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SILENCE IS GOLDEN, UNLESS YOU'RE GETTING BILLED FOR IT: *MJS LAS CROABAS PROPERTIES, INC.* AND PUNISHING LAW FIRMS WHEN THEIR ATTORNEYS PROLONG LITIGATION

MATTHEW HALL*

“A lawyer with his briefcase can steal more money than a hundred men with guns.”¹

I. COLD CALL: AN INTRODUCTION TO 28 U.S.C. § 1927 SANCTIONS

The notion that a lawyer armed with a briefcase may be a better thief than one hundred men with guns, a saying from Mario Puzo's *The Godfather*, dates back nearly fifty years, but it is a sentiment that persists to this day.² Lawyers are valuable contributors to society, but the public does not always hold the profession in high esteem.³ A lawyer can seldom go to a dinner party without being told a corny, or perhaps even offensive, lawyer joke.⁴ Moreover, it is almost a requirement for any courtroom drama to feature a corrupt or

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1. Mario Puzo, *The Godfather*, G.P. Putnam's Sons (1969).

2. See generally *Public Esteem for Military Still High*, PEW RES. CTR. (July 11, 2013), <http://www.pewforum.org/2013/07/11/public-esteem-for-military-still-high> [<https://perma.cc/CW5U-J8YF>] (providing data on Americans' perceptions of several occupations); see Leo J. Shapiro, *Public Perceptions of Lawyers: Consumer Research Findings*, SECTION OF LITIG.: AM. BAR ASS'N 1 (April 2002) (providing data on public's views of attorneys).

According to a survey conducted by the “Religion and Public Life” section of the PEW Research Center, lawyers placed last in a list of occupations where the public was asked to rank the extent that each “contribute[d] a lot to society's well-being.” See *Public Esteem for Military Still High*, *supra* (surveying public perception of different occupations). The survey found that 18% of respondents claimed “that lawyers contribute a lot to society,” compared to 78%, 72%, and 66% for military personnel, teachers, and medical doctors, respectively. See *id.* (providing survey results). Further, 34% of respondents claimed “lawyers contribute not very much or nothing at all.” See *id.* (providing survey results for lawyers). Additionally, the Litigation Section of the American Bar Association (ABA) conducted a survey that collected data on the public's perceptions of lawyers. See Shapiro, *supra*, at 2 (surveying public perception of lawyers). This survey found that Americans believe lawyers to be “greedy, manipulative, and corrupt.” See *id.* at 4 (providing results of survey).

3. See generally Shapiro, *supra* note 2, at 2 (illustrating negative perceptions that public holds of attorneys). For instance, respondents of the survey commented that their own experiences with attorneys led to the opinion that attorneys are unethical. See *id.* at 9 (providing reasons for negative perceptions).

4. See, e.g., *Lawyer Jokes*, READER'S DIGEST, <http://www.rd.com/jokes/lawyer> [<https://perma.cc/92WV-WPY7>] (last visited October Oct. 2, 2016) (“A lawyer e-mailed a client: ‘Dear Jennifer: Thought I saw you on the street the other day. Crossed over to say hello, but it wasn't you, so I went back. One tenth of an hour: \$30.’”).

incompetent lawyer.⁵ Although these portrayals in the media and pop-culture are often exaggerated, they nevertheless reflect the public sentiment that law is not the most ethical profession.⁶

Although lawyers often get a bad rap, it is not always without merit.⁷ They sometimes do unethical and unprofessional things.⁸ They lie.⁹ They bill for hours they didn't earn.¹⁰ They post pictures of themselves on Facebook holding a shotgun with the captions like this: "You should take the plea."¹¹ With these bad apples out there, it is no wonder that the public questions attorneys' morals.¹² However, the legal community is not without hope.¹³

In response to, or perhaps in anticipation of, attorney misconduct and the negative light it casts on the profession as a whole, the legal institution has taken measures to increase professionalism and competence among attorneys.¹⁴

5. See, e.g., *THE FIRM* (Davis Entertainment 1993); *BETTER CALL SAUL* (High Bridge Productions 2015); *MAKING A MURDERER* (Netflix 2015).

6. For examples of behavior that reflect public perception of lawyers, see *supra* notes 2-5 and accompanying text.

7. For a discussion of public perceptions of attorneys, see *supra* notes 2-5 and accompanying text.

8. See, e.g., *2014 Survey on Lawyer Discipline System*, AM. BAR ASS'N CENTER FOR PROF. RESP. (Jan. 2016), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2014_sold_final_results.authcheckdam.pdf [<https://perma.cc/3T6K-57FD>] (providing data on attorney sanctions throughout United States). In 2014, a total of 88,930 complaints were made to state disciplinary committees concerning attorney misconduct. See *id.* at 5 (providing sanction data).

9. See, e.g., Joe Patrice, *Lawyer Who Lied About His Mom Dying . . . Allegedly Lied Again TO THE SAME JUDGE*, ABOVE THE LAW (Apr. 18, 2016), <http://abovethelaw.com/2016/04/lawyer-who-lied-about-his-mom-dying-allegedly-lied-again-to-the-same-judge> [<https://perma.cc/T8YG-D6PJ>] (describing case in which lawyer lied to judge to receive extension).

10. See, e.g., Elie Mystal, *When I Get That Feeling, I Want Sexual Billing*, ABOVE THE LAW (Jan. 15, 2013), <http://abovethelaw.com/2013/01/when-i-get-that-feeling-i-want-sexual-billing> [<https://perma.cc/6DNU-XMVZ>] (describing case where lawyer billed client for sex); Kathryn Rubino, *Lawyer Sent Fake Bills to Company for 14 Years. Lesson: Check Yo Bills*, ABOVE THE LAW (July 25, 2016), <http://abovethelaw.com/2016/07/lawyer-sent-fake-bills-to-company-for-14-years-lesson-check-yo-bills> [<https://perma.cc/7AXL-RA53>] (describing case where lawyer sent fake bills to his employer).

11. See Joe Patrice, *DA Brandishes Shotgun in Facebook Picture Captioned, 'You Should Take The Plea'*, ABOVE THE LAW (Aug. 3, 2015), <http://abovethelaw.com/2015/08/da-brandishes-shotgun-in-facebook-picture-captioned-you-should-take-the-plea> [<https://perma.cc/JJ2H-3JCT>] (describing case where assistant district attorney jokingly threatened defendant on social media).

12. For a discussion of public perceptions of attorneys, see *supra* notes 2-5 and accompanying text.

13. For a discussion of the measures the legal community is taking to fight unethical behavior, see *infra* notes 14-17 and accompanying text.

14. See MODEL RULES OF PROF'L CONDUCT preface (AM. BAR ASS'N 2016) (introducing rules governing attorney professional and ethical conduct). The ABA initially "adopted the original Canons of Professional Ethics" in 1908, a set of guidelines that delineate proper attorney conduct. See *id.* (describing history of ethics rules). In 1969, the ABA introduced the Model Code of Professional Responsibility, and later in 1983 the Model Rules of Professional Conduct. See JAMES E. MOLITERNO, *CASES AND MATERIALS ON THE LAW*

For example, the American Bar Association founded the Standing Committee on Ethics and Professional Responsibility.¹⁵ Further, state bar associations require practicing attorneys to complete a minimum number of continuing legal education (CLE) ethics credits each year.¹⁶ The American Bar Association also requires law schools to offer a legal professionalism or ethics course.¹⁷

Despite these efforts, however, unethical and unprofessional behavior continues to plague the legal profession.¹⁸ One particular type of attorney misconduct that has received attention in federal courts is covered by 28 U.S.C. § 1927.¹⁹ This statute permits courts to impose sanctions on attorneys that “unreasonably and vexatiously” multiply proceedings.²⁰ However, courts disagree as to whether the statute holds law firms jointly and severally liable for an attorney’s violation of the statute.²¹ *MJS Las Croabas Properties, Inc. v. Federal Deposit Institution Corp.*,²² the subject of this Note, is the most recent

GOVERNING LAWYERS 19 (4th ed. 2012) (describing updates to Model Rules of Professional Conduct).

15. See *Standing Committee on Ethics and Professional Responsibility*, AM. BAR ASS’N, http://www.americanbar.org/groups/professional_responsibility/committees_commissions/ethicsandprofessionalresponsibility.html [https://perma.cc/YEB8-3FKQ] (last visited Sept. 6, 2016) (providing background on Standing Committee on Ethics and Professional Responsibility).

16. See, e.g., *Pennsylvania MCLE Requirements*, AM. BAR ASS’N, http://www.americanbar.org/cle/mandatory_cle/mcle_states/states_p-z/pennsylvania.html [https://perma.cc/R7EB-FCS4] (last visited Sept. 6, 2016) (requiring attorneys practicing in Pennsylvania to complete two hours of ethics education credits per year).

17. See generally *ABA Standards and Rules of Procedure for Approval of Law Schools*, AM. BAR ASS’N 1, 3-46 (2016), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_aba_standards_and_rules_of_procedure.authcheckdam.pdf [https://perma.cc/JQ25-E664] (providing requirements for law schools to become accredited under ABA). The ABA recognizes that professionalism is an issue in the legal field and requires that a law school “requires each student to satisfactorily complete . . . one course of at least two credit hours in professional responsibility.” See *id.* at 16 (explaining requirements set by ABA). See also Lisa G. Lerman, *Teaching Ethics in and Outside of Law Schools: What Works and What Doesn’t*, PROF. LAW. 57, 58 (2006) (surveying obstacles for teaching ethics in law schools). Lerman argues that because an ethics course may be the only requirement for upper level students, those students may resent it and not take it seriously. See *id.* (explaining why students may not take ethics courses seriously).

18. For data on complaints concerning attorney misconduct, see *supra* note 8 and accompanying text.

19. See Joan C. Rogers, *Firms Can Be Sanctioned Under Vexatious Litigation Statute*, BLOOMBERG LAW (Feb. 25, 2016), <https://www.bloomberglaw.com/search/results/98e7a2cbf938db37ce22fff0e546eb51/document/XDQ15C9G000000?jsearch=dk%253Abna%2520a0h9n8n1u0#jcite> (describing circuit split over 28 U.S.C. § 1927).

20. See 28 U.S.C. § 1927 (2012) (explaining counsel’s liability for excessive costs). For a further discussion of the meaning of 28 U.S.C. § 1927, see *infra* notes 38–45 and accompanying text.

21. For a description of the circuit split over 28 U.S.C. § 1927, see *infra* notes 49–84 and accompanying text.

22. 545 B.R. 401 (B.A.P. 1st Cir. 2016).

decision to contribute to the circuit split.²³

The Bankruptcy Court in *MJS Las Croabas* held that law firms could be held jointly and severally liable for their attorneys' violations of 28 U.S.C. § 1927.²⁴ This Note discusses how the court reached that conclusion, and argues that a broad interpretation, which includes sanctioning of law firms, will promote ethical behavior among attorneys.²⁵ Part II describes the requirements of 28 U.S.C. § 1927 and discusses the opinions that created the circuit split.²⁶ Part III reviews the facts of *MJS Las Croabas*.²⁷ Part IV describes the court's reasoning in concluding that law firms can be sanctioned pursuant to 28 U.S.C. § 1927.²⁸ Part V provides a critical analysis of the opinion in *MJS Las Croabas* and offers a framework as to how both the courts and the legislature should approach the statute.²⁹ Finally, Part VI considers the impact of *MJS Las Croabas* and calls for the legislature to amend 28 U.S.C. § 1927 so that the statute clearly applies to law firms with the aim of promoting ethical and professional behavior.³⁰

II. THE LINES HAVE GOTTEN CROSSED: VARYING INTERPRETATIONS OF 28 U.S.C § 1927

Attorneys will occasionally go to extreme lengths to delay or prolong litigation.³¹ Consider the case of Holly Gail Crampton, in which Crampton, a lawyer, dropped her client's case after determining that the client would not win.³² Crampton, however, neglected to tell either the court or opposing counsel about her decision.³³ Not knowing that the case was dropped, the defendants continued preparing for trial, and they incurred attorneys' fees as a result.³⁴ Crampton's unprofessional behavior is one of many examples of the

23. For a complete discussion of the facts of *MJS Las Croabas*, see *infra* notes 85–128 and accompanying text. For the court's reasoning, see *infra* notes 132–64 and accompanying text.

24. See *MJS Las Croabas*, 545 B.R. at 421 (affirming lower court's ruling that law firms can be sanctioned under 28 U.S.C. § 1927).

25. For the court's interpretation of 28 U.S.C. § 1927, see *infra* notes 132–64 and accompanying text. For a discussion on how the interpretation can promote ethical conduct among practicing attorneys, see *infra* notes 165–214 and accompanying text.

26. For a further discussion of 28 U.S.C. § 1927 and the varying interpretations of the statute among the several circuit courts, see *infra* notes 38–84.

27. For a discussion of the facts of *MJS Las Croabas*, see *infra* notes 85–128 and accompanying text.

28. For a description of the court's analysis in *MJS Las Croabas*, see *infra* notes 132–64 and accompanying text.

29. For a critical analysis of the interpretation of 28 U.S.C § 1927, see *infra* notes 165–214 and accompanying text.

30. For a discussion on the impact of *MJS Las Croabas* on attorney conduct, see *infra* notes 199–210 and accompanying text.

31. For examples of attorneys prolonging litigation, see *infra* note 45 and accompanying text.

32. See *Edwards v. General Motors Corp.*, 153 F.3d 242, 244–45 (5th Cir. 1998) (providing background of case).

33. See *id.*

34. See *id.* (providing background of case).

type of conduct that 28 U.S.C. § 1927 is meant to cover.³⁵ However, courts disagree on *who* or *what* can be punished under the statute.³⁶ While some courts restrict the statute's reach to only individual attorneys, like Crampton, others take a broader interpretation and apply it to attorneys *and* law firms alike.³⁷

28 U.S.C. § 1927 was enacted to deter “intentional and unnecessary delay[s] in the proceedings.”³⁸ It provides:

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.³⁹

Although the language of the statute can confuse even the sharpest of minds, it essentially punishes attorneys who unnecessarily prolong a case by requiring them to pay for any costs that the other party incurred as a result of their conduct.⁴⁰ The statute is intended to target conduct that disrespects both the court and the attorney's duties to the legal profession.⁴¹

To be held liable under 28 U.S.C. § 1927, the attorney must be more than careless or incompetent.⁴² Some circuit courts require a showing of bad faith.⁴³ Others ask whether the conduct had the end effect of “harassing” or “annoying,”

35. For examples of sanctionable conduct in violation of 28 U.S.C. § 1927, see *infra* note 45 and accompanying text.

36. For a discussion on how courts disagree as to who can be sanctioned under 28 U.S.C. § 1927, see *infra* notes 49–84 and accompanying text.

37. For a discussion on how courts disagree as to who can be sanctioned under 28 U.S.C. § 1927, see *infra* notes 49–84 and accompanying text.

38. See *Beatrice Foods Co. v. New Eng. Printing & Lithographing Co.*, 899 F.2d 1171, 1177 (Fed. Cir. 1990) (noting purpose of 28 U.S.C. § 1927).

39. 28 U.S.C. § 1927 (2012) (explaining counsel's liability for excessive costs).

40. See Douglas Pepe, *Persuading Courts to Impose Sanctions on Your Adversary*, 6 AM. BAR ASS'N SEC. LITIG. 1, 2 (2010) (describing 28 U.S.C. § 1927 violations as consisting of “basically any conduct that prolongs the case and causes additional expense and delay”). While the purpose of the statute is meant to deter attorneys from delaying litigation, a “strict construction is necessary so that the provision will in no way dampen the legitimate zeal of an attorney in representing his or her client.” See Janet Eve Josselyn, *The Song of Sirens—Sanctioning Lawyers Under 28 U.S.C. § 1927*, 31 B.C. L. REV. 477, 480 (1990) (describing purpose of statute).

41. See *Jensen v. Phillips Screw Co.*, 546 F.3d 59, 64 (1st Cir. 2008) (“[A]n attorney's actions must evince a studied disregard of the need for an orderly judicial process . . . , or add up to a reckless breach of the lawyer's obligations as an officer of the court.”) (citations omitted).

42. See *Jensen*, 546 F.3d at 64 (“Garden-variety carelessness or even incompetence, without more, will not suffice to ground the imposition of sanctions under section 1927.”). Although not all courts require bad faith to show a violation of 28 U.S.C. § 1927, such a showing is typically sufficient. See *id.* (explaining bad faith as sufficient to satisfy 28 U.S.C. § 1927).

43. See, e.g., *New Alaska Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1306 (9th Cir. 1989) (noting requirement of subjective bad faith when imposing 28 U.S.C. § 1927 sanctions).

and an attorney's intentions are irrelevant to this analysis.⁴⁴ Examples of sanctionable conduct under 28 U.S.C. § 1927 include filing the same complaint multiple times and making unnecessary discovery requests.⁴⁵

Although the specific conduct covered by the statute has been clarified, the answer to “who” or “what” is liable is not as clear.⁴⁶ Several circuit courts argue that 28 U.S.C. § 1927 applies only to individuals, and that law firms do not qualify as “individuals” within the meaning of the statute.⁴⁷ Other courts, by contrast, apply 28 U.S.C. § 1927 to both attorneys *and* the law firms where they work.⁴⁸

A. *Sent Straight to Voicemail: Courts That Do Not Apply
28 U.S.C. § 1927 to Law Firms*

The Sixth, Seventh, and Ninth Circuits have all refused to apply 28 U.S.C. § 1927 to law firms.⁴⁹ In *BDT Productions, Inc. v. Lexmark International, Inc.*,⁵⁰ the Sixth Circuit reversed the District Court of Eastern Kentucky, which had imposed 28 U.S.C. § 1927 sanctions against the law firm Meisenheimer

44. See, e.g., *Cruz v. Savage*, 896 F.2d 626, 632 (1st Cir. 1990) (“Behavior is ‘vexatious’ when it is harassing or annoying, regardless of whether it is intended to be so.”).

45. See *Pepe*, *supra* note 40, at 3 (providing examples of sanctionable conduct under 28 U.S.C. § 1927). As another example, the defendants in *Siderpali, S.P.A. v. Judal Industries, Inc.* were sanctioned for re-filing a motion that had already been denied by the court. See *Siderpali, S.P.A. v. Judal Industries, Inc.*, 833 F. Supp. 1023, 1028 (S.D.N.Y. 1993) (determining re-filing of previously denied motion was sanctionable). The attorneys in *Kotsilieris v. Chalmers* were sanctioned for requesting a jury the night before the trial was scheduled to commence. See *Kotsilieris v. Chalmers*, 966 F.2d 1181, 1183 (7th Cir. 1992) (requesting jury night before trial was sanctionable).

46. For a discussion of the circuit split, see *infra* notes 49–84 and accompanying text.

47. See, e.g., *Kaass Law v. Wells Fargo Bank, N.A.*, 799 F.3d 1290, 1294–95 (9th Cir. 2015) (holding law firms excluded from 28 U.S.C. § 1927); *BDT Prods., Inc. v. Lexmark Int'l, Inc.*, 602 F.3d 742, 751 (6th Cir. 2010) (“Even if firms can admittedly be personified in a literary sense through briefs, there is no reason to consider a law firm a ‘person’ under the statute.”); *FM Indus., Inc. v. Citicorp Credit Servs., Inc.*, 614 F.3d 335, 340 (7th Cir. 2010) (“Liability under § 1927 is direct, not vicarious.”); *Rentz v. Dynasty Apparel Indus., Inc.*, 556 F.3d 389, 395 n.6 (6th Cir. 2009) (“[Section] 1927 does not authorize the imposition of sanctions on a represented party, nor does it authorize the imposition of sanctions on a law firm.”); *Claiborne v. Wisdom*, 414 F.3d 715, 722–24 (7th Cir. 2005) (interpreting “other person admitted to conduct cases” language of statute).

48. See, e.g., *Enmon v. Prospect Capital Corp.*, 675 F.3d 138, 148 (2d Cir. 2012) (“[N]othing in the language of 28 U.S.C. § 1927, . . . leads us to think that the District Court was without authority to impose sanctions on Arnold & Itkin as a whole.”); *Smith v. Grand Bank & Tr. of Fla.*, 193 F. App'x 833, 838 (11th Cir. 2006) (agreeing that 28 U.S.C. § 1927 applies to law firms); *Lee v. First Lenders Ins. Servs., Inc.*, 236 F.3d 443, 446 (8th Cir. 2001) (affirming 28 U.S.C. § 1927 sanctions against law firm); *LaPrade v. Kidder Peabody & Co.*, 146 F.3d 899, 907 (D.C. Cir. 1998) (affirming district court ruling that law firm was liable for expenses incurred due to vexatious and unreasonable multiplication of proceedings); *Baker Indus., Inc. v. Cerberus Ltd.*, 764 F.2d 204, 212 (3d Cir. 1985) (affirming 28 U.S.C. § 1927 sanctions against Cravath law firm).

49. For a sample of cases that did not hold law firms liable under 28 U.S.C. § 1927, see *supra* note 47 and accompanying text.

50. 602 F.3d 742 (6th Cir. 2010).

Herron & Steel (Meisenheimer).⁵¹ The law firm was initially sanctioned for filing a frivolous claim.⁵² In reversing the district court's sanctions against Meisenheimer, the circuit court explained that a law firm is not a "person" as required by the statute, nor is a firm "admitted" to appear before the court.⁵³

Similarly, the Seventh Circuit judge in *Claiborne v. Wisdom*⁵⁴ reversed the district court's ruling that a law firm can be sanctioned because one of its attorneys filed a baseless claim.⁵⁵ Similar to the Sixth Circuit's reasoning, the Seventh Circuit concluded that only individuals are admitted to practice law, and law firms are not "individuals" under the statute.⁵⁶ Further, the Seventh Circuit asserted that the language "other person admitted to conduct cases" does not apply to law firms, but instead, includes only other non-attorney individuals.⁵⁷

In addition to *BDT* and *Claiborne*, the Ninth Circuit in *Kaass Law v. Wells Fargo Bank, N.A.*⁵⁸ reversed the district court's sanctions against the law firm.⁵⁹

51. *See id.* at 743–44, 751 (holding law firms cannot be sanctioned under 28 U.S.C. § 1927).

52. *See id.* at 749–50 (providing background of case). The plaintiff, BDT Products, alleged that the defendant, Lexmark, had stolen its design for a printer tray. *See id.* at 743 (explaining plaintiff's argument). The court, however, found that the design was not proprietary as it was previously released to the public. *See id.* at 749 (finding design was not proprietary). As a result, the district court sanctioned BDT's law firm, Meisenheimer Herron & Steel, for bringing "a lawsuit that should never have been brought, and in which no attorney should have persisted." *See id.* (explaining court sanctions imposed on law firm) (citation omitted).

53. *See id.* at 751 ("Even if firms can admittedly be personified in a literary sense through briefs, there is no reason to consider a law firm a 'person' under the statute. More importantly, law firms are not 'admitted' to 'conduct cases' in court.").

54. 414 F.3d 715 (7th Cir. 2005).

55. *See id.* at 717–18, 720, 724 (providing factual background). The plaintiff, Toni Claiborne, alleged that she was wrongfully evicted from her apartment after turning down the building manager's sexual advances. *See id.* at 717 (describing plaintiff's claim). Claiborne's complaint asserted that the defendant engaged in similar conduct with other women, and that both her and her lawyer, Boyd, interviewed those women to support her claim. *See id.* at 718 (explaining plaintiff's complaint). However, those women later denied ever corroborating Claiborne's story, and Claiborne subsequently filed a motion to dismiss. *See id.* (indicating factors that led to plaintiff's motion to dismiss). In response to Claiborne's allegations, which were not supported by factual evidence, the district court sanctioned Claiborne, Boyd, and Boyd's law firm for vexatiously and unreasonably multiplying the proceedings. *See id.* at 718, 722. (sanctioning law firm).

56. *See id.* at 723 ("Individual lawyers, not firms, are admitted to practice before both the state courts and the federal courts." (citations omitted)).

57. *See id.* (interpreting meaning of statute). The court argued that the term "other person" is limited to non-attorney individuals that may appear before the court. *See id.* (noting court's interpretation of "other person"). The court refers to both the Code of Federal Regulations and the Indiana Rules of Court. *See id.* (citing 37 C.F.R. § 10.14; IND. R. CT. 2.1) (referring to statutes that permit non-attorneys to appear before court). 37 C.F.R. § 10.14 permits certain non-attorneys to participate in patent proceedings, while IND. R. CT. 2.1 permits "supervised law students to act as attorneys." *See id.* (comparing 37 C.F.R. § 10.14 and IND. R. CT. 2.1). The court refused to extend the meaning of other person to law firms, claiming that to do so would be "too much of a stretch." *See id.* (noting court's reasoning for limiting its interpretation of "other person").

58. 799 F.3d 1290 (9th Cir. 2015).

Comparing 28 U.S.C. § 1927 with Rule 11 of the Federal Rules of Civil Procedure, the court concluded that the legislature could not have intended for 28 U.S.C. § 1927 to apply to law firms because Rule 11 explicitly mentions “law firm[s].”⁶⁰ If the legislature intended 28 U.S.C. § 1927 to apply to law firms, the words “law firms” would have been included in the statute.⁶¹

B. *Taking the Call: Courts That Do Apply*
28 U.S.C. § 1927 to Law Firms

In contrast to the abovementioned courts, the Second, Third, Eighth, Eleventh, and D.C. Circuits take the opposing viewpoint, holding that 28 U.S.C. § 1927 *does* apply to law firms.⁶² Additionally, the First Circuit has implicitly held law firms liable under 28 U.S.C. § 1927.⁶³ Finally, the Southern District of New York has imposed 28 U.S.C. § 1927 sanctions against a law firm, a decision the *MJS Las Croabas* court finds persuasive.⁶⁴

In *Enmon v. Prospect Capital Corp.*,⁶⁵ the Second Circuit affirmed the Southern District of New York’s 28 U.S.C. § 1927 sanctions against the Arnold & Itkin law firm.⁶⁶ The Second Circuit held that district courts have wide

59. *See id.* at 1295 (reversing district court). Wells Fargo argued that Kaass Law “multipl[ied] the proceedings” by (1) “fail[ing] to differentiate Wells Fargo from the other defendants,” (2) “failing to communicate its intent to file a motion for leave to amend, and then filing a motion for leave to amend the day after Wells Fargo filed a motion to dismiss[.]” (3) “failing to oppose Wells Fargo’s motion to dismiss[.]” and (4) “filing . . . ‘boilerplate’ complaints” that were not specific to the current issue. *See id.* at 1292 (explaining defendant’s legal argument). The district court imposed sanctions against Kaass Law in the amount of \$8,480. *See id.* (noting monetary amount of fine imposed on law firm).

60. *See id.* at 1294–95 (describing and differentiating FED. R. CIV. P. 11 from 28 U.S.C. § 1927).

61. *See id.* (comparing 28 U.S.C. to § 1927 to FED. R. CIV. P. 11). The court applies the doctrine of “*expressio unius*.” *See id.* at 1294 (interpreting statute). *Expressio unius* stands for the proposition that anything mentioned in the statute is covered whereas anything not mentioned is excluded. *See, e.g.,* Cass R. Sunstein, *Interpreting Statutes in the Regulatory State*, 103 HARV. L. REV. 405, 455 (1989). The court further reasoned that the language of § 1927 is specific enough to justify the interpretation that law firms were not considered under the statute—the legislature would not have written the statute with such “specificity” if it intended for it to apply to a larger class. *See Kaass*, 799 F.3d at 1294 (citation omitted) (noting why law firms do not fall under statute’s umbrella).

62. For a sample of cases that extended liability under 28 U.S.C. § 1927 to law firms, see *supra* note 48 and accompanying text.

63. For a discussion of the First Circuit’s implicit sanctions against a law firm under 28 U.S.C. § 1927, see *infra* notes 152–56 and accompanying text.

64. For a discussion of the Southern District of New York’s imposition of sanctions against a law firm, see *infra* notes 81–84 and accompanying text.

65. 675 F.3d 138 (2d Cir. 2012).

66. *See id.* at 149 (affirming district court’s holding). In April 2006, Michael Enmon attempted to finance an acquisition of a piping company by applying for a loan from Prospect. *See id.* at 140 (explaining facts of case). As part of the application, Enmon signed an arbitration agreement that required all disputes to be resolved through binding arbitration in New York. *See id.* (explaining facts of case). However, Prospect ultimately denied Enmon’s loan application. *See id.* at 141 (explaining facts of case). In September 2006, the attorney who represented Enmon in the failed transaction, Robert Fiser, sued Enmon for unpaid legal fees. *See id.* at 141 (explaining plaintiff’s allegations). At this time, Enmon was represented

discretion when imposing sanctions.⁶⁷ The court also noted a “long-standing practice” of sanctioning law firms pursuant to 28 U.S.C. § 1927 and deemed it unnecessary to change this tradition.⁶⁸ Finally, the court held that the individual attorney’s actions were “indistinguishable” from those of the law firm, and therefore it was appropriate to sanction the law firm as a whole.⁶⁹

Other circuit courts have implicitly imposed sanctions against law firms pursuant to 28 U.S.C. § 1927.⁷⁰ For instance, the Third Circuit in *Baker Industry, Inc. v. Cerberus Ltd.*⁷¹ affirmed the district court’s sanctions against the Cravath, Swaine, and Moore law firm.⁷² The Eighth Circuit in *Lee v. First Lenders Institution Services, Inc.*⁷³ similarly affirmed sanctions against the plaintiff’s law firm.⁷⁴ Lastly, the First Circuit in *Jensen v. Phillips Screw Co.*⁷⁵ implicitly affirmed sanctions against a law firm when it remanded the case back to the district court on matters unrelated to the sanction.⁷⁶

Further, while the Eleventh Circuit in *Smith v. Grand Bank & Trust of Florida*⁷⁷ did not issue sanctions to the attorney nor the law firm, it nevertheless analyzed whether or not the law firm *should* be sanctioned.⁷⁸ In refusing to extend the sanctions to the law firm, the court reasoned that Scott Behren was

by Jason Itkin, a partner at the Arnold & Itkin law firm. *See id.* (indicating defendant’s representation). Itkin subsequently filed claims against Prospect. *See id.* (noting defendant’s claims against third party). In response to Itkin’s claims, Prospect filed for arbitration in New York, as agreed upon in the arbitration agreement. *See id.* (noting why case was filed in New York). Itkin notified Prospect that he was filing a temporary restraining order in Texas state court to stay the arbitration proceedings. *See id.* (explaining facts of case). Prospect filed a similar order in the Southern District of New York. *See id.* (explaining facts of case). However, Itkin failed to notify the Texas state court that an order was filed in New York federal court. *See id.* (indicating defendant’s failed actions). The district court imposed sanctions against Arnold & Itkin for filing the order in bad faith. *See id.* at 143–44 (sanctioning law firm).

67. *See id.* at 147 (asserting that courts possess inherent power to impose sanctions, and that power applies to 28 U.S.C. § 1927 sanctions).

68. *See id.* (citing prior district court cases that sanction law firms under 28 U.S.C. § 1927). *See, e.g.,* Reichmann v. Neumann, 553 F. Supp. 2d 307, 319–26 (S.D.N.Y. 2008) (sanctioning law firm for repeatedly altering arguments when confronted with unfavorable facts); ACLI Gov’t Sec., Inc. v. Rhoades, 907 F. Supp. 66, 70 (S.D.N.Y. 1995) (sanctioning law firm for filing baseless claim).

69. *See Enmon*, 675 F.3d at 148 (“The District Court . . . properly attributed the actions of Jason Itkin to the entire firm. . . . Throughout the litigation, Itkin’s actions were indistinguishable from those of Arnold & Itkin as a firm.”).

70. For a discussion of cases that implicitly imposed 28 U.S.C. § 1927, see *infra* notes 71–84 and accompanying text.

71. 764 F.2d 204 (3d Cir. 1985).

72. *See id.* at 212 (affirming sanctions imposed by district court on law firm pursuant to 28 U.S.C. § 1927).

73. 236 F.3d 443 (8th Cir. 2001).

74. *See id.* at 445 (affirming district court’s sanctions imposed on law firm pursuant to 28 U.S.C. § 1927).

75. 546 F.3d 59 (1st Cir. 2008).

76. For a discussion of *Jensen*, see *infra* notes 153–55 and accompanying text.

77. 193 F. App’x 833 (11th Cir. 2006).

78. *See id.* at 838–39 (determining whether law firm should be sanctioned). The circuit court explicitly declared that 28 U.S.C. § 1927 applies to law firms. *See id.* at 838 (“[Plaintiff] correctly argues that § 1927 allows for sanctions against a law firm.”).

the only attorney at his law firm who worked on the case, and if anyone were to be sanctioned in this case, it would be him.⁷⁹ However, the court did acknowledge that law firms *can* be sanctioned under 28 U.S.C. § 1927 for “vexatiously and unreasonably” multiplying the proceedings.⁸⁰

A final example, *Brignoli v. Balch Hardy & Scheinman, Inc.*,⁸¹ comes from the Southern District of New York.⁸² The court in *Brignoli* found that law firms are “other person[s] admitted to conduct cases” and therefore can be sanctioned under 28 U.S.C. § 1927.⁸³ Although the case was decided in a district court within the First Circuit, the *MJS Las Croabas* court found *Brignoli*’s reasoning persuasive.⁸⁴

III. GETTING A BUSY SIGNAL: AN ATTORNEY’S UNRESPONSIVENESS LEADS TO A LONG PROCEEDING

In *MJS Las Croabas*, one attorney’s unresponsiveness caused opposing counsel to incur expenses that could have been avoided.⁸⁵ The relevant parties to this case include (1) MJS Las Croabas Properties, Inc. (MJS), (2) the Federal Deposit Insurance Company (FDIC), (3) Trigild, Inc. (Trigild), (4) the trustee, Mr. Wilfredo Segarra Miranda, and (5) the Homeowners Association (HOA).⁸⁶

79. *See id.* (ruling that law firm is not liable). The attorney in this case, Behren, filed a frivolous claim in bad faith. *See id.* at 837 (discussing facts of case). However, the court determined that the attorney’s conduct did not multiply the proceedings. *See id.* at 838 (discussing holding of case). In refusing to sanction Behren’s law firm, the court considered the following factors: (1) Behren was the only attorney who was assigned to the case and (2) he was fired during the case. *See id.* at 838–39 (discussing factors to consider for determining sanction violation). Although the law firm signed the pleadings and paid for the filing fees, the court did not consider this conduct enough to outweigh the other factors. *See id.* (finding that sanctions were not appropriate).

80. *See id.* at 838 (noting that law firms can be sanctioned pursuant to 28 U.S.C. § 1927).

81. 735 F. Supp. 100, 102 (S.D.N.Y. 1990) (sanctioning law firm under 28 U.S.C. § 1927).

82. *See id.* at 100 (explaining procedural history).

83. *See id.* at 102 (holding law firms as “other person[s] admitted to conduct cases” under 28 U.S.C. § 1927) (citation omitted).

84. For a discussion of how the *MJS Las Croabas* court applied the reasoning from *Brignoli*, see *infra* notes 143–48 and accompanying text.

85. For a discussion of how the attorney’s unresponsiveness caused opposing counsel to incur expenses, see *infra* notes 95–128 and accompanying text.

86. *See MJS Las Croabas Props., Inc. v. FDIC*, 545 B.R. 401, 404 n.1 & 3–4 (B.A.P. 1st Cir. 2016) (noting relevant parties). MJS is a real estate company established in 2004. *See id.* at 405 n.3 (noting relevant parties). MJS built residential units in a development called “The Ocean Club at Seven Seas.” *See id.* (discussing facts of case). MJS owed FDIC \$20 million. *See id.* (discussing facts of case). As per protocol under a Chapter 7 bankruptcy case, the court appointed Trigild as a receiver and Mr. Segarra Miranda as trustee. *See id.* (identifying trustee). A receiver is “appointed by a judge to take [control of a debtor’s] . . . property.” *See Receiver*, NOLLO’S PLAIN-ENGLISH LAW DICTIONARY <https://www.nolo.com/dictionary/receiver-term.html> [<https://perma.cc/A8PV-3LLU>] (last visited Sept. 7, 2016) (defining receiver). Finally, HOA was both a creditor to MJS and the administrator of “The Ocean Club at Seven Seas.” *See MJS Las Croabas*, 545 B.R. at 405 n.6 (describing relevant parties).

Ms. Anabelle Quiñones-Rodríguez, an attorney for the Castellanos & Gierbolini (Castellanos) law firm, served as counsel for HOA.⁸⁷ Finally, Mr. Manuel Fernández-Bared, Mr. Brian M. Dick-Biascochea, and Mr. Jeffrey Sandell served as counsel for FDIC.⁸⁸

On July 19, 2012, MJS filed for Chapter 11 bankruptcy.⁸⁹ The case was subsequently changed to a Chapter 7 case, and Mr. Segarra Miranda was named the trustee.⁹⁰ In response to the MJS bankruptcy, Ms. Quiñones-Rodríguez filed a motion for relief from stay on August 14, 2014.⁹¹ Ms. Quiñones-Rodríguez filed the motion on behalf of HOA, who was trying to recover damages for construction defects at The Ocean Club at Seven Seas.⁹² HOA managed The Ocean Club at Seven Seas, and it alleged that MJS was responsible for the defects.⁹³

On August 15, 2014, the judge summoned FDIC and one of HOA's creditors, and also scheduled a hearing for September 9, 2014.⁹⁴ After receiving the summons, Mr. Fernández-Bared, counsel for FDIC, called Ms. Quiñones-Rodríguez several times to resolve the matter before the hearing.⁹⁵ Ms. Quiñones-Rodríguez did not respond to nor return any of the calls.⁹⁶ Trigild

87. See *MJS Las Croabas*, 545 B.R. at 405 (describing Ms. Quiñones-Rodríguez's relationship with Castellano law firm). Castellanos & Gierbolini later renamed their firm "Castellanos Group Law Firm." See *id.* at 405 n.4 (renaming firm).

88. See *id.* at 405–07 n.8 (listing FDIC counsel). Mr. Fernández-Bared and Mr. Dick-Biascochea were local counsel for FDIC. See *id.* at 405-07 (listing local counsel). Mr. Sandell also represented FDIC and was located in Dallas, Texas. See *id.* at 406–07 n.8 (naming Mr. Sandell as counsel for FDIC).

89. See *id.* at 404–05 (noting MJS's bankruptcy filing). A business filing for Chapter 11 bankruptcy proposes a plan to reorganize the business. See *Chapter 11 – Bankruptcy Basics*, UNITED STATES COURTS, <http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics> [<https://perma.cc/4F2E-B96J>] (last visited Oct. 23, 2016) (describing Chapter 11 bankruptcy). This reorganization allows the business to pay back creditors following an extended schedule. See *id.* (describing Chapter 11 bankruptcy).

90. See *MJS Las Croabas*, 545 B.R. at 405 (providing background of case). When a business files for Chapter 7 bankruptcy, a trustee is appointed to sell any non-exempt assets and use the proceeds to repay creditors. See *Chapter 7 - Bankruptcy Basics*, UNITED STATES COURTS, <http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-7-bankruptcy-basics> [<https://perma.cc/7MCM-GZ9L>] (last visited Sept. 4, 2016) (describing Chapter 7 bankruptcy).

91. See *MJS Las Croabas*, 545 B.R. at 405 (providing background of case). In her motion, Ms. Quiñones-Rodríguez represented herself as an attorney at Castellanos. See *id.* (discussing representation by Ms. Quiñones-Rodríguez).

92. See *id.* (noting HOA allegations against MJS).

93. See *id.* (noting HOA allegations against MJS).

94. See *id.* (describing summons). A creditor is defined as "one to whom a debt is owed." See *Creditor*, BLACK'S LAW DICTIONARY (9th ed. 2009) (defining "creditor").

95. See *MJS Las Croabas*, 545 B.R. at 405 (describing Mr. Fernández-Bared's attempts to contact Ms. Quiñones-Rodríguez). Mr. Fernández-Bared called Ms. Quiñones-Rodríguez on August 19, 20, and 21. See *id.* (discussing facts of case).

96. See *id.* at 405–06 (describing Mr. Fernández-Bared's attempts to contact Ms. Quiñones-Rodríguez). Each time Mr. Fernández-Bared called Ms. Quiñones-Rodríguez, he was told that she was not available. See *id.* (describing Mr. Fernández-Bared's attempts to contact Ms. Quiñones-Rodríguez). He left a voice message each time. See *id.* (describing Mr. Fernández-Bared's attempts to contact Ms. Quiñones-Rodríguez). Albino Acosta, an

and Mr. Segarra Miranda also attempted to contact Ms. Quiñones-Rodríguez, but Ms. Quiñones-Rodríguez did not respond.⁹⁷ In light of these failed attempts to contact Ms. Quiñones-Rodríguez, FDIC, Trigild, and Mr. Segarra Miranda requested additional time to respond to the motion.⁹⁸

On August 29, 2014, FDIC again attempted to contact Ms. Quiñones-Rodríguez through another attorney, Mr. Dick-Biascochea.⁹⁹ Subsequent to leaving a phone message, Mr. Dick-Biascochea followed up with an email urging Ms. Quiñones-Rodríguez to respond.¹⁰⁰ Again, Ms. Quiñones-Rodríguez remained silent.¹⁰¹ Trigild's attorney then emailed Ms. Quiñones-Rodríguez on September 3, 2014.¹⁰² Again, Ms. Quiñones-Rodríguez did not respond.¹⁰³ Finally, on September 4, 2014, FDIC and Trigild filed an opposition to HOA's motion.¹⁰⁴

At 4:51 PM on September 8, 2014, while Mr. Sandell was en route from Dallas to Puerto Rico to attend the hearing scheduled for the following day, Ms. Quiñones-Rodríguez filed a motion to withdraw the initial relief motion.¹⁰⁵ The following morning, counsel for FDIC filed a response requesting that HOA and

administrative assistant at Castellanos, later testified that she answered "most if not all" phone calls made to the law firm. *See id.* at 409 (introducing assistant's testimony). She claimed that she did not speak to counsel for the FDIC or Trustee. *See id.* (describing Mr. Fernández-Bared's attempts to contact Ms. Quiñones-Rodríguez).

97. *See id.* at 406 (describing Trigild's and Trustee's attempts to contact Ms. Quiñones-Rodríguez).

98. *See id.* (describing FDIC's motion to extend). On August 27, 2014, FDIC requested an additional seven days to respond to HOA's motion. *See id.* (describing FDIC's motion to extend). Trigild and Trustee similarly filed motions to extend on August 28 and 29, respectively. *See id.* (describing Trigild's and Trustee's motions to extend). All motions were granted. *See id.* (discussing approval of motions to extend).

99. *See id.* (describing Mr. Dick-Biascochea's attempt to contact Ms. Quiñones-Rodríguez). Mr. Dick-Biascochea was told that Ms. Quiñones-Rodríguez was "unavailable." *See id.* (describing Mr. Dick-Biascochea's attempt to contact Ms. Quiñones-Rodríguez).

100. *See id.* (describing Mr. Dick-Biascochea's email to Ms. Quiñones-Rodríguez). In the email, Mr. Dick-Biascochea identified himself as the attorney for FDIC. *See id.* (describing Mr. Dick-Biascochea's email to Ms. Quiñones-Rodríguez). He informed Ms. Quiñones-Rodríguez that both he and Mr. Fernández-Bared had attempted to contact her, and he urged her to respond so that all parties could resolve the conflict as quickly as possible. *See id.* (describing content of Mr. Dick-Biascochea's email to Ms. Quiñones-Rodríguez).

101. *See id.* (describing Mr. Dick-Biascochea's email to Ms. Quiñones-Rodríguez).

102. *See id.* (describing Trigild's email to Ms. Quiñones-Rodríguez). In the email, Trigild expressed its concerns over HOA's motion and asked her to respond before its opposition was due. *See id.* (describing Trigild's email to Ms. Quiñones-Rodríguez).

103. *See id.* (describing Trigild's email to Ms. Quiñones-Rodríguez).

104. *See id.* (providing FDIC's opposition to relief motion). FDIC explained that it attempted to contact Ms. Quiñones-Rodríguez on several occasions and that she was unresponsive to all attempts. *See id.* at 407 (providing FDIC's opposition to relief motion). FDIC also claimed that HOA's motion was improper. *See id.* (providing FDIC's opposition to relief motion). Accordingly, FDIC argued that HOA's motion for relief should be denied. *See id.* Trigild also filed an opposition. *See id.* (providing Trigild's opposition to relief motion).

105. *See id.* (describing Ms. Quiñones-Rodríguez's motion to withdraw). Ms. Quiñones-Rodríguez did not explain why the motion was made the night before the hearing, nor did she explain why she was withdrawing the motion. *See id.* (describing Ms. Quiñones-Rodríguez's motion to withdraw).

Castellanos reimburse them for all expenses incurred as a result of preparing for and travelling to the September 9, 2014 hearing.¹⁰⁶ They argued that Ms. Quiñones-Rodriguez's failure to respond resulted in expenses that could have been avoided if she simply responded to their calls or emails.¹⁰⁷ FDIC also asked the court to conduct the September 9, 2014 hearing as scheduled.¹⁰⁸

At the hearing, the judge gave Ms. Quiñones-Rodriguez and Castellanos time to respond to FDIC's sanction requests.¹⁰⁹ On September 19, 2014, Mr. Segarra Miranda joined FDIC's motion requesting sanctions, arguing that Ms. Quiñones-Rodriguez's failure to respond resulted in "unnecessarily increased administrative expenses of the estate."¹¹⁰ On October 2, 2014, the bankruptcy court sanctioned both Ms. Quiñones-Rodriguez and Castellanos.¹¹¹

HOA immediately filed an opposition to the sanctions and asked the court to vacate the order.¹¹² HOA argued:

(1) [L]aw firms are not responsible for the signatures of their attorneys; (2) the imposition of sanctions under § 1927 requires a finding of bad faith and vexatious conduct; (3) counsel for the FDIC could have appeared telephonically to avoid travel costs; (4) neither the FDIC nor [Segarra Miranda] "exhausted" their remedies by sending a letter to opposing counsel, "explaining what they consider[ed] frivolous"; and (5) "defending or prosecuting a lawsuit" was a "valid exercise of its First Amendment rights."¹¹³

Ms. Quiñones-Rodriguez also testified on behalf of HOA, claiming that she was an "independent contractor."¹¹⁴ On October 16, 2014, the court granted the motion, vacated the sanctions, and gave FDIC twenty-one days to respond to HOA's opposition.¹¹⁵ The FDIC filed its response on November 6, 2014,

106. *See id.* (describing FDIC's response motion to HOA's withdrawal).

107. *See id.* (explaining that FDIC counsel was forced to prepare for hearing because of Ms. Quiñones-Rodriguez's unresponsiveness). Ms. Quiñones-Rodriguez explained that the law firm was in the process of moving offices and communicating with opposing counsel was difficult. *See id.* at 407–08 (discussing Ms. Quiñones-Rodriguez's explanation for being unresponsive).

108. *See id.* at 407 (describing FDIC's response motion to HOA's withdrawal).

109. *See id.* at 408 (describing September 9, 2014 hearing). The judge added that if FDIC incurred costs because of Ms. Quiñones-Rodriguez's unresponsiveness, FDIC would have to be compensated for those costs. *See id.* (describing September 9, 2014 hearing).

110. *See id.* (describing Trustee's motion to join FDIC). The Trustee requested that Ms. Quiñones-Rodriguez be sanctioned and that the court hold HOA's withdrawal on September 8, 2014 "with prejudice." *See id.* (describing Trustee's motion to join FDIC).

111. *See id.* (describing court's sanctions of Ms. Quiñones-Rodriguez and Castellanos).

112. *See id.* at 409 (describing HOA's opposition to sanctions).

113. *Id.* (third alteration in original) (describing HOA's opposition to sanctions).

114. *See id.* (providing Ms. Quiñones-Rodriguez's testimony). Ms. Quiñones-Rodriguez argued that she was not an employee of Castellanos, but an independent contractor. *See id.* (explaining Ms. Quiñones-Rodriguez's argument). She claimed she was unaware of communication attempts made by opposing counsel or that Mr. Sandell was travelling to the hearing. *See id.* (providing Ms. Quiñones-Rodriguez's testimony).

115. *See id.* at 410 (granting HOA's motion to vacate sanctions).

arguing that Ms. Quiñones-Rodriguez should be sanctioned for two reasons.¹¹⁶ FDIC argued that Ms. Quiñones-Rodriguez multiplied the proceedings by (1) filing a baseless motion and (2) failing to respond to opposing counsel's calls and emails.¹¹⁷

In March of 2015, the bankruptcy court found Ms. Quiñones-Rodriguez and the Castellanos law firm "jointly and severally" liable in violation of 28 U.S.C. § 1927 and ordered them to repay FDIC for all expenses incurred as a result of Ms. Quiñones-Rodriguez's misconduct.¹¹⁸ The bankruptcy court noted that attorneys have the duty to resolve conflicts as efficiently as possible, a duty that Ms. Quiñones-Rodriguez failed to fulfill.¹¹⁹ The court also noted that if Ms. Quiñones-Rodriguez had conducted a simple inquiry before filing the case, she would have discovered that FDIC had a lien over MJS's assets and that FDIC would have priority as a creditor.¹²⁰

On April 16, 2015, the Castellanos law firm challenged the sanctions on several grounds.¹²¹ Nevertheless, the court maintained the sanctions.¹²² Castellanos appealed to the Bankruptcy Appellate Court.¹²³ Most relevant is Castellanos's argument that 28 U.S.C. § 1927 does not apply to law firms.¹²⁴

The United States Bankruptcy Appellate Panel of the First Circuit affirmed the circuit court's holding.¹²⁵ The First Circuit bankruptcy court agreed that

116. *See id.* at 410, 411 (describing FDIC's response to vacated order). FDIC argued:

(1) [T]he Relief Motion lacked support; (2) the HOA failed to respond to the FDIC's efforts to reach an out-of-court resolution of the Relief Motion; (3) the HOA failed to notify the FDIC that it planned to file the Withdrawal Motion; and (4) the HOA's counsel behaved in a manner inconsistent with the responsibilities of an officer of the court.

Id.

117. *See id.* at 412 (describing FDIC's argument that HOA should be sanctioned under 28 U.S.C. § 1927).

118. *See id.* at 413 (holding Ms. Quiñones-Rodriguez and Castellanos "jointly and severally" liable). The FDIC requested sanctions in the amount of \$11,603.10. *See id.* at 413–14 (describing sanction requests). This figure represented attorneys' fees incurred as a result of preparing for the relief motion. *See id.* at 414 (describing sanction requests). While FDIC actually incurred \$17,407.20, it lowered the amount requested to "facilitate the Court's determination of reasonableness." *See id.* (citation omitted) (describing sanction requests).

119. *See id.* (holding that Ms. Quiñones-Rodriguez breached professional duty).

120. *See id.* at 411 ("A quick look at the docket would have revealed to the HOA that the FDIC–R has a lien over all of the debtor's assets, covering their entire value.").

121. *See id.* at 414 (noting Castellanos's objections to sanctions). Castellanos argued that "law firms are not responsible for the signatures of their attorneys[.]" law firms are not liable under 28 U.S.C. § 1927, and Ms. Quiñones-Rodriguez's conduct did not rise to the level of sanctionable conduct under 28 U.S.C. § 1927. *See id.* (noting Castellanos's objections to sanctions).

122. *See id.* (affirming sanctions against Ms. Quiñones-Rodriguez and Castellanos). Before the court affirmed the sanctions, FDIC responded to Castellanos's objections and Castellanos replied to FDIC's response. *See id.* (discussing FDIC's and Castellanos's objections).

123. *See id.* at 415 (noting appeal to appellate court).

124. *See id.* at 416 (noting Castellanos's objections to sanctions).

125. *See id.* at 421 (affirming district court's holding).

Ms. Quiñones-Rodriguez's failure to respond to FDIC, Mr. Segarra Miranda, and Trigild, followed by her withdrawal of the relief motion, was "a 'cavalier disregard for both the [c]ourt and h[er] colleagues' time."¹²⁶ The court added that Castellanos similarly acted unprofessionally throughout the proceedings.¹²⁷ In accordance with this conduct, the appellate panel upheld the sanctions against Ms. Quiñones-Rodriguez and Castellanos.¹²⁸

IV. SERVICE HAS BEEN CANCELLED: SANCTIONING QUIÑONES-RODRIGUEZ AND CASTELLANOS

In affirming the bankruptcy court's sanctions against both Ms. Quiñones-Rodriguez and Castellanos, the appellate panel concluded that 28 U.S.C. § 1927 applies to law firms.¹²⁹ The court began its analysis with the requirements of 28 U.S.C. § 1927 and subsequently discussed whether law firms can be held jointly and severally liable under the statute.¹³⁰ After answering the latter question in the affirmative, the court found that the sanctions against Ms. Quiñones-Rodriguez and Castellanos were appropriate.¹³¹

A. *Elevator Pitch: The Requirements of 28 U.S.C. § 1927*

After noting that bankruptcy courts in the First Circuit have the power to issue sanctions pursuant to 28 U.S.C. § 1927, the First Circuit bankruptcy court proceeded to discuss the requirements of the statute.¹³² First, the party's

126. *See id.* at 422 (alteration in original) (citation omitted) (noting Ms. Quiñones-Rodriguez's behavior violated 28 U.S.C. § 1927). The court added that Ms. Quiñones-Rodriguez's unprofessional behavior was exactly the type of conduct that the statute meant to deter. *See id.* (describing behavior intended to be reprimanded by 28 U.S.C. § 1927).

127. *See id.* (describing Castellanos's unprofessional behavior throughout proceedings).

128. *See id.* at 424 (affirming bankruptcy court's holding).

129. For the court's analysis of 28 U.S.C. § 1927, see *infra* notes 132–38 and accompanying text.

130. For the court's analysis of whether law firms are liable under 28 U.S.C. § 1927, see *infra* notes 139–56 and accompanying text.

131. For a discussion of Ms. Quiñones-Rodriguez and Castellanos's sanctionable conduct, see *infra* notes 157–64 and accompanying text.

132. *See MJS Las Croabas*, 545 B.R. at 418 (noting split of whether bankruptcy courts have power to issue sanctions pursuant to 28 U.S.C. § 1927). 28 U.S.C. § 1927 applies to attorneys admitted "to conduct cases in any court of the United States." *See* 28 U.S.C. § 1927 (explaining scope of 28 U.S.C. § 1927). There has been some debate as to whether a bankruptcy court is a "court of the United States." *See In re Casiello*, 333 B.R. 571, 573 (Bankr. D. Mass. 2005) (stating debate between courts). Courts cite to 28 U.S.C. § 451 when holding that bankruptcy courts are not courts "of the United States." *See id.* at 574 (distinguishing bankruptcy courts to other courts "of the United States"). 28 U.S.C. § 451 defines a "court of the United States" as including "the Supreme Court of the United States, courts of appeals, district courts." *Id.* (defining "courts of the United States"). Because bankruptcy courts are not explicitly defined in the statute, some courts deny bankruptcy courts the authority to issue 28 U.S.C. § 1927 sanctions. *See, e.g., In re Sandoval*, 186 B.R. 490, 496–97 (B.A.P. 9th Cir. 1995) (following majority view in Ninth Circuit that bankruptcy courts are not "courts of the United States"); *In re Courtesy Inns, Ltd. Inc.*, 40 F.3d 1084, 1086 (10th Cir. 1994) (stating that "bankruptcy courts are not within the contemplation of

conduct must “multipl[y] the proceedings” in such a way that causes some delay in reaching a resolution of the case.¹³³ For a party to “multipl[y] the proceedings,” the proceeding must have already begun.¹³⁴ A case cannot be “multiplied” if it has not been filed.¹³⁵ Further, the court explained that vexatious conduct must be “harassing or annoying.”¹³⁶ Finally, while some courts require that the attorney act in bad faith, the First Circuit adopted the objective standard, which gives courts a great deal of discretion when imposing sanctions.¹³⁷ The judge is expected to use the judge’s experience to determine if the attorney’s conduct “falls short of the obligations owed by a member of the bar to the court.”¹³⁸

§ 1927”). However, district courts in the First Circuit have permitted bankruptcy courts to sanction attorneys in violation of 28 U.S.C. § 1927. *See* *MJS Las Croabas Props., Inc. v. FDIC*, 545 B.R. 401, 418 (B.A.P. 1st Cir. 2016) (citations omitted) (noting bankruptcy courts are permitted to issue sanctions in First Circuit). For instance, the Bankruptcy Court for the District of Massachusetts, which sits in the First Circuit, issued 28 U.S.C. § 1927 sanctions against counsel for failing to respond to discovery requests in a timely fashion and failing to appear at examinations. *See In re Lincoln N. Assocs., Ltd. P’ship*, 163 B.R. 403, 410–11 (Bankr. D. Mass. 1993) (sanctioning attorneys for unethical behavior). Further, the court in *In re Casiello* held that “a bankruptcy court is a court of the United States because it is a unit of the district court.” *See In re Casiello*, 333 B.R. at 575 (citation omitted) (describing bankruptcy court as part of district court system).

133. *See* *Beatrice Foods Co. v. New Eng. Printing & Lithographing Co.*, 899 F.2d 1171, 1177 (Fed. Cir. 1990) (noting purpose of 28 U.S.C. § 1927 is to deter “intentional and unnecessary delay in the proceedings”). Although the *MJS Las Croabas* court does not specifically discuss the *Beatrice Foods Co.* case in its opinion, *Beatrice Foods Co.* has been cited to set forth the principle purpose of the statute. *See* James F. Holderman, *Section 1927 Sanctions and the Split Among the Circuits*, 32 AM. BAR ASS’N SEC. LITIG. 44, 45 (2005).

134. *See MJS Las Croabas*, 545 B.R. at 418–19 (quoting *Jensen v. Phillips Screw Co.*, 546 F.3d 59, 65 (1st Cir. 2008)) (“In the First Circuit’s view, Congress’s use of the verb ‘multipl[y]’ in the text of the statute ‘clearly contemplates that, to be sanctionable thereunder, conduct must have an effect on an already initiated proceeding.’”).

135. *See id.* (explaining how cases are “multiplied”).

136. *See id.* at 419 (quoting *Lamboy-Ortiz v. Ortiz-Velez*, 630 F.3d 228, 245 (1st Cir. 2010)) (explaining meaning of “vexatious” conduct); *see also Jensen*, 546 F.3d at 64 (“Garden-variety carelessness or even incompetence, without more, will not suffice to ground the imposition of sanctions under section 1927.”). In *Jordan v. City of Detroit*, the court refused to sanction an attorney who filed a motion to enforce a settlement agreement before that agreement was finalized. *See Jordan v. City of Detroit*, 595 F. App’x 486, 487 (6th Cir. 2014) (describing attorney conduct that was not sanctionable). The court held that, although the attorney was mistaken about the law, it did not rise to the level of “vexatious” behavior. *See id.* at 488 (providing holding of case).

137. *See MJS Las Croabas*, 545 B.R. at 419 (citation omitted) (noting objective standard of review). The court explained, “[i]n assessing whether an attorney acted unreasonably and vexatiously, the First Circuit instructs courts to apply an objective standard.” *Id.* (citation omitted). An objective standard asks whether opposing counsel incurred costs because of the attorney’s conduct. *See* *Ardiola Sinaj, Attorneys’ Ability to Pay Sanctions Under 28 U.S.C. § 1927*, 15 J. L. SOC’Y 335, 339 (2013–2014) (citation omitted) (describing objective and subjective interpretations of 28 U.S.C. § 1927). This standard is different from the subjective view that determines whether the attorney acted in bad faith. *See id.* (describing subjective interpretation).

138. *See MJS Las Croabas*, 545 B.R. at 419 (citing *Rathbun v. Warren Cty. Schs.*, 825 F.2d 977, 984 (6th Cir. 1987)) (describing sanctionable conduct under 28 U.S.C. § 1927).

B. *It's a Party Line: Holding both Law Firms and Attorneys
Liable Under 28 U.S.C. § 1927*

Following its discussion of the requirements and standard of review of 28 U.S.C. § 1927, the court analyzed whether the statute encompasses law firms.¹³⁹ Acknowledging that nothing in the statute explicitly holds law firms liable, the court needed to resolve this “threshold” question.¹⁴⁰ To accomplish this task, the court looked at how other courts resolved this specific question.¹⁴¹

Several circuit courts have sanctioned law firms under 28 U.S.C. § 1927.¹⁴² However, the court centered its focus on the reasoning in *Brignoli* from the Southern District of New York.¹⁴³ Citing the *Brignoli* court’s reasoning, the First Circuit bankruptcy court conceded that when an individual sees the word “personally” in the statute, a law firm is not the first thing that comes to mind.¹⁴⁴ However, because the statute is meant to cover attorney conduct, and not client conduct, it is reasonable that the law firms supervising those attorneys can also be held liable.¹⁴⁵

Further, the *MJS Las Croabas* court held that the legislature intended the statute to cover “entities who ‘conduct cases.’”¹⁴⁶ The court agreed with the

139. *See id.* at 419 (introducing question of whether law firms can be sanctioned under 28 U.S.C. § 1927).

140. *See id.* (“The statute does not explicitly provide for vicarious liability.”). Law firms should be held to the same standard as corporations. *See* Ted Schneyer, *Professional Discipline for Law Firms*, 77 CORNELL L. REV. 1, 28 (1991) (arguing that law firms should be held liable for attorney conduct). Under the doctrine of “respondeat superior,” law firms would be held liable for attorney conduct just as corporations are liable for the negligence of their employees. *See id.* (comparing law firm liability to corporations under respondeat superior doctrine).

141. *See MJS Las Croabas*, 545 B.R. at 420 (referring to other court holdings as to whether law firms can be held liable under 28 U.S.C. § 1927).

142. For a discussion of cases that sanctioned law firms under 28 U.S.C. § 1927, see *supra* notes 62–84 and accompanying text.

143. *See MJS Las Croabas*, 545 B.R. at 420 (following reasoning from *Brignoli v. Balch Hardy & Scheinman, Inc.*, 735 F. Supp. 100 (S.D.N.Y. 1990)).

144. *See id.* (citing *Brignoli*, 735 F. Supp. at 101–02) (describing meaning of word “personally” in statute).

145. *See id.* (holding law firms liable under 28 U.S.C. § 1927). According to the *Brignoli* court, law firms “naturally fall” within the category of “other person[s] admitted to conduct cases.” *See Brignoli*, 735 F. Supp. at 102 (quoting 29 U.S.C. § 1927). In *Brignoli*, both an attorney and his law firm were sanctioned under 28 U.S.C. § 1927. *See id.* at 101 (discussing outcome of case). The court reasoned that because the attorney was a named partner of the law firm, and the law firm employed other attorneys who worked on the case, sanctions against the law firm were appropriate. *See id.* (explaining court’s reasoning). In fact, the court noted that the law firm personified itself in its brief, making statements such as, “We have also shown that *our* positions taken at the time were reasonable.” *See id.* at 102 n.2 (explaining court’s reasoning).

146. *See MJS Las Croabas*, 545 B.R. at 420 (citation omitted) (describing legislature’s intent). 28 U.S.C. § 1927 was enacted to “prevent attorneys from filing multiple suits when the matter only required a single proceeding.” Kevin J. Henderson, *When Is an Attorney Unreasonable and Vexatious?*, 45 WASH. & LEE L. REV. 249, 250 n.5 (1988) (citing 26 ANNALS OF CONG. 29 (1813)) (describing legislature’s intent for creating 28 U.S.C. § 1927). Law firms did not exist when the statute was enacted in 1813. *See* GREGORY P. JOSEPH, SANCTIONS: THE FEDERAL LAW OF LITIGATION ABUSE § 21(C)(2) (5th ed. 2013) (noting

Brignoli court that law firms are “entities who ‘conduct cases.’”¹⁴⁷ Because it was a basic assumption of courts that law firms are included in the statute, the court did not feel the need to explicitly address it.¹⁴⁸

Following its discussion of *Brignoli*, the First Circuit bankruptcy court noted which other circuits have refused to sanction law firms under the statute.¹⁴⁹ For instance, the Ninth Circuit did not extend 28 U.S.C. § 1927 to law firms, reasoning that Congress would have explicitly included “law firms” in the statute if it were meant to reach them.¹⁵⁰ In support of the Ninth Circuit’s reasoning, the Seventh Circuit held that only individual attorneys, and not law firms, are admitted to conduct cases.¹⁵¹

Finally, the *MJS Las Croabas* court turned to an opinion from the First Circuit, which implicitly ruled that law firms can be sanctioned under 28 U.S.C. § 1927.¹⁵² In *Jensen*, the First Circuit Court reviewed a district court’s ruling where the law firm was sanctioned.¹⁵³ The circuit court remanded the case on

absence of law firms when statute was created). The statute was last amended in 1980. *See id.* (providing history of statute).

147. *See MJS Las Croabas*, 545 B.R. at 421 (citation omitted) (agreeing with *Brignoli* that law firms are persons who conduct cases).

148. *See id.* at 420 (citing *Brignoli*, 735 F. Supp. at 101–02) (explaining why question of whether law firms covered under statute was not explicitly discussed). Sanctioning law firms under 28 U.S.C. § 1927 has only been implicit. *See id.* (explaining implicit nature of sanctions). In *Apex Oil Co. v. Belcher Co. of New York, Inc.*, the circuit court affirmed § 1927 sanctions against a law firm. *See Apex Oil Co. v. Belcher Co. of N.Y.*, 855 F.2d 1009, 1020 (2d Cir. 1988) (affirming sanctions against law firm). In that case, the court examined only whether the sanctions were appropriate and not whether law firms were the appropriate target of the sanction. *See id.* (explaining court’s reasoning to sanction law firm). Finding that the trial court did not err in issuing sanctions, the court implicitly held that law firms can be sanctioned under 28 U.S.C. § 1927. *See id.* (providing holding of case).

149. *See MJS Las Croabas*, 545 B.R. at 421 (noting courts that did not issue sanctions against law firms). For a discussion of courts that did not extend 28 U.S.C. § 1927 sanctions to law firms, see *supra* notes 49–61 and accompanying text.

150. *See MJS Las Croabas*, 545 B.R. at 421 (citing *Kaass Law v. Wells Fargo Bank, N.A.*, 799 F.3d 1290, 1294 (9th Cir. 2015)) (discussing Congress’s intent).

151. *See id.* (citing *Claiborne v. Wisdom*, 414 F.3d 715, 723 (7th Cir. 2005)) (noting non-attorney individuals who are admitted to conduct cases).

152. *See id.* (citing *Jensen v. Phillips Screw Co.*, 546 F.3d 59, 68 (1st Cir. 2008)) (noting implicit ruling in First Circuit).

153. *See id.* (reviewing district court sanctions against law firm). In *Jensen*, the law firm Stewart, Estes, & Donnell filed four separate claims against the Phillips Screw Company. *See Jensen*, 546 F.3d at 61 (discussing claims of case). The law firm accused Phillips of manufacturing faulty screws. *See id.* (discussing claims of case). The first claim was dismissed because the plaintiff had previously resolved all issues with Phillips. *See id.* (discussing claims of case). Stewart, Estes, & Donnell then added a second plaintiff; however, that plaintiff ultimately decided not to litigate. *See id.* at 62 (discussing claims of case). A third plaintiff was added, but it was subsequently discovered Phillips did not manufacture the screw that the plaintiff was using. *See id.* (discussing procedural history). Finally, Stewart, Estes, & Donnell substituted a fourth plaintiff. *See id.* (discussing procedural history). However, after the court inquired about the suitability of this plaintiff, Stewart, Estes, & Donnell withdrew its claim. *See id.* (discussing procedural history). Although 28 U.S.C. § 1927 is not an appropriate sanction for Stewart, Estes, & Donnell’s first complaint because the proceeding must have begun, the three subsequent amendments were subject to sanctions under the statute. *See id.* at 63 (explaining amendments that were subject to sanctions). The trial court sanctioned the law firm Stewart, Estes, & Donnell for multiplying

another matter, without addressing the sanctions.¹⁵⁴ The *MJS Las Croabas* court reasoned that implicit in the *Jensen* court's decision was that 28 U.S.C. § 1927 applies to law firms because it was not overturned on review.¹⁵⁵ In affirming the bankruptcy court's sanctions against Castellanos, the court found the *Jensen* and *Brignoli* holdings, as well as the holdings from the Second, Third, Eighth, Eleventh, and D.C. Circuits, persuasive.¹⁵⁶

C. *Time for a Wake-Up Call: Punishing the Unprofessional Behavior of Ms. Quiñones-Rodriguez and Castellanos*

Because of Ms. Quiñones-Rodriguez's unresponsiveness to opposing counsel, and Castellanos's failure to act on several occasions, the First Circuit bankruptcy court affirmed the lower court's holding that both Ms. Quiñones-Rodriguez's and Castellanos' unprofessional conduct warranted sanctions under 28 U.S.C. § 1927.¹⁵⁷ Their misconduct caused opposing counsel to incur unnecessary expenses.¹⁵⁸ The court held that Ms. Quiñones-Rodriguez's "behavior. . . is precisely the type of behavior targeted by § 1927."¹⁵⁹

In addition to Ms. Quiñones-Rodriguez, the court held that Castellanos was also responsible for the expenses incurred by opposing counsel.¹⁶⁰ Castellanos failed to act on several occasions.¹⁶¹ The court found it most surprising that Castellanos remained uninvolved even after it was threatened with sanctions.¹⁶² It also rejected Castellanos's argument that the law firm was unaware of Mr.

the proceedings, and the firm appealed. *See id.* (sanctioning law firms). The appellate court held that, considering these facts, the district court may have abused its discretion in sanctioning the conduct; however, the court did not hold that law firms fall outside the scope of 28 U.S.C. § 1927. *See id.* at 67–68 (providing holding of case).

154. *See MJS Las Croabas*, 545 B.R., at 420–21 (citing *Jensen*, 546 F.3d at 68) (describing that case was remanded without ruling whether law firms can be sanctioned under statute).

155. *See id.* (citing that First Circuit courts have implicitly sanctioned law firms under 28 U.S.C. § 1927).

156. *See id.* (following decisions in *Jensen* and Second, Third, Eighth, Eleventh, and D.C. Circuits).

157. *See id.* at 421–22 (describing bankruptcy court's holding).

158. *See id.* at 421 (noting expenses incurred from Ms. Quiñones-Rodriguez's misconduct). Because of Ms. Quiñones-Rodriguez's unresponsiveness, FDIC, Trustee, and Trigild were all forced to prepare oppositions to Ms. Quiñones-Rodriguez's motion, as well as prepare for and travel to the hearing. *See id.* (describing facts of case). If Ms. Quiñones-Rodriguez responded to their phone calls and emails, all of the expenses could have been avoided. *See id.* (explaining focal problem).

159. *See id.* at 422 (citing *Lamboy-Ortiz v. Ortiz-Velez*, 630 F.3d 228, 245–46 (1st Cir.2010)) (describing type of behavior targeted by 28 U.S.C. § 1927).

160. *See id.* (holding Castellanos "jointly and severally liable" for Ms. Quiñones-Rodriguez's behavior).

161. *See id.* (describing Castellanos's failure to act in response to opposing counsel's actions). Castellanos "remained silent when confronted with the FDIC's Response to the Withdrawal Motion, the Trustee's Sanctions Request, the October 2014 Sanctions Orders, and the FDIC's Reply to HOA's Opposition." *Id.* (describing same).

162. *See id.* ("Even the court's admonition from the bench at the September 2014 Hearing that it was inclined to grant the pending requests for sanctions, which included a request for sanctions against the Castellanos Firm, did not elicit a response from the firm.").

Sandell's travel arrangements to Puerto Rico for the September 9, 2014 hearing.¹⁶³ Finally, the court was unconvinced that Ms. Quiñones-Rodriguez was an independent contractor of Castellanos.¹⁶⁴

V. GETTING MIXED SIGNALS: THE LEGISLATURE SAYS ONE THING BUT SHOULD HAVE SAID ANOTHER

Future courts may face a dilemma when confronted with a sanction request against a law firm under 28 U.S.C. § 1927.¹⁶⁵ On the one hand, intuition tells us that law firms do not naturally fall within the language of the statute.¹⁶⁶ On the other hand, intuition also tells us that they should.¹⁶⁷ Therefore, until the legislature or Supreme Court says otherwise, courts will likely struggle with reconciling what they think the legislature intended and what they think the legislature *should have* intended.¹⁶⁸ Further, although it is unlikely that Congress intended for the statute to apply to law firms, amending the statute to include law firms would better serve the purposes of 28 U.S.C. § 1927.¹⁶⁹

163. *See id.* (rejecting argument that Castellanos was unaware that opposing counsel was travelling to motion hearing).

164. *See id.* (rejecting argument that Ms. Quiñones-Rodriguez was independent contractor for Castellanos). The court noted the following factors to determine if an individual is an independent contractor:

[T]he hiring party's right to control the manner and means by which the product is accomplished . . . ; the skills required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.

Id. at 422 n.19 (citing *Alberty-Velez v. Corporación de P.R. Para La Difusión Pública*, 361 F.3d 1, 7 (1st Cir. 2004)) (listing factors to determine whether someone is independent contractor). Further, Ms. Quiñones-Rodriguez represented herself as an attorney of the Castellanos law firm. *See id.* (indicating relevant facts in determining holding).

165. For a critical analysis of sanctioning law firms under 28 U.S.C. § 1927, see *infra* notes 170–214 and accompanying text.

166. For an analysis of why firms are unlikely to be liable under the current language of 28 U.S.C. § 1927, see *infra* notes 170–93 and accompanying text.

167. For an analysis of the reason firms should be liable under 28 U.S.C. § 1927, see *infra* notes 195–214 and accompanying text.

168. For a critical analysis of sanctioning law firms under 28 U.S.C. § 1927, see *infra* notes 170–214 and accompanying text.

169. For a discussion of why it is unlikely that law firms are covered by 28 U.S.C. § 1927, see *infra* notes 170–93 and accompanying text. For a discussion of why firms should be included in the statute, see *infra* notes 194–214 and accompanying text.

A. *Wrong Number: 28 U.S.C. § 1927 Likely
Does Not Apply to Law Firms*

Courts have an obligation to enforce a statute as the legislature intended.¹⁷⁰ To meet this obligation, courts must determine the legislature's intent in enacting 28 U.S.C. § 1927.¹⁷¹ Although this task may prove to be difficult, courts use several methods to determine the legislature's intent.¹⁷²

Legislative intent in the present context helps courts understand whether law firms are "person[s] admitted to conduct cases."¹⁷³ There are several definitions for the word "person."¹⁷⁴ Most relevant is Congress's definition, which states, "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise . . . the words 'person' and 'whoever' include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals."¹⁷⁵ Therefore, it is a reasonable assumption that law firms are considered "persons" under this definition because "firms" are explicitly mentioned.¹⁷⁶

Although law firms may be persons according to the legislature, the issue remains whether they are persons who are "admitted to conduct cases."¹⁷⁷ State bar associations determine who can be admitted to conduct cases.¹⁷⁸ Many

170. See Abner J. Mikva & Eric Lane, *An Introduction to Statutory Interpretation and the Legislative Process* 4 (1997) ("[T]he judicial will must bend to the legislative command[.]"'). There are varying theories of how statutes should be interpreted. See *id.* at 50–52 (identifying different theories). Following a traditional approach, courts may consider the text, the legislative history, and canons of construction. See *id.* at 50 (considering traditional approach). Following a textualist approach, courts will consider only the text of the statute and surrounding statutes, and apply the canons of construction. See *id.* at 52 (considering textualist approach).

171. See *id.* at 4 (describing how courts must determine legislative intent).

172. For a discussion of the statutory interpretation methods that courts use in determining legislative intent, see *infra* notes 173–76 and accompanying text.

173. See 28 U.S.C. § 1927 (identifying statutory ambiguity). For a further discussion of this issue and the present split among the circuit courts, see *supra* notes 47–84 and accompanying text.

174. See, e.g., *Person*, BLACK'S LAW DICTIONARY, (9th ed. 2009) (defining person as either "a human being" or "an entity . . . that is recognized by law as having the rights and duties of a human being"); *Person*, MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/person> [<https://perma.cc/5E6C-VSQQ>] (last visited Sept. 19, 2016) (defining person as "a human being"). Congress includes "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals" in its definition of "person." 1 U.S.C. § 1 (2012).

175. 1 U.S.C. § 1 (explaining definition of "person" established by Congress).

176. See Richard Bobholz, *Law Firm Choice of Entity*, AM. BAR ASS'N, <http://www.americanbar.org/publications/tyl/topics/solo-small-firm/law-firm-choice-entity.html> [<https://perma.cc/CS67-SWVW>] (last visited Oct. 4, 2016) (listing types of law firm entities). Law firms may be formed as corporations, limited liability corporations, S corporations, partnerships, and sole proprietorships. See *id.* (identifying law firms' governance structure).

177. See 28 U.S.C. § 1927 (applying statute to "persons who conduct cases").

178. See NAT'L CONF. BAR EXAMINERS & AM. BAR ASS'N SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *COMPREHENSIVE GUIDE TO BAR ADMISSIONS REQUIREMENTS* 1 (Erica Moeser & Claire J. Guback eds., 2016), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Comprehensi

states require bar applicants to have completed a bachelor's degree.¹⁷⁹ Almost all states require the applicant to have a law degree.¹⁸⁰ And among those states that do not require a law degree, the applicant must still fulfill apprenticeship requirements.¹⁸¹ Most notably, the applicant must take—and pass—the bar examination.¹⁸²

Based on these admission requirements, it is likely that *Claiborne* and similar courts interpreted the statute correctly; law firms are not individuals admitted to conduct cases.¹⁸³ Law firms do not hold a bachelor's degree.¹⁸⁴ They have not attended law school.¹⁸⁵ They have not worked with a judge.¹⁸⁶ And they did not sit for the bar exam.¹⁸⁷ If law firms cannot meet the requirements to be admitted to the bar, then they cannot be admitted to conduct cases.¹⁸⁸ Further, even if ambiguity exists as to whether law firms are “individuals who conduct cases,” the rule of lenity dictates that the statute be construed most favorably to the defendant, which, in this case, would be the law firm.¹⁸⁹

veGuidetoBarAdmissions/2016_comp_guide.authcheckdam.pdf [https://perma.cc/7XTD-GHQ4] [hereinafter GUIDE TO BAR ADMISSIONS] (describing state requirements for bar admission).

179. *See id.* at 2 (listing states that require bachelor's degree to be admitted to state bar).

180. *See id.* 8–11 (listing states that require law school diploma to be admitted to state bar). However, some states do not require a formal legal education from a law school. *See* Sean Patrick Farrell, *The Lawyer's Apprentice*, N.Y. TIMES (July 30, 2014), http://www.nytimes.com/2014/08/03/education/edlife/how-to-learn-the-law-without-law-school.html?_r=1 [https://perma.cc/WLE5-56AV]. Among these states are California, Wyoming, Vermont, and Virginia. *See id.* (identifying states that do not have formal legal education requirements). However, they do require apprenticeships. *See id.* (stating requirements of states that do not require formal education).

181. *See* Corey Adwar, *There's a Way to Become an Attorney Without Setting Foot in Law School*, BUS. INSIDER (July 30, 2014, 6:21 PM) <http://www.businessinsider.com/how-to-become-an-attorney-without-law-school-2014-7> [https://perma.cc/ET63-5YTW] (describing requirements for bar admissions in states that do not require attending law school). Those who substitute law school for an apprenticeship are known as “law readers.” *See id.* (explaining common name).

182. *See* GUIDE TO BAR ADMISSIONS, *supra* note 178 (requiring bar applicants to pass exam).

183. *See* *Claiborne v. Wisdom*, 414 F.3d 715, 723 (7th Cir. 2005) (describing circumstances when non-attorneys can conduct cases).

184. For a discussion of bachelor's degree requirements, see *supra* note 180 and accompanying text.

185. For a discussion of apprenticeship requirements, see *supra* note 181 and accompanying text.

186. For a discussion of law degree requirements, see *supra* notes 180–81 and accompanying text.

187. For a discussion of bar exam requirements, see *supra* note 182 and accompanying text.

188. For discussion of bar admission requirements, see *supra* notes 178–82 and accompanying text.

189. *See* JOSEPH, *supra* note 146, at 436 (describing rule of lenity). The rule of lenity dictates that statutes be interpreted as narrowly as possible for the benefit of the defendant. *See* William D. Popkin, *A Dictionary of Statutory Interpretation* 191 (2007) (explaining rule of lenity). The rule also encourages the legislature to draft statutes that place potential

If law firms are not “individuals who conduct cases,” the question then becomes, to which individuals was the legislature referring?¹⁹⁰ As the court in *Claiborne* explained, there are rare circumstances when a law student may appear before the court and when non-attorneys appear in patent disputes.¹⁹¹ Thus, it is possible, if not probable, that the legislature was referring to these individuals, and not law firms, when drafting 28 U.S.C. § 1927.¹⁹² As a result, it is unlikely that law firms are covered by the current language of 28 U.S.C. § 1927.¹⁹³

B. *Adding a Second Line: Law Firms Should Be Held Liable Under 28 U.S.C. § 1927*

While there may be doubt as to whether law firms really are persons for purposes of 28 U.S.C. § 1927, the decision in *MJS Las Croabas* represents a step in the right direction.¹⁹⁴ The two predominant theories for imposing 28 U.S.C. § 1927 sanctions are (1) to punish and deter misconduct, and (2) to compensate opposing counsel for any expenses that they incurred as a result of the misconduct.¹⁹⁵ Either of these objectives, along with the general purpose of imposing sanctions, will be accomplished by holding law firms liable under 28 U.S.C. § 1927.¹⁹⁶ Punishing law firms would incentivize them to monitor attorney compliance with ethical standards, thus preventing future

offenders on notice of whether the conduct is wrongful and whether it applies to them. See WILLIAM D. POPKIN, STATUTES IN COURT: THE HISTORY AND THEORY OF STATUTORY INTERPRETATION 204 (1999) (describing rule of lenity). Applying the rule of lenity to 28 U.S.C. § 1927 would likely absolve law firms from any liability because “persons admitted to conduct cases” would be narrowly interpreted to exclude law firms. See *id.* at 191.

190. For an explanation of why law firms are likely not “individuals who conduct cases,” see *supra* notes 170–89 and accompanying text.

191. See *Claiborne v. Wisdom*, 414 F.3d 715, 723 (7th Cir. 2005) (describing circumstances when non-attorneys can conduct cases). For example, a patent agent is admitted to prosecute patent cases. See *Patent Agent FAQ*, PATENT LAW AT NOTRE DAME, <http://patentlaw.nd.edu/patent-agent-and-program-faq> [<https://perma.cc/N69R-ABMJ>] (last visited Oct. 2, 2016) (describing patent agents and patent attorneys). Patent agents differ from patent attorneys in that they have not attended law school, nor are they admitted to a state bar. See *id.* (distinguishing patent agents and patent attorneys). In California, certified students can represent clients in trials. See CAL. R. 9.42(d)(3).

192. For a discussion of how courts interpret legislative intent, see *supra* notes 173–76 and accompanying text.

193. For a discussion of why it is unlikely that law firms are covered by 28 U.S.C. § 1927, see *supra* notes 170–92 and accompanying text.

194. For an explanation of why law firms should be held liable under 28 U.S.C. § 1927, see *infra* notes 195–214 and accompanying text.

195. See Sinaj, *supra* note 137, at 339 (citation omitted) (describing two different interpretations of purpose of 28 U.S.C. § 1927).

196. See *Annotated Standards for Imposing Lawyer Sanctions* 1, AM. BAR ASS’N (2015) (describing purposes of sanctions). The purposes of sanctions are “protecting the public, upholding the integrity of the legal system, assuring the fair administration of justice, and deterring other lawyers from similar misconduct.” *Id.* (explaining objectives of statute). For lawyers to effectively serve the public, they must earn the public’s trust. See *id.* at 5 (identifying key factors in serving public). A lawyer who breaches that trust should be disciplined. See *id.* (explaining discipline for breaching attorney duties).

misconduct.¹⁹⁷ Law firms are also in a better position to compensate opposing counsel.¹⁹⁸

1. *Conference Call: Sanctioning Law Firms Will Have a Greater Influence on Attorney Behavior*

One view of 28 U.S.C. § 1927 is that it is meant to punish and deter attorneys from “unreasonably and vexatiously” delaying or prolonging proceedings.¹⁹⁹ When an individual is punished, the individual is less likely to engage in future misconduct because of an increased perception that the individual will be caught.²⁰⁰ Similarly, any peers who have observed the punishment will be less likely to engage in future misconduct.²⁰¹ Therefore, if an individual attorney is punished for a violation of 28 U.S.C. § 1927, the sanctions will deter both that specific attorney and that attorney’s peers who observe the punishment.²⁰²

While sanctioning an individual attorney will affect both that attorney and the attorney’s surrounding peers, sanctioning the law firm will have an influence on most, if not all, attorneys at the law firm.²⁰³ When a law firm is sanctioned, it often suffers a loss in reputation and, consequently, a loss of business.²⁰⁴ Therefore, the threat of these adverse effects will incentivize law firms to adopt a culture that encourages ethical and efficient lawyering.²⁰⁵ By

197. For a discussion of how sanctions motivate law firms to monitor attorneys, see *infra* notes 204–06 and accompanying text.

198. For a discussion of why law firms are in a better position to pay sanctions, see *infra* notes 211–14 and accompanying text.

199. For a discussion of the goals of 28 U.S.C. § 1927, see *supra* note 195 and accompanying text.

200. See Greg Pogarsky & Alex R. Piquero, *Can Punishment Encourage Offending? Investigating the “Resetting” Effect*, 40 J. RES. CRIME AND DELINQ. 95, 97 (2003) (citations omitted) (describing effect of individual punishment).

201. See Linda Klebe Trevino, *The Social Effects of Punishment in Organizations: A Justice Perspective*, 17 ACAD. MGMT. REV. 647, 650 (1992) (citations omitted) (discussing social effect of punishment).

202. For a discussion of why punishment deters individuals and their peers, see *supra* notes 200–01 and accompanying text.

203. See Daryl J. Levinson, *Collective Sanctions*, 56 STAN. L. REV. 345, 378 (2003) (noting that groups can influence and control individual members).

204. See *Collective Sanctions and Large Law Firm Discipline*, 118 HARV. L. REV. 2336, 2338 (2005) (describing adverse effects of sanctions). There is a stigma attached to sanctions. See *id.* (explaining stigma). Both lawyers and firms will suffer a loss in reputation after being sanctioned. See *id.* (identifying loss in reputation). Further, this stigma may create a financial loss that manifests when the law firm loses business. See *id.* (explaining effects of sanctions). Research suggests that corporations are more concerned with the possibility of negative publicity than economic sanctions. See Schneyer, *supra* note 140, at 34 (citation omitted) (describing negative publicity following sanctions). This loss in reputation might not occur if an individual attorney is sanctioned because the law firm can argue that the unethical attorney is not an accurate reflection of the law firm’s ethical standards. See *id.* (differentiating consequences between sanctioned law firms and attorneys).

205. See Levinson, *supra* note 203, at 349 (describing how collective sanctions motivate groups to monitor individuals). When an entire group is threatened with sanctions, the group will change its ethical infrastructure. See *id.* (noting effects of sanctions). Levinson

adopting a culture that promotes ethics, as well as implementing an ethical infrastructure, law firms will be able to influence the ethical conduct of all attorneys at the law firm.²⁰⁶

In addition to influencing more attorneys at the law firm, holding law firms jointly and severally liable has other benefits that will prevent misconduct.²⁰⁷ First, sanctioning the law firm as a group recognizes the attorney as a member of the firm, and identification with the firm will make it more likely that the

explains that changing group norms or introducing ethics initiatives can accomplish this change. *See id.* (identifying how ethical infrastructure can be corrected).

206. *See* Patrick J. Schlitz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 910 (1999) (describing effect of firm culture on ethical decision-making). Schlitz argues that law firms have a subtle way of getting attorneys to adopt their values. *See id.* at 912 (identifying lawyers' reluctance to adopt ethical values). This shift in values may ultimately lead to unethical behavior. *See id.* at 915 (explaining how lawyers can become unethical). For example, the pressure of meeting billable hour requirements leads some attorneys to manipulate their time sheets. *See id.* at 917 (explaining how lawyers may become unethical). Further, some argue that law firms may also reward attorneys for engaging in unethical behavior and may also represent clients that expect "hyper-aggressive lawyering." *See* Austin Sarat, *Enactments of Professionalism: A Study of Judges' and Lawyers' Accounts of Ethics and Civility in Litigation*, 67 FORDHAM L. REV. 809, 827 (1998) (describing ways firm culture influences ethical decision-making); *see also* Elizabeth Chambliss & David B. Wilkins, *Promoting Effective Ethical Infrastructure in Large Law Firms: A Call for Research and Reporting*, 30 HOFSTRA L. REV. 691, 692 (2002) (advocating for ethical infrastructures in law firms); Ted Schneyer, *supra* note 140, at 12 (describing that law firm discipline will "supplement" attorney discipline). This effect is illustrated in an example described by Schneyer. *See* Schneyer, *supra* note 140, at 2 (citation omitted). Attorneys in Kirkland & Ellis's Chicago office represented a uranium corporation in an antitrust case. *See id.* (citation omitted). Unbeknownst to Kirkland & Ellis's Chicago office, however, their Washington office was representing the American Petroleum Institute, an opposing party to the uranium company. *See id.* (citation omitted) (explaining conflicts of interest). The law firm was forced to drop the case because of the conflict of interest. *See id.* (citation omitted) (explaining actions taken to prevent conflicts of interest). Schneyer attributes the existence of the conflict of interest to the law firm's failure to take measures to detect such conflicts. *See id.* at 10 (identifying failure in law firm procedures). If the law firm had a system to detect conflicts, then the issue could have been avoided. *See id.* (explaining how law firm could have prevented conflict of interest). People often know right from wrong, but that does not always translate to ethical decision-making. *See generally* Charles D. Kerns, *Creating and Sustaining an Ethical Workplace Culture*, 6 GRAZIADIO BUS. REV. (2003), <https://gbr.pepperdine.edu/2010/08/creating-and-sustaining-an-ethical-workplace-culture> [<https://perma.cc/S46P-S6B2>] (finding that some criminals know what right thing to do is but do not do it). The United States Sentencing Commission introduces seven factors for an effective corporate ethics program: (1) implementing procedures that detect misconduct, (2) educating supervisors on the compliance procedures and ensuring that the guidelines are being followed, (3) refraining from hiring individuals with a criminal background, (4) offering ethical training programs, (5) monitoring and auditing employee misconduct, determining the effectiveness of the compliance program, and making sure that the employees are aware of the program, (6) introducing incentives for compliance and punishment to deter noncompliance, and (7) punishing those who engage in unethical behavior. *See* U.S. SENTENCING GUIDELINES MANUAL § 8B2.1 (U.S. SENTENCING COMM'N 2011) (listing minimal requirements to encourage ethical conduct).

207. For a discussion of the additional benefits of sanctioning law firms, *see infra* notes 208–14.

attorney adopts the firm's culture and ethics.²⁰⁸ Holding law firms liable will also encourage them to fulfill their duty of ensuring that attorneys follow the Rules of Professional Conduct.²⁰⁹ Therefore, holding law firms liable under 28 U.S.C. § 1927 would encourage them to fulfill these duties.²¹⁰

2. *Paying the Bill: Law Firms Are in a Better Position to Cover Expenses*

A second interpretation of 28 U.S.C. § 1927 is that it is meant to compensate opposing counsel for unnecessary expenses resulting from an opposing attorney's misconduct.²¹¹ Law firms are often in a better position to pay these expenses than an individual attorney.²¹² Holding law firms liable will increase the likelihood that the affected attorney will be compensated for expenses incurred.²¹³ Therefore, if the purpose of 28 U.S.C. § 1927 is to compensate opposing counsel, holding law firms liable will better serve this purpose because they are in a better position to pay the fines.²¹⁴

VI. GET CONGRESS ON THE PHONE: 28 U.S.C. § 1927 SHOULD BE AMENDED TO INCLUDE LAW FIRMS

The circuit split over whether 28 U.S.C. § 1927 applies to law firms indicates the need for a quick resolution, and the legislature is in the best

208. See Milton C. Reagan, Jr., *Nested Ethics: A Tale of Two Cultures*, 42 HOFSTRA L. REV. 143, 145 (2013) (citing Scott Killingsworth, *Modeling the Message: Communicating Compliance Through Organizational Values and Culture*, 25 GEO J. LEGAL ETHICS 961, 975, 978 (2012)) (finding greater identification by employee with company corresponds with greater likelihood of following compliance programs).

209. See MODEL R. OF PROF'L CONDUCT r. 5.1(a) (AM. BAR ASS'N 2014) (explaining effects of professional conduct rules). Rule 5.1(a) provides that:

A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

Id. Part of this duty is to facilitate attorney communication with clients and to ensure that attorneys engage in efficient legal practices. See *id.* r. 3.2 ("A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.").

210. See, e.g., Avner Bar-Ilan & Sacerdote Bruce, *The Response of Criminals and Non-Criminals to Fines*, 47 J. L. & ECON. 1, 15 (2004) (finding that monetary fines deter drivers from running red lights); Todd L. Cherry, *Financial Penalties as an Alternative to Criminal Sanction: Evidence from Panel Data*, 29 ATLANTIC ECON. J. 450, 456 (2001) (arguing that monetary fines are effective alternative to criminal penalties).

211. For a discussion of the goals of 28 U.S.C. § 1927, see *supra* note 195 and accompanying text.

212. See Schneyer, *supra* note 140, at 33 (citation omitted) (illustrating that firms are more capable of paying fines).

213. See Thomas J. Miceli & Kathleen Segerson, *Punishing the Innocent Along with the Guilty: The Economics of Individual Versus Group Punishment*, 36 J. LEGAL STUD. 81, 86 (2007) (describing benefits of punishing group instead of individual).

214. For a discussion of why law firms are in a better position to pay sanctions, see *supra* notes 211–13 and accompanying text.

position to accomplish this feat.²¹⁵ Regardless of how the statute is ultimately interpreted, a uniform interpretation of 28 U.S.C. § 1927 will give law firms and attorneys the opportunity to predict the consequences of their actions.²¹⁶ Inconsistent interpretations of 28 U.S.C. § 1927 will only create confusion among law firms and give some an unfair advantage over others.²¹⁷ This unfairness is especially true as sanction requests under 28 U.S.C. § 1927 are becoming more common.²¹⁸

However, adopting the *MJS Las Croabas* court's reasoning would benefit the legal profession as a whole.²¹⁹ Holding law firms liable would likely incentivize them to ensure attorney compliance with 28 U.S.C. § 1927.²²⁰ Further, law firms are in the best position to monitor and influence attorney conduct because attorneys are under their supervision.²²¹ Sanctioning law firms would give them the incentive to take advantage of that position and introduce an infrastructure that encourages ethical and professional behavior.²²² And increasing attorney ethics and professionalism would improve the public's view of the legal institution, fostering a more trustworthy and efficient legal system.²²³

215. For an explanation of why the legislature or Supreme Court must clarify the interpretation of the statute, see *infra* notes 216–18 and accompanying text.

216. See Amanda Frost, *Overvaluing Uniformity*, 94 VA. L. REV. 1567, 1584 (2008) (citing Evan H. Caminker, *Precedent and Prediction: The Forward-Looking Aspects of Inferior Court Decision Making*, 73 TEX. L. REV. 1, 38–40 (1994)) (explaining that uniform interpretation of statutes creates predictability).

217. See Daniel J. Meador, *A Challenge to Judicial Architecture: Modifying the Regional Design of the U.S. Courts of Appeals*, 56 U. CHI. L. REV. 603, 618 (claiming that inconsistent interpretations create confusion). When the legislature is attempting to control future behavior via statute, different interpretations of that statute will undermine the objective. See *id.* (providing reasoning behind statute). Further, the different interpretations will create unfair results both from a judicial viewpoint and a competitive one. See *id.* (explaining effects of statute). Applying this concept to the issue here, a law firm in the Sixth Circuit will not be liable for attorney conduct, but a firm in the First Circuit will. See *id.* (identifying when law firm is liable in First Circuit). As a result, the Sixth Circuit firm may have a competitive advantage over the First Circuit firm. See *id.* (distinguishing between First and Sixth Circuits).

218. See Sinaj, *supra* note 137, at 345 (describing how 28 U.S.C. § 1927 has become substitute for Rule 11).

219. For an explanation of why sanctioning law firms under 28 U.S.C. § 1927 would improve attorney ethics, see *supra* notes 203–10 and accompanying text.

220. For an explanation of why holding law firms liable under 28 U.S.C. § 1927 will likely give them the incentive to promote ethical behavior, see *supra* notes 204–06 and accompanying text.

221. For an explanation of why law firms are in the best position to control attorney behavior, see *supra* notes 203–13 and accompanying text.

222. For an explanation of why sanctioning law firms under 28 U.S.C. § 1927 would give them the incentive to create a better ethical infrastructure, see *supra* notes 204–08 and accompanying text.

223. See Piero Mella & Patrizia Gazzola, *Ethics Builds Reputation*, 1 INT'L J. MKTS. & BUS. SYS. 38, 39 (2015) (describing relationship between ethical behavior and reputation).