November, 2020

A Land Mine in Rule 12(c) Motions for Judgment on the Pleadings

William M Janssen

THE FEDERAL LAWYER

Volume 67, Issue 6

The Magazine of the Federal Bar Association

Law in the Time of Corona

page 48

THE
FEDERAL LAWYER

Volume 67, Issue 6

The Magazine of the Federal Bar Association

The Federal Lawyer (ISSN: 1080-675X) is published bimonthly six times per year by the Federal Bar Association, 1220 N. Fillmore St., Ste. 444, Arlington, VA, 22201 Tel, (571) 481-9126, Fax (571) 481-9090, Email: social@fedbar.org. Subscription Rates: $14 of each member's dues is applied toward a subscription. Nonmember domestic subscriptions are $50 each per year; foreign subscriptions are $60 each per year. All subscription prices include postage. Single copies are $5. **"Periodical postage paid at Arlington, VA... and at additional mailing offices." "POSTMASTER**, send address changes to: The Federal Lawyer, The Federal Bar Association, 1220 N. Fillmore St., Ste. 444, Arlington, VA 22201."

November/December: Federal Practice

Also in This Issue

COLUMNS

PROFILES

BOOK REVIEWS

FBA MEMBER NEWS

A Land Mine in Rule 12(c) Motions for Judgment on the Pleadings

WILLIAM M. JANSSEN

Several federal judges have recently shined a light on an often overlooked feature of Rule 12(c)—it comes with a land mine.[1] Let me explain through an example. Your client has just been served with a federal lawsuit, and it is clear from the face of the complaint that the claim is time-barred. Your client is convinced she has other defenses as well, including other merits arguments, a strong personal jurisdiction and venue objection, and maybe even a service of process objection. But the time-bar argument looks to be a clean, unambiguous winner. Your particular federal circuit does not permit affirmative defenses (like time-bar) to be contested in a pre-answer motion to dismiss, no matter how clearly it appears on the face of the pleading.

Instead, the proper vehicle for raising that defense in your circuit is a Rule 12(c) motion for judgment on the pleadings. Acutely mindful of the need to preserve your client's waivable defenses of personal jurisdiction, venue, and service, you dutifully plead them in your answer. (Each of those challenges will require affidavits from your client to set out the supporting factual details, and you are busily assembling those documents now—you envision a Rule 12(i) motion for a prompt hearing on those soon to follow.) But, confident, in your sure-winner time-bar argument, you file your answer and, along with it, you file a Rule 12(c) motion on that statute of limitations defense.

Doing so likely just forfeited all your client's personal jurisdiction, venue, and service objections.

Why a Rule 12(c) Motions for Judgment on the Pleadings?

For many practicing lawyers, motions for judgment on the pleadings have long been like those fourth-cousins who live somewhere out in the country eight states away—you might be familiar enough to say hello, but you sure wouldn't be able to keep the conversation going for long. These motions have not been tools most practitioners dust off all that often (or ever, for that matter). Even the legendary professors Wright and Miller reinforce the point in their masterwork, dismissing Rule 12(c) motions as "little more than a relic of the common law and code eras" with a usefulness that has long since faded as Rule 12(b)(6) and Rule 56 practice evolved.[2]

This burial of Rule 12(c) is seeming more and more premature these days. Rule 12(c) is having a revival of sorts, and for several reasons. First, with some courts precluding the use of a pre-answer Rule 12(b)(6) motion to press affirmative defenses, a post-answer Rule 12(c) motion is often the most suitable vehicle for raising those types of pleadings-based challenges.[3] Second, Rule 12(b)(6) motions are reserved for those from whom a responsive pleading is required (typically, defendants), whereas Rule 12(c) can be used by claimants as well.[4] Third, when used by claimants to attack an opponent's defense, Rule 12(c) is more versatile than Rule 12(f) motions to strike because it allows a substantive merits challenge to the defense, something Rule 12(f) case law now increasingly forecloses.[5] Fourth, unlike Rule 12(b)(6) motions, which ordinarily are constrained to

the tight, pre-answer time window, Rule 12(c) motions can be filed any time after the pleadings have closed, so long as the filing is "early enough not to delay trial."[6] Fifth, this timing liberality offers clear practice advantages, as the clarity of an attorney's view of the lawsuit sharpens with greater familiarity, more strategic thinking, and maturing case developments. Sixth, victory on a Rule 12(c) motion ends with a "judgment," not just a dismissal,[7] which could prove more final and less vulnerable to a re-pleading cycle than Rule 12(b)(6) might produce.[8]

For these reasons, Rule 12(c) motions now seem ascendant in the arsenals of counsel for both federal plaintiffs and defendants. After years sitting neglected in the armory, practitioners appear to have rediscovered Rule 12(c)'s strategic place and unique value in federal litigation. But along with Rule 12(c)'s long period of disuse has come a lack of familiarity and a waning of that wisdom that follows from experience. Not to worry, leading proceduralists counseled: the "continued existence" of this artifact of a bygone age ought not to "present any real difficulty for practitioners or judges."[9] Alas, that surmise has not proven entirely accurate.

Avoiding a Waiver of Defenses—What We Think We Know

For many of us, the topic of Rule 12(b) defense waivers takes us uncomfortably back to those overwhelming first-year-of-law-school days. What practitioners learned, or at least think they remember they learned, about Rule 12(b) defense waivers is often just this—there are four waivable Rule 12(b) defenses and objections (personal jurisdiction, venue, bad summons form, and bad service of process), and to be preserved, those must be asserted in a pre-answer motion, if one is filed, or if not, in that party's answer.

Easy enough, and correct.[10] The Advisory Committee Notes to Rule 12 confirm as much: "a defendant who makes a *preanswer* motion under this rule" is "forbidden," wrote the committee back in 1966, "from making a further motion presenting any defense or objection which was available to him at the time he made the first motion and which he could have included, but did not in fact include."[11] The "salutary" purpose of this "required consolidation of defenses and objections" is obvious—to avoid "piecemeal consideration of a case."[12] The companion 1966 amendments to Rules 12(g) and 12(h) had been intended to resolve a then-existing ambiguity in the rules that had left the federal courts divided on how Rule 12(b) defense waivers were supposed to work. The amended rule text, wrote the 1966 committee, "eliminates the ambiguity and states that certain specified defenses which were available to a party when he made a *preanswer* motion, but which he omitted from the motion, are waived."[13]

The as-clarified Rule 12(b) defense waivers process seemed simple enough, as did the path of waiver-avoidance. To preserve challenges to personal jurisdiction, venue, bad summons form, and bad service of process, parties must include them in any pre-answer motion they file or, if they file no such motion, plead them in their answer. Failing to do so is a waiver. It's all very straightforward.

So how is Rule 12(c) implicated in all of this? After all, a Rule 12(c) motion for judgment on the pleadings is not a "pre-answer" motion. Indeed, its very availability hinges on an answer already having been filed.[14] It is the quintessential *post*-answer motion. Consequently, the Rule 12(b) defense waivers process ought to be irrelevant in the Rule 12(c) context. So long as a party has dutifully preserved its waivable defenses and objections by pleading them in its answer, the filing of a Rule 12(c) *post*-answer motion for judgment on the pleadings should pose no Rule 12(b) defense waiver risk. Right?

Avoiding a Waiver of Defenses—What It Actually Is

As it turns out, the 1966 Advisory Committee Note is a bit misguiding. Although the language of the amending committee's 1966 note is heavily anchored to "preanswer" motion filings, the language of the rule the committee actually wrote is not so limited.

It is true that a party waives its personal jurisdiction, venue, bad summons form, or bad service of process challenges by omitting them from a pre-answer motion (if one is filed) or its answer (if one is not). But waiver can come in another form as well. If a party makes a *post-answer* Rule 12(c) motion but omits from it any of those same four defenses and objections (if then available), the omitted defenses and objections are waived just as readily.[15] And that's true *even if* those defenses and objections were dutifully pleaded in the party's answer.[16] That's the Rule 12(c) land mine.

It's a land mine not because the language of Rule 12 fails to support that reading. It does. It's a land mine because getting there takes some assembly work—and because that outcome confounds how many practitioners think about Rule 12(b) defense waivers.

Assembling the Rule 12 Defense Waivers Process

The waiver consequence of a Rule 12 motion filing is set out in the rule's subpart (h); the complicating assembly comes from its internal cross-references to subpart (g). Here's how the journey works:

Step #1: A party waives any defenses and objections to personal jurisdiction, venue, the summons, and service of process it may then have if the party fails to make a Rule 12 motion asserting them *or* fails to include them in its answer (or an as-of-right amendment to that answer).[17]

Step #2: The failure-to-make-a-motion path becomes significant for waiver purposes because any party who *does* make a motion under Rule 12 is permitted, by the preceding subpart (g), to join with that motion any other Rule 12 motion that party may then have.[18]

Step #3: That motion-combining right of subpart (g) contains a proscription barring anyone from making a *second* "motion under this rule" that would raise a defense or objection "that was available to the party but omitted from its earlier motion."[19]

Step #4: Then, the rule in subpart (h), referring back to the second provision of subpart (g), announces that an omission of personal jurisdiction, venue, bad summons, or bad service of process "in the circumstances described in Rule 12(g)(2)" constitutes a waiver of that omitted defense or objection.[20] The "circumstances described in Rule 12(g)(2)" mean Step #3, above.

Admittedly, it produces a fairly indirect, circular path to explaining a procedure of federal civil litigation. But it is there just the same. It may take some untangling, but if you spend the time to work through the assembly process, the meaning appears.

Confounding Our Expected Understanding

Yet that meaning tends to compete with practitioner expectations. It's just not the way we think about Rule 12. Rule 12 instructs us on when to file a responsive pleading, allows us to raise certain defenses and objections by motion before filing that responsive pleading (and prescribes the mechanics for such motions), and confirms that such early motions postpone the time for filing a responsive pleading, were the motions to fail.[21] It also allows us to obtain the court's help in better understanding a pleading to which we must respond, and to ask the court to strike portions of that pleading (in lieu of responding) when those portions are improper.[22] All told, the whole focus of Rule 12—other than Rule 12(c)—is *pre-answer* litigation obligations, mechanics, and consequences.

Viewed from this perspective, a practitioner's *pre-answer* impression of how the Rule 12(b) defense waivers work matches the pre-answer focus that dominates Rule 12. Practitioners see in the rule what they expect to see in the rule. That, in turn, leads to a simplified appreciation of Rule 12(b) defense waivers: if you file a *pre-answer* motion, it has to be comprehensive; you have to assert all at once your preliminary, threshold objections.

This impression is correct, of course, but also incomplete. It neglects the Rule 12(c) land mine. Why we continue to labor under this incomplete understanding is easy to explain.

First, our pre-answer-only focus aligns with the Advisory Committee's pre-answer observations about its 1966 amendments to the waiver subpart, as recounted above. Thus, for more than a half century, we've been conditioned to think about Rule 12(b) defense waivers in a pre-answer environment. That understanding also comported with sentiments expressed over the years by leading practice specialists.[23]

Second, our pre-answer-only understanding of Rule 12(b) defense waivers is reinforced by our experience with the motion-combining right codified in Rule 12(g). The motion-combining right teaches us that any motion made "under" Rule 12 may be "joined with any other motion allowed by this rule."[24] Well, that's just not true about Rule 12(c) motions for judgment on the pleadings. Rule 12(c) motions *cannot* be joined with Rule 12(b) motions to dismiss (which "must be made before pleading if a responsive pleading is allowed"),[25] or Rule 12(e) motions for a more definite statement (which also "must be made before filing a responsive pleading"),[26] or many Rule 12(f) motions to strike (which likewise must be made "before responding to the pleading").[27] To the contrary, Rule 12(c) motions are only timely *after* a responsive pleading is filed.[28] This plain unavailability of Rule 12(c) for motion-combining purposes bolsters our impression of motion-combining as a *pre-answer* function. So, even a careful practitioner could be forgiven for failing to immediately call Rule 12(c) to mind when thinking through the motion-combining right. And, because the motion-combining right is integral in creating the Rule 12(c) land mine, the ensuing practitioner confusion can follow quite naturally.

Third, into this mix must be folded the motion/answer option preserved by Rule 12(b). Pre-answer motion practice on threshold defenses is permitted, not required. A party may always properly raise those threshold defenses and objections—for the first time—in its answer, entirely omitting the filing of any pre-answer motion.[29] Indeed, a party might have good and thoughtful reasons for electing to do so. As hypothesized earlier, a party might believe it has a sound basis to contest personal jurisdiction, venue, process, or service, yet need more time to marshal affidavits and companion documents essential to support those challenges. In that setting, a motion in the pre-answer timeframe might just not be possible. And, thinking those defenses to be well and safely "preserved" once pleaded in the answer,[30] a busy practitioner (who missed the Rule 12(b) defense waivers assembly nuances described above) might actually feel quite sanguine with the decision to simultaneously press a Rule 12(c) motion aimed at addressing some merits issue that appears easily resolved on the pleadings. After all, such a strategy would seem, on a cursory glance, to comport snugly with a rules regime that already allows—without risk or waiver—the pressing of threshold power defenses (jurisdiction, venue, and service) at the very same time as a merits-based failure to state a claim is pressed.[31]

Thus, the practitioner's misapprehension is explained. Still incomplete, but understandable.

Practicing More Safely With Rule 12(c)

The waiving effect of a Rule 12(c) motion makes perfect sense. Its logic is inescapable as a matter of reason and incontestable as a matter of policy. A party who, by motion, requests a court to enter a dispositive merits judgment in its favor is hard-pressed to deny that it is, by that request, voluntarily submitting to the power of that tribunal to rule. One court called this "constructive consent."[32] That's apt. It makes little sense to allow a party to ask a court to declare it a winner and yet preserve for that party a fall-back argument that would deny the court's authority to declare anything at all.[33]

This logic squares with the Rule 12 defense-assertion regime. While a court always possesses jurisdiction to decide whether it has jurisdiction,[34] the notion of "hypothetical" or "assumed" jurisdiction has been rejected—as least so far as pre-jurisdictional merits rulings are concerned.[35] A court must have jurisdiction before it can exercise it. This is why allowing parties to raise (and thus preserve) jurisdiction defenses at the same time as they raise (and thus preserve) alternative merits arguments is prudent and efficient, and not inconsistent with a companion rule that prohibits *seriatim* motions pressing the court for sequential rulings on threshold power issues.[36] The same efficiency concerns also justify precluding follow-on non-jurisdictional venue, summons, and service challenges.[37]

When unpacked, it is also clear that the Rule 12 waiver syntax is not limited to just pre-answer Rule 12 motions. As one court held: "The problem with th[at] argument is its complete lack of textual support. ... The drafters could have done that—inserted the words 'pre-answer' or 'Rule 12(b)'—but did not."[38]

The issue here is not with the fairness of this outcome, which is obvious on calm reflection. The issue is that the route needed to discern that outcome can be missed, and not unreasonably so. Textual assembly is needed to get there, and that process often collides with baked-in assumptions we have about the Rule 12(b) defense waiver risk and how it is triggered. The waiver rule even sometimes confuses courts,[39] and that is hardly a surprise given oddities it can occasionally produce.[40] It may also be that there is no better way to express the procedures codified in Rules 12(g) and 12(h). The 1966 amendments and what prompted them show that the waiver rule is just plain hard to write.

So there it is.

A land mine in Rule 12(c) is hiding in plain sight (well, maybe not "plain" sight). It threatens to ambush those busy practitioners who, while grinding through crowded workdays, find themselves dusting

off Rule 12(c) for the first time. Even though Rule 12(c) is, by its very definition, a post-answer motion, it nonetheless triggers the Rule 12(b) defense waiver process.

Take-Away: Parties waive defenses to personal jurisdiction, venue, the form of summons, or service of process if: (#1) they omit them from any pre-answer motion they file or, if they file no such motion, omit them from their answer; *or* (#2) they omit them from any motion for judgment on the pleadings they may file—regardless of whether those defenses were preserved earlier in the answer. ⊙

William M. Janssen is a tenured professor of law at the Charleston School of Law in Charleston, S.C. He joined the faculty in 2006, after a lengthy litigation practice and partnership at an AmLaw-200 law firm. Janssen has written, published, and taught extensively in the field of federal civil practice and procedure.

Endnotes

[1]*See Boulger v. Woods,* 306 F. Supp. 3d 985, 994-95 (S.D. Ohio 2018) (*Boulger I*), *aff'd*, 917 F.3d 471, 476-77 (6th Cir. 2019) (*Bougler II*); *Broussard v. Texas Dep't of Crim. Just.,* 2006 WL 1517532, at *8 (S.D. Tex. May 30, 2006).

[2]*See* 5C Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1369, at 265 (2004).

[3]*See, e.g., United States v. Rogers Cartage Co.,* 794 F.3d 854, 860 (7th Cir. 2015) ("[W]e have repeatedly cautioned that the proper heading for such motions is Rule 12(c), since an affirmative defense is external to the complaint").

[4]*See, e.g., Mellentine v. Ameriquest Mortg. Co.,* 515 F. App'x 419, 422 (6th Cir. 2013) (noting filing of Rule 12(c) motion by plaintiffs); *Soc'y of Separationists v. Pleasant Grove City,* 416 F.3d 1239, 1240 (10th Cir. 2005) (same).

[5]*See, e.g., Red Label Music Publ'g, Inc. v. Chila Prods.,* 388 F. Supp. 3d 975, 982 (N.D. Ill. 2019) (may only strike "insufficient" defense, not one that is colorable but arguably "a loser on the merits").

[6]*See* Fed. R. Civ. P. 12(c).

[7]*See, e.g., Republic Steel Corp. v. Pa. Eng'g Corp.,* 785 F.2d 174, 177 n.2 (7th Cir. 1986) (Rule 12(c) motions are "directed towards a final judgment on the merits").

[8]*See, e.g., Baiul v. NBC Sports, a div. of NBCUniversal Media LLC,* 708 F. App'x 710, 714 (2d Cir. 2017) (affirming both with-prejudice Rule 12(c) grant and refusal of leave to amend); *DiCarlo v. St. Mary Hosp.,* 530 F.3d 255, 259 (3d Cir. 2008) (affirming with-prejudice Rule 12(c) grant).

[9]*See* 5C Wright & Miller, *supra* n.3, § 1369, at 265.

[10]*See* Fed. R. Civ. P. 12(h)(1)(B).

[11]*See* Fed. R. Civ. P. 12(g) advisory committee's note to 1966 amendment (emphasis added).

[12]*See id.*

[13]*See* Fed. R. Civ. P. 12(h) advisory committee's note to 1966 amendment (emphasis added).

[14]*See Healthcare Ass'n of N.Y. State, Inc. v. Pataki,* 471 F.3d 87, 94 (2d Cir. 2006) (Rule 12(c) motion is "impossible" if the pleadings are not closed); *Doe v. United States,* 419 F.3d 1058, 1061 (9th Cir. 2005) (Rule 12(c) motion filed before answer is premature and should be denied).

[15]*See* Fed. R. Civ. P. 12(h)(1)(A).

[16]*See Broussard*, 2006 WL 1517532, at *8. *See also Boulger I*, 306 F. Supp. 3d at 994-95 (waiver procedure "applies to any initial motion 'under this rule'—i.e., Rule 12 as a whole—and makes no distinction between pre-answer and post-answer motions").

[17]*See* Fed. R. Civ. P. 12(h)(1)(B)(i)-(ii).

[18]*See* Fed. R. Civ. P. 12(g)(1).

[19]*See* Fed. R. Civ. P. 12(g)(2).

[20]*See* Fed. R. Civ. P. 12(h)(1)(A).

[21]*See* Fed. R. Civ. P. 12(a)(1)-(2); Rule 12(b); Rule 12(d) & Rule 12(i); and Rule 12(a)(4), respectively.

[22]*See* Fed. R. Civ. P. 12(e) and (f), respectively.

[23]*See, e.g.,* 5C Wright & Miller, *supra* n.3, § 1384, at 479 ("Subdivision (g) contemplates the presentation of an omnibus *pre-answer motion* in which the defendant advances every available Rule 12 defense and objection he may have that is assertable by motion.") (emphasis added). An earlier version of the same treatise had advised: "Almost since its adoption, Rule 12(g) has been understood to require a party moving under Rule 12 *before submitting a responsive pleading* to consolidate all Rule 12 defenses and objections that are 'then available' to the party." *Id.* § 1391, at 499 (emphasis added; footnote omitted; highlighted language now deleted).

[24]*See* Fed. R. Civ. P. 12(g)(1).

[25]*See* Fed. R. Civ. P. 12(b).

[26]*See* Fed. R. Civ. P. 12(e).

[27]*See* Fed. R. Civ. P. 12(f)(2) (except for such motions directed to pleadings for which no response is allowed).

[28]*See Lillian B. ex rel. Brown v. Gwinnett Cty. Sch. Dist.,* 631 F. App'x 851, 853 (11th Cir. 2015) ("Because a party may not move for judgment on the pleadings until the pleadings are closed, the district court should have denied [that] ... motion as procedurally premature" because "that's what Rule 12(c) unambiguously requires").

[29]*See* Rule 12(b). *See generally* 5B Wright & Miller, *supra* n.3, § 1353, at 339-40 ("The defendant may present objections to the insufficiency of the process or the insufficiency of the service of process in the answer, provided he or she has not advanced any other Rule 12(b) defense by pre-answer motion.") (footnotes omitted).

[30]*See* Fed. R. Civ. P. 12(h) (subpart title: "Waiving and Preserving Certain Defenses").

[31]*See* Fed. R. Civ. P. 12(b) ("No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion."). *See generally Lindberg v. Dimon,* 2019 WL 2145466, at *9 (D.S.D. Feb. 12, 2019), *adopted*, 2019 WL 1460644 (D.S.D. Mar. 27, 2019), *aff'd*, 792 F. App'x 412 (8th Cir. 2020) (summarily rejecting argument that movant waived personal jurisdiction challenge by pairing it with motion for dismissal on merits for failing to state a claim).

[32]*Boulger II*, 917 F.3d at 477.

[33]*See id.* at 477-48 (holding that moving for judgment on the pleadings showed that movant "sought to have the district court use its power over the parties to reach a decision on the merits, and required the court to expend significant efforts in doing so" which, in turn, "created a reasonable expectation that [movant] would defend the suits on the merits").

[34]*See United States v. United Mine Workers of Am.,* 330 U.S. 258, 292 n.57 (1947).

[35]*See Ruhrgas AG v. Marathon Oil Co.,* 526 U.S. 574, 577 (1999).

[36]*See Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.,* 549 U.S. 422, 431 (2007) (federal courts enjoy "leeway" to select among multiple asserted threshold grounds (e.g., personal jurisdiction, venue) for "denying audience to a case on the merits") (citations omitted).

[37]*See* Fed. R. Civ. P. 12(h) advisory committee note (1966) ("A party who by motion invites the court to pass upon a threshold defense should bring forward all the specified defenses he then has and thus allow the court to do a reasonably complete job.").

[38]*See Miss. ex rel. Hood v. Entergy Miss., Inc.,* 2017 WL 2973998, at *2 (N.D. Miss. July 11, 2017).

[39]*See, e.g., id.* at *1 ([A]fter very skillfully "[e]liding and combining the relevant language," the court incorrectly summarized Rule 12 as resulting in a waiver of a personal jurisdiction defense if "[a]ny one" of the following occurred: failing to include it in a first Rule 12 motion, failing to bring any Rule 12 motion, or failing to include it in an answer; since no party is required to bring a Rule 12 motion in order to preserve this defense, a failure to pursue this middle course does not necessarily produce the defense's waiver.).

[40]*Compare Sternberg v. Langston,* 2019 WL 5426480, at *3 (E.D. La. Oct. 23, 2019) (holding that because Rule 4(m) "authorizes a motion by its own terms," an out-of-time service objection asserted on a motion bearing a "Rule 4(m)" label will not trigger the waiver procedure), *with Craig v. Crowley,* 167 F.R.D. 67, 68 (N.D. Ind. 1996) (holding that Rule 4(m) motions should be made under Rule 12(b)(5), otherwise "the waiver provisions of Rule 12(h)(1) could be easily dodged, obviously not the intent of Rule 4(m)").

Statement of Ownership, Management, and Circulation of *The Federal Lawyer*

This statement of ownership, management, and circulation as filed Oct. 1, 2020, is required by an act of August 12, 1970: Section 3685, Title 39, United States Code. *The Federal Lawyer* (ISSN: 1080-675X) is published by the Federal Bar Association (FBA); in calendar year 2019, The Federal Lawyer was published bi-monthly. The annual nonmember subscription price is $50 ($14 FBA member subscription included in member dues).

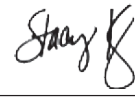
The publisher's general office is: 1220 North Fillmore Street, Suite 444, Arlington, VA 22201. The Federal Bar Association, Publisher; Andrew Doyle, Editor in Chief: 1220 North Fillmore Street, Suite 444, Arlington, VA 22201; Lynne Agoston, Managing Editor: 1220 North Fillmore Street, Suite 444, Arlington, VA 22201. Owned and managed by the Federal Bar Association, 1220 North Fillmore Street, Suite 444, Arlington, VA 22201. Stockholders owning or holding 1 percent or more of total amount of stock: none. Bondholders, mortgage, and other security holders owning or holding 1 percent or more of total amount of bonds, mortgages, or other securities: none. The purpose, function, and nonprofit status of the Federal Bar Association has not changed during the preceding 12 months.

Publication Title: The Federal Lawyer **Extent and Nature of Circulation:** Association
Issue Date for Circulation Below: March/April 2020

	Avg. No. Copies of Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date (September 2019)
A. Total No. Copies Printed		
B. Paid Circulation	18,294	18,481
1. Mailed Outside-County Paid Subscription State on PS Forum 3541	0	0
2. Mailed In-county Paid Subscriptions State on PS Form 3541	0	0
3. Paid Distribution Outside the Mails Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution	5	5
4. Paid Distribution by Other Classes of Mail Through the USPS	18,299	18,486
C. Total Paid Circulation		
D. Free or Nominal Rate Distribution	540	540
1. Free or Nominal Rate Outside-County Copies Included on PS Form 3541	0	0
2. Free or Nominal Rate In-County Copies Included on PS Form 3541	185	6
3. Free or Nominal Rate Copies Mailed at Other Classes Through the USPS	117	0
4. Free or Nominal Rate Distribution Outside the Mail	842	546
E. Total Free or Nominal Rate Distribution	19,141	19,032
F. Total Distribution	1,408	2,767
G. Copies Not Distributed	20,549	21,799
H. Total	96%	97%
I. Percent Paid		

This publication is a general publication and publication of this statement is required. The statement will be printed in the November/December 2020 issue of this publication.

Signature and Title of Editor, Publisher, Business Manager, or Owner **Date**



Executive Director **10/1/20**

I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).