue Clarification Act of 2011)

⁷ Indeed, Congress recently amended 1332(b) to establish that "the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same state." See Federal Courts Jurisdiction and Venue Clarification Act of 2011. The policy behind this amendment is that a foreigner with permanent residence in the United States no longer needs the "neutral forum" which the federal court provides, since, as a permanent resident of the U.S. and a particular state —Florida, for example— he is unlikely to be discriminated in a Florida state court. Accordingly, an amendment to dissuade Puerto Rican plaintiffs from moving to Florida would create no harm, since it would compel them to litigate Puerto Rico claims in the Commonwealth Courts of Puerto Rico. Just like the permanent residents, the Puerto Rican citizens do not need a "neutral forum" in federal courts to protect their claims.

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FBA's FEDERAL BAR REVIEW COURSE

The United States District Court for the District of Puerto Rico offers a Federal Bar Examination twice a year, typically during the first Saturday of April and the first Saturday of October or November.

Each year, twice a year, the Puerto Rico Chapter of the Federal Bar Association administers an in-person preparatory course for the Bar Exam. The FBA's course is composed of eight sessions, each dealing with one of the eight topics of inquiry of the exam (Evidence, Federal Civil Procedure, Federal Criminal Procedure, Bankruptcy, Appellate Procedure, Local Rules, Ethics, Federal Jurisdiction). The classes are scheduled twice a week on Mondays to Thursdays and they start at 7:00 pm until 10:00 pm. The classes are taught by seasoned federal practitioners, each with abundant hands-on experience in their respective areas of practice.

The Puerto Rico Chapter of the FBA would like to acknowledge the participation and invaluable assistance of the following persons in the FBA's Federal Bar Review Course.

Roberto Abesada Agüet, Esq.



FEDERAL BAR EXAM

FEDERAL BAR ASSOCIATION REVIEW COURSE

March 16, 17, 24, 25, and April 7, 8, 9 and 16
7:00 p.m. to 10:00 p.m.

UNIVERSIDAD DE SAGRADO CORAZÓN
San Juan, Puerto Rico

Local Rules MARCH 16, 2015 Seth Erbe, Esq.	Federal Jurisdiction and Venue MARCH 17, 2015 Joanna Matos-Hicks, Esq.	Rules of Professional Conduct MARCH 24, 2015 Rica López de Alós, Esq.	Federal Rules of Criminal Procedure MARCH 25, 2015 Maritza González, AUSA
Federal Rules of Civil Procedure APRIL 7, 2015 Raúl Arias, Esq.	Federal Rules of Evidence APRIL 8, 2015 Manuel Pietrantonì, Esq.	Bankruptcy Practice and Procedure APRIL 9, 2015 Antonio A. Arias, Esq. Manuel Fernández Bared, Esq.	Federal Rules of Appellate Procedure APRIL 16, 2015 Ricardo Casellas, Esq.

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A Plane Ticket to Florida...

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Puerto Rico Superior Court.).

Should the federal courts impose a jury trial requirement on all civil proceedings in Puerto Rico, the incentive to “flee to Florida” to create diversity jurisdiction would vanish, since the plaintiffs would have civil jury trials in the Commonwealth Courts, and presumably would receive

similar compensation to the jury awards now granted for similar claims in the U.S. District Court of Puerto Rico.

The ball is in your court, Honorable Congressmen and Federal Judges. Shall you return serve?

FBA–PR STUDENT DIVISIONS INDUCTION CEREMONY



(L-R) Hon. Roberto Feliberti Cintrón, Hon. José A. Fusté, Hon. Aida M. Delgado-Colón, Hon. Bruce J. McGiverin

On November 2014, the U.S. District Court for the District of Puerto Rico welcomed student members of the Hon. Raymond L. Acosta Puerto Rico Chapter of the FBA and held an induction ceremony for the student divisions of the University of Puerto Rico School of Law (UPR), the Interamerican University of Puerto Rico School of Law (IUPR), and the Pontifical Catholic university of Puerto Rico School of Law (PUCPR). The ceremony was presided by the Honorable Aida M. Delgado-Colón, Chief Judge of the U.S. District Court for the District of Puerto Rico was joined by Hon. José A. Fusté, U.S. District Court Judge, Hon. Bruce J. McGiverin, U.S. Magistrate Judge, and Hon. Roberto Feliberti-Cintrón, Associate Justice of the Puerto Rico Supreme Court. The Court began by recognizing Mr. Roberto A. Cámara Fuertes, Esq, president of the Puerto Rico Chapter, who gave opening remarks, congratulated the students in becoming members of the FBA and encouraged them to take advantage of the many benefits that the membership of the FBA carries. Next, the presidents of each student division, Giancarlo Cartagena Avilés (IUPR), Javier González (UPR) and Carlos Morales Cardona (PUCPR) briefly addressed the court and fellow student members.

After the students’ oath was taken, the judicial officers addressed the new student members congratulating them on their decision to join the organization, encouraging them to become federal practitioners and highlighting how being FBA members has been beneficial to each one.

Thereafter, the students and family members in attendance had the opportunity to mingle and take photographs in the federal court facilities.



Giancarlo Cartagena Avilés (IUPR)



IUPR Student Chapter



Javier González (UPR)



UPR Student Chapter



Carlos Morales Cardona (PUCPR)



PUCPR Student Chapter

LUNCHEON WITH HON. MAITÉ D. ORONOZ RODRÍGUEZ

On December, 2014, the Federal Bar Association, Hon. Raymond L. Acosta P.R. Chapter held a luncheon with the newly appointed Associate Justice of the Puerto Rico Supreme Court, Hon. Maite D. Oronoz Rodríguez. After a warm welcome from the Chapter's President, Mr. Roberto A. Cámara Fuertes, and an introductory message from Salvador Antonetti-Stutts, Judge Oronoz addressed the members in attendance at Los Chavales Restaurant in Hato Rey. Her message included a brief review of her professional trajectory prior to becoming Associate Justice of the Puerto Rico Supreme Court; a synopsis of her weekly tasks and responsibilities as Associate Justice and some recommendations to practitioners.



Hon. Maite D. Oronoz Rodríguez

as clear as possible for the judges and parties to a case. Her recommendations to practitioners included being detail oriented and always abiding by the Rules of the Supreme Court for the filing of papers. Justice Oronoz urged lawyers to be more precise in their writing and paying attention to Court deadlines.

Finally, Justice Oronoz explained that her transition has been smooth thanks to the assistance of the remainder Associate Justices. According to her, the most difficult task so far is deciding whether to be more liberal or strict with the text of the law and finding her precise adjudicative theory.

Justice Oronoz is the fifth woman to serve in Puerto Rico's highest court of justice. Justice Oronoz graduated from Villanova University in Pennsylvania where she obtained a BA in History. Later, she attended the University of Puerto Rico School of Law, where she graduated Magda Cum Laude and was a member of the Law Review. Finally, she obtained an LLM from Columbia University in New York. After being admitted to the bar, she served as law clerk for Hon. Federico Hernández Denton, and later worked in private practice. Afterwards, she served as Deputy Solicitor General at the Department of Justice, and in 2013 she was nominated to head the Office of Legal Affairs of the city of San Juan, Puerto Rico. On June 4, 2014, Gov. Alejandro García Padilla nominated Oronoz Rodríguez to the Supreme Court of Puerto Rico, following Associate Justice Liana Fiol Matta's nomination as Chief Justice. She was confirmed by the Senate on June 23, 2014. She was finally sworn in on July 15, 2014.

During the luncheon, Justice Oronoz stressed her understanding of the frustrations of litigation attorneys and assured that her contributions bear such concerns in mind and aim to be



Salvador Antonetti Stutts, Esq.



Roberto A. Cámara Fuertes, Esq.

COMPLEX CIVIL LITIGATION

On February 18, 2015, the Federal Bar Association, Hon. Raymond L. Acosta P.R. Chapter, its Young Lawyers Division, and the FBA-UPR Student Chapter gathered for an evening with Hon. Gustavo A. Gelpí, U.S. District Judge for the District of Puerto Rico, as well as José A. Hernández Mayoral, Esq. and Manuel San Juan, Esq. for an open discussion on Complex Civil Litigation and recent caselaw.



José A. Hernández Mayoral, Esq., Manuel San Juan, Esq. and Hon. Gustavo A. Gelpí.



Manuel San Juan, Esq., Hon. Gustavo A. Gelpí., José A. Hernández Mayoral, Esq., and Joseph Feldstein, Esq. joined by various student members.

INTERESTED IN BECOMING A MEMBER?

The Federal Bar Association is the premier professional association for judges and lawyers involved in federal practice before the US District Court and the federal agencies. With over 16,000 members in more than 80 local chapters, it is unequalled in its relationship with the Federal Judiciary.

Puerto Rico is the third largest chapter in the national organization and has repeatedly won recognition for being one of the best chapters in the Nation. This shows the level of commitment to serve our members with educational seminars, social activities with the members of the Federal Bar, civic and educational activities for the general public, and by conveying the concerns of our membership to the

judges and the Clerk's office.

Membership is open to any person admitted to the practice of law before a federal court or a court of record in any of the several states, commonwealths, territories, or possessions of the U.S., or in the District of Columbia, provided you have been an officer or employee of the United States or the District of Columbia, you have a substantial interest or participate in the area of federal law, or you are a law student not admitted to practice.

There are two ways of joining our organization. First, you can fill out a form online, or you can print the application form and mail it. Don't wait a minute longer, visit us at www.federalbar.org and JOIN NOW!