

Federal Rules of Civil Procedure Rule 17

Rule 17. Plaintiff and Defendant; Capacity; Public Officers

Currentness

**(a) Real Party in Interest.**

**(1) *Designation in General.*** An action **must be** prosecuted in the name of the real party in interest. The following may **sue** in their own names without joining the **person** for whose benefit the action is brought:

**(A)** an executor;

**(B)** an administrator;

**(C)** a guardian;

**(D)** a bailee;

**(E)** a trustee of an express trust;

**(F)** a party with whom or in whose name a contract has been made for another's benefit; and

**(G)** a party authorized by statute.

**(2) *Action in the Name of the United States for Another's Use or Benefit.*** When a federal statute so provides, an action for another's use or benefit **must be** brought in the name of the United States.

**(3) *Joinder of the Real Party in Interest.*** The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

**(b) Capacity to Sue or Be Sued.** Capacity to **sue** or be **sued** is determined as follows:

(1) for an individual who is not acting in a representative capacity, by the law of the individual's

domicile; (2) for a corporation, by the law under which it was organized; and

(3) for all other parties, by the law of the state where the court is located, except that:

(A) a partnership or other unincorporated association with no such capacity under that state's law may **sue** or be **sued** in its common name to enforce a substantive right existing under the United States Constitution or laws; and

(B) 28 U.S.C. §§ 754 and 959(a) govern the capacity of a receiver appointed by a United States court to **sue** or be **sued** in a United States court.

**(c) Minor or Incompetent Person.**

(1) *With a Representative.* The following representatives may **sue** or defend on behalf of a minor or an incompetent

person: (A) a general guardian;

(B) a committee;

(C) a conservator; or

(D) a like fiduciary.

(2) *Without a Representative.* A minor or an incompetent **person** who does not have a duly appointed representative may **sue** by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem--or issue another appropriate order-- to protect a minor or incompetent **person** who is unrepresented in an action.

**(d) Public Officer's Title and Name.** A public officer who **sues** or is **sued** in an official capacity may be designated by official title rather than by name, but the court may order that the officer's name be added.

**CREDIT(S)**

(Amended December 27, 1946, effective March 19, 1948; December 29, 1948, effective October 20, 1949; February 28, 1966, effective July 1, 1966; March 2, 1987, effective August 1, 1987; April 25, 1988, effective August 1, 1988; amended by Pub.L. 100-690, Title VII, § 7049, November 18, 1988, 102 Stat. 4401 (although amendment by Pub.L. 100-690 could not be executed due to prior amendment by Court order which made the same change effective August 1, 1988); April 30, 2007, effective December 1, 2007.)

## **ADVISORY COMMITTEE NOTES**

### 1937 Adoption

**Note to Subdivision (a).** The real party in interest provision, except for the last clause which is new, is taken verbatim from [former] Equity Rule 37 (Parties **Generally**--Intervention), except that the word “expressly” has been omitted. For similar provisions see N.Y.C.P.A., (1937) § 210; Wyo.Rev.Stat.Ann. (1931) §§ 89-501, 89-502, 89-503; *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 16, r. 8. See, also Equity Rule 41 (Suit to Execute Trusts of Will--Heir as Party). For examples of statutes of the United States providing particularly for an action for the use or benefit of another in the name of the United States, see [U.S.C., Title 40, § 270b](#) [see now [40 U.S.C.A. § 3133\(b\)](#)] (Suit by **persons** furnishing labor and material for work on public building contracts \* \* \* may **sue** on a payment bond, “in the name of the United States for the use of the **person suing**”); and [U.S.C., Title 25, § 201](#) (Penalties under laws relating to Indians--how recovered). Compare [U.S.C., Title 26, Int.Rev.Code \[1939\], § 3745\(c\)](#) [former § 1645(c)] (Suits for penalties, fines, and forfeitures, under this title, where not otherwise provided for, to be in name of United States).

**Note to Subdivision (b).** For capacity see **generally** Clark and Moore, *New Federal Civil Procedure--II. Pleadings and Parties*, 44 Yale L.J. 1291, 1312-1317 (1935) and specifically *Coppedge v. Clinton*, 72 F.2d 531 (C.C.A.10th, 1934) (natural **person**); *David Lupton's Sons Co. v. Automobile Club of America*, 225 U.S. 489, 32 S.Ct. 711, 56 L.Ed. 1177, Ann.Cas.1914A, 699 (1912) (corporation); *Puerto Rico v. Russell & Co.*, 288 U.S. 476, 53 S.Ct. 447, 77 L.Ed. 903 (1933) (unincorporated assn.); *United Mine Workers of America v. Coronado Coal Co.*, 259 U.S. 344, 42 S.Ct. 570, 66 L.Ed. 975, 27 A.L.R. 762 (1922) (federal substantive right enforced against unincorporated association by suit against the association in its common name without naming all its members as parties). This rule follows the existing law as to such associations, as declared in the case last cited above. Compare *Moffat Tunnel League v. United States*, 289 U.S. 113, 53 S.Ct. 543, 77 L.Ed. 1069 (1933). See note to Rule 23, clause (1).

**Note to Subdivision (c).** The provision for infants and incompetent **persons** is substantially former Equity Rule 70 (Suits by or Against Incompetents) with slight additions. Compare the more detailed English provisions, *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 16, r.r. 16-21.

### 1946 Amendment

**Note.** The new matter [in subdivision (b)] makes clear the controlling character of Rule 66 regarding suits by or against a federal receiver in a federal court.

### 1948 Amendment

Since the statute states the capacity of a federal receiver to **sue** or be **sued**, a repetitive statement in the rule is confusing and undesirable.

### 1966 Amendment

The minor change in the text of the rule is designed to make it clear that the specific instances enumerated are not exceptions to, but illustrations of, the rule. These illustrations, of course, carry no negative implication to the effect that there are not other instances of recognition as the real party in interest of one whose standing as such may be in doubt. The enumeration is simply of cases in which there might be substantial doubt as to the issue but for the specific enumeration. There are other potentially arguable cases that are not excluded by the enumeration. For example, the enumeration states that the promisee in a contract for the benefit of a third party may **sue** as real party in interest; it does not say, because it is obvious, that the

third-party beneficiary may **sue** (when the applicable law gives him that right.)

The rule adds to the illustrative list of real parties in interest a bailee--meaning, of course, a bailee **suing** on behalf of the bailor with respect to the property bailed. (When the possessor of property other than the owner **sues** for an invasion of the possessory

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interest he is the real party in interest.) The word “bailee” is added primarily to preserve the admiralty practice whereby the owner of a vessel as bailee of the cargo, or the master of the vessel as bailee of both vessel and cargo, **sues** for damage to either property interest or both. But there is no reason to limit such a provision to maritime situations. The owner of a warehouse in which household furniture is stored is equally entitled to **sue** on behalf of the numerous owners of the furniture stored. Cf. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947).

The provision that no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after the objection has been raised, for ratification, substitution, etc., is added simply in the interests of justice. In its origin the rule concerning the real party in interest was permissive in purpose: it was designed to allow an assignee to **sue** in his own name. That having been accomplished, the modern function of the rule in its negative aspect is simply to protect the defendant against a subsequent action by the party actually entitled to recover, and to insure **generally** that the judgment will have its proper effect as res judicata.

This provision keeps pace with the law as it is actually developing. Modern decisions are inclined to be lenient when an honest mistake has been made in choosing the party in whose name the action is to be filed--in both maritime and nonmaritime cases. See *Levinson v. Deupree*, 345 U.S. 648 (1953); *Link Aviation, Inc. v. Downs*, 325 F.2d 613 (D.C.Cir. 1963). The provision should not be misunderstood or distorted. It is intended to prevent forfeiture when determination of the proper party to **sue** is difficult or when an understandable mistake has been made. It does not mean, for example, that, following an airplane crash in which all aboard were killed, an action may be filed in the name of John Doe (a fictitious **person**), as personal representative of Richard Roe (another fictitious **person**), in the hope that at a later time the attorney filing the action may substitute the real name of the real personal representative of a real victim, and have the benefit of suspension of the limitation period. It does not even mean, when an action is filed by the personal representative of John Smith, of Buffalo, in the good faith belief that he was aboard the flight, that upon discovery that Smith is alive and well, having missed the fatal flight, the representative of James Brown, of San Francisco, an actual victim, can be substituted to take advantage of the suspension of the limitation period. It is, in cases of this sort, intended to insure against forfeiture and injustice--in short, to codify in broad terms the salutary principle of *Levinson v. Deupree*, 345 U.S. 648 (1953), and *Link Aviation, Inc. v. Downs*, 325 F.2d 613 (D.C.Cir. 1963).

#### 1987 Amendment

The amendments are technical. No substantive change is intended.

#### 1988 Amendment

The amendment is technical. No substantive change is intended.

#### 2007 Amendment

The language of Rule 17 has been amended as part of the **general** restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 17(d) incorporates the provisions of former Rule 25(d)(2), which fit better with Rule 17.

## Relevant Additional Resources

Additional Resources listed below contain your search terms.

## RESEARCH REFERENCES

### ALR Library

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29 American Law Reports, Federal 3rd Series 4, Representation of "Incompetent **Persons**" Under Fed. R. Civ. P. 17(C). 2 American Law Reports, Federal 1014, Right of Injured Employee to **Sue** Third-Party Tortfeasor Under, or Affected By, § 33(B) of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C.A. § 933(B)). 22 American Law Reports, Federal 765, Who **Must be** Joined in Action as **Person** "Needed for Just Adjudication" Under Rule 19(A) of Federal Rules of Civil Procedure.

37 American Law Reports, Federal 243, Right of Labor Union to **Sue** on Bond Under Miller Act (40 U.S.C.A. §§ 270a et seq.). 82 American Law Reports, Federal 509, Standing to **Sue** for Copyright Infringement Under 17 U.S.C.A. § 501(B). 56 American Law Reports 4th 1234, Joint Venture's Capacity to **Sue**.

### Encyclopedias

36 Am. Jur. 2d Foreign Corporations § 393, Right of Foreign Corporation to **Sue** in a State--Federal Courts. 53 Am. Jur. 2d Mentally Impaired **Persons** § 173, Representation of Incompetent by Guardian Ad Litem or Next Friend **Generally**.

### Treatises and Practice Aids

6A Bankruptcy Service Lawyers Edition § 57:463, Minor or Incompetent **Persons**.

3 Employment Discrimination Coordinator Analysis of Federal Law § 121:2, Capacity to be **Sued**. 6A Federal Procedure, Lawyers Edition § 12:419, Procedures for Class Actions by or Against Unincorporated Associations, **Generally**.

25 Federal Procedure, Lawyers Edition § 59:50, Real Party in Interest Rule With Regard to **Persons** Statutorily Authorized to **Sue**.

25 Federal Procedure, Lawyers Edition § 59:57, Capacity to **Sue** or be **Sued** in Diversity Cases. 25 Federal Procedure, Lawyers Edition § 59:62, Capacity of Individuals Acting in Representative Capacity to **Sue** or be **Sued**, **Generally**; Government Officials.

25 Federal Procedure, Lawyers Edition § 59:63, Capacity of Infants and Incompetents to **Sue** or be **Sued**, **Generally**. 25 Federal Procedure, Lawyers Edition § 59:65, Capacity of Previously Appointed Guardians to **Sue** or be **Sued**. 25 Federal Procedure, Lawyers Edition § 59:67, Representation by Guardian Ad Litem of Infants or Incompetents, **Generally**. 25 Federal Procedure, Lawyers Edition § 59:72, Capacity of Private Corporations to **Sue** or be **Sued**, **Generally**. 25 Federal Procedure, Lawyers Edition § 59:73, Capacity of Out-Of-State and Foreign Corporations to **Sue** or be **Sued**. 25 Federal Procedure, Lawyers Edition § 59:74, Capacity of Corporations Whose Charters Have Been Suspended or Forfeited to **Sue** or be **Sued**.

25 Federal Procedure, Lawyers Edition § 59:75, Capacity of Dissolved Corporations to **Sue** or be **Sued**. 25 Federal Procedure, Lawyers Edition § 59:76, Capacity of Partnerships and Unincorporated Associations to **Sue** or be **Sued**, **Generally**.

25 Federal Procedure, Lawyers Edition § 59:78, Capacity of Unincorporated Associations to **Sue** or be **Sued**; What Constitutes Unincorporated Association.

25 Federal Procedure, Lawyers Edition § 59:82, Capacity of Government Corporations to **Sue** or be **Sued**. 2 Patent Law Fundamentals § 6:81 (2d ed.), Exploiting Copyrights--Recourse Against Infringement--Conduct of Copyright Infringement Litigation--Standing to **Sue**.

Wright & Miller Federal Practice and Procedure § 1292, Capacity to **Sue** or be **Sued**.

Wright & Miller Federal Practice and Procedure § 1559, Capacity to **Sue** or be **Sued**--In **General**. Wright & Miller Federal Practice and Procedure § 1561, Capacity to **Sue** or be **Sued**--Private Corporations. Wright & Miller Federal Practice and Procedure § 1571, Suits by or Against Infants and Incompetent **Persons**--Relationship Between Rules 17(B) and 17(C).

Wright & Miller Federal Practice and Procedure § 1761, The Representatives **Must be** Members of the Class. Wright & Miller Federal Practice and Procedure § 3531, In **General**.

Relevant Notes of Decisions (428)


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## GENERALLY


### Construction



This rule dealing with capacity of parties to **sue** or be **sued** was intended to work accommodation of interests within federal system, and United States Supreme Court, in interpreting it in new contexts, should look to its guiding policy and keep it free from entanglements with analytical or terminological niceties. [Van Dusen v. Barrack](#), U.S.Pa.1964, 84 S.Ct. 805, 376 U.S. 612, 11 L.Ed.2d 945, on remand 236 F.Supp. 645. Federal Civil Procedure  111


Rule of civil procedure provision limiting dismissal of civil action on ground it is not prosecuted by real party in interest **must be** read with the limitation that a federal district court must, at a minimum, arguably have subject matter jurisdiction over the original claim. [Zurich Ins. Co. v. Logitrans, Inc.](#), C.A.6 (Mich.) 2002, 297 F.3d 528. Federal Civil Procedure  1744.1

Subd. (a) of this rule requiring that an action be prosecuted in name of **person** who, under substantive law, has right sought to be enforced, **must be** given a liberal construction. [Fitzgerald v. Kriss](#), N.D.N.Y.1950, 10 F.R.D. 51. Federal Civil Procedure  131


### Construction with statutory provisions

CERCLA supersedes federal rule of civil procedure providing that “capacity of corporation to **sue** or be **sued** shall be determined by the law under which it was organized”; application of rule would allow the states to enforce 50 widely varying schemes of liability which would subvert congressional intent on matter, and it was likely that Congress did not intend to allow corporations, upon discovering new toxic waste sites, to be able to avoid liability simply by dissolving and then hiding behind the shield of state statutes limiting their capacity to be **sued**. [Burlington Northern & Santa Fe Ry. Co. v. Consolidated Fibers, Inc.](#), N.D.Tex.1998, 7 F.Supp.2d 822. Federal Courts  3087


CERCLA preempted state law concerning corporate capacity and superseded Federal Rule of Civil Procedure 17 stating that the capacity of a corporation to **sue** or be **sued** should be determined by the law under which it was organized. [City and County of Denver v. Adolph Coors Co.](#), D.Colo.1992, 813 F.Supp. 1471. Corporations And Business Organizations  2524; Federal Preemption  49

This rule cannot be construed as modifying § 51 of Title 45, with respect to capacity to **sue**. [Kreiger v. Lehigh Valley R. Co.](#), E.D.N.Y.1939, 1 F.R.D. 601. Federal Civil Procedure  138


### Construction with other rules

Requirement of [rule 9](#) of these rules that defendant make specific negative averment if he challenges plaintiff's authority to **sue** in representative capacity and that he include such supporting particulars as are peculiarly within pleader's knowledge is to be read with requirement of this rule that there should be no dismissal of complaint because it is not prosecuted in name of real party in interest until after a reasonable time has been allowed for substitution of proper party. [Marston v. American Emp. Ins. Co.](#), C.A.1 (Puerto Rico) 1971, 439 F.2d 1035. Federal Civil Procedure  38




Rule 25 of these rules providing that in case of any transfer of interest the action may be continued by or against the original party unless the court upon motion directs the **person** to whom the interest is transferred be substituted or joined with the original party is consistent with and in no way conflicts with this rule providing that no action shall be dismissed on ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed for joinder or substitution of the real party in interest. [Killebrew v. Moore, N.D.Miss.1966, 41 F.R.D. 269. Federal Civil Procedure](#)  1749


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This rule to effect that capacity of individual other than one acting in a representative capacity, to **sue** or be **sued**, shall be determined by law of his domicile, does not limit [rule 23](#) of these rules with respect to class actions. [Canuel v. Oskoian, D.C.R.I.1959, 23 F.R.D. 307, affirmed 269 F.2d 311. Federal Civil Procedure](#)  164


### **Common law**



The common law rule that in cases of tort, the liability of an unincorporated association is that of its members **generally**, was not changed by decision that associations could be **sued** as such in federal courts or by this rule covering the same matter. [Sperry Products v. Association of American Railroads, C.C.A.2 \(N.Y.\) 1942, 132 F.2d 408, certiorari denied 63 S.Ct. 1031, 319 U.S. 744, 87 L.Ed. 1700. Associations](#)  213


### **Purpose**

Purpose of federal rule that no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until there has been reasonable time for ratification or joinder of the real party in interest is to prevent forfeiture of an action when determination of the right party to **sue** is difficult or when an understandable mistake has been made. [U.S. for Use and Benefit of Wulff v. CMA, Inc., C.A.9 \(Idaho\) 1989, 890 F.2d 1070. Federal Civil Procedure](#)  131

This rule relating to capacity to **sue** or be **sued** is intended to keep or bring the procedure of the federal courts in conformity with that of the courts of the state in which the district court is held, as respects the capacity of partnerships or unincorporated associations to **sue** and be **sued**, except when the state court follows the common law, and a federal substantive right is involved. [Fennell v. Bache, App.D.C.1941, 123 F.2d 905, 74 App.D.C. 247, certiorari denied 62 S.Ct. 359, 314 U.S. 689, 86 L.Ed. 551. Federal Courts](#)  3087

The purpose of rule addressing real parties in interest is to ensure that an action is brought by a **person** who has the right to enforce the claim and who has a significant interest in the case. [LaSalle Bank Nat. Ass'n v. Lehman Bros. Holdings, Inc., D.Md.2002, 237 F.Supp.2d 618. Federal Civil Procedure](#)  131

Although issue of whether sharecropping tenants should have been joined as plaintiffs, on ground that they were real parties in interest in nuisance action arising from alleged salt pollution of groundwater which made it impossible to grow irrigated corn, should have been addressed long before trial, tenants would be permitted to join as plaintiffs; purpose of rule addressing real parties in interest is to avoid forfeiture of meritorious claims, and court would take reasonable steps to prevent any unfair prejudice to defendant salt plant owner, including allowance of necessary discovery and jury instructions on reason why some witnesses might have to be recalled and questioned on new matters. [Scheufler v. General Host Corp., D.Kan.1995, 895 F.Supp. 1416, affirmed 126 F.3d 1261. Federal Civil Procedure](#)  143; [Federal Civil Procedure](#)  383.5

Purpose of rule mandating that owner of substantive right be prosecutor of suit is to protect defendants from harassment of suits by **persons** who do not have power to make final and binding decisions concerning prosecution, compromise and settlement. [Campus Sweater and Sportswear Co. v. M.B. Kahn Const. Co., D.C.S.C.1979, 515 F.Supp. 64, affirmed 644 F.2d 877. See, also, Kenrich Corp. v. Miller, D.C.Pa.1966, 256 F.Supp. 15, affirmed 377 F.2d 312. Federal Civil Procedure](#)  103

Real party in interest rule was originally intended simply to allow an assignee to **sue** in his own name, but has also come to protect a defendant against subsequent action by the party actually entitled to recovery and to insure that a judgment will have its proper final effect. [White Hall Bldg. Corp. v. Profexray Division of Litton Industries, Inc., E.D.Pa.1974, 387 F.Supp. 1202, affirmed 578 F.2d 1375, affirmed 578 F.2d 1377. Federal Civil Procedure](#) ☐ 132

Rationale of this rule is to protect defendant from multiplicity of suits and from multiple liability and to allow defendant to present all his defenses. [Pace v. General Elec. Co., W.D.Pa.1972, 55 F.R.D. 215. Federal Civil Procedure](#) ☐ 131

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Purpose of subd. (a) of this rule concerning real party in interest is to prevent the prosecution of action by **persons** who have no right, title or interest in the cause and to require the actual party for relief to prosecute the cause, to avoid the multiplicity of litigation and to protect the defendants from the same demands and to avail the defendants of counterclaims against the real party in interest, so that there will be full protection. [In re Jack Hudson, Inc., Bkrcty.D.Nev.1980, 6 B.R. 153. Federal Civil Procedure](#) ☐ 131

#### **Party defined**

“Party” is a technical word having a precise meaning in legal parlance; it refers to those by or against whom a legal suit is brought, whether in law or in equity, the party plaintiff or defendant, whether composed of one or more individuals and whether natural or legal **persons**; all others who may be affected by the suit, indirectly or consequently, are **persons** interested but not parties. [Golatte v. Mathews, M.D.Ala.1975, 394 F.Supp. 1203. Federal Civil Procedure](#) ☐ 101

#### **State regulation or control**

State law may confer but not deny capacity to **sue** or defend federally. [Donnelly v. Parker, C.A.D.C.1973, 486 F.2d 402, 158 U.S.App.D.C. 335. Federal Civil Procedure](#) ☐ 111

#### **Mandatory or permissive nature of rule**

Subd. (c) of this rule that a representative, such as **general** guardian, appointed for an infant, may **sue** or defend on infant's behalf, is permissive, not mandatory. [C.J. Peck Oil Co. v. Diamond, by Bond, C.A.5 \(Miss.\) 1953, 204 F.2d 179. Federal Civil Procedure](#) ☐ 140

#### **Fictitious parties**

Transsexual who had filed suit against insurer to recoup medical expenses for sex change could **sue** under fictitious name; plaintiff had substantial privacy interest at stake and his interest in nondisclosure was more than mere embarrassment or threat of economic harm; moreover, there was little if any evidence that public interest in disclosure was sufficient to override plaintiff's privacy interest. [Doe v. Blue Cross & Blue Shield of Rhode Island, D.R.I.1992, 794 F.Supp. 72. Federal Civil Procedure](#) ☐ 101.5(2)

There is no provision in federal statutes or these rules for the use of fictitious parties. [McDonald v. General Mills, Inc., E.D.Cal.1974, 387 F.Supp. 24. Federal Civil Procedure](#) ☐ 101.5(1)

Female high school graduate, **suing** school district and individuals complaining that she was forced to participate in oral sex with male athletes belonging to club, was required to **sue** under her own name; while there was embarrassment involved in name disclosure, protection of a minor was no longer a consideration as suit began when she was 19, public had strong interest in knowing who was using its courts, and individuals most likely to come into contact with graduate, posing safety and other concerns, already knew her true identity. [Rose v. Beaumont Indep. School Dist., E.D.Tex.2007, 240 F.R.D. 264. Federal Civil Procedure](#) ☐ 101.5(2)



Defendants and proposed intervenors were not entitled to proceed anonymously or by pseudonym in action for trademark infringement, trademark dilution, unfair competition, and copyright infringement where the only injury that defendants and proposed intervenors alleged they would suffer if they were forced to reveal their true identities was economic injury, and they did not make clear either the nature of the harm or the likelihood that it would occur; plaintiffs sought only the names of those members of organization who purported to claim ownership in the copyrighted works at issue and otherwise sought to intervene, and the only identities that had to be revealed were those of **persons** in court asserting private rights of ownership, and those whose evidence was necessary in resolving the disputes. [Guerrilla Girls, Inc. v. Kaz](#), S.D.N.Y.2004, 224 F.R.D. 571. [Federal Civil Procedure](#) 101.5(2); [Trademarks](#) 1567

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Entity cannot **sue** under pseudonym but, rather, must **sue** under its own name, as real party in interest. [In re South Central States Bakery Products Antitrust Litigation](#), M.D.La.1980, 86 F.R.D. 407. [Federal Civil Procedure](#) 131

### **Intervention of parties**

United States is proper party defendant in any **general** water adjudication proceeding, whether brought in federal court or state court, relating to federally created water rights, including those reserved for use by Indian tribes; however, this does not mean that an Indian tribe using federally reserved waters is not granted right of intervention in any such adjudication, to be represented by private counsel independent of any possible conflict of interest. [Jicarilla Apache Tribe v. U.S., C.A.10 \(N.M.\) 1979](#), 601 F.2d 1116, certiorari denied 100 S.Ct. 530, 444 U.S. 995, 62 L.Ed.2d 426. [Federal Civil Procedure](#) 219; [Federal Civil Procedure](#) 339.5

### **Presumptions**

Attorneys for 74 plaintiffs in adversary proceeding would not be required to produce warrants of attorney evidencing that they, in fact, represented each of the named plaintiffs, as **general** statements by trustee that, because of the age and ill health of such plaintiffs, they might have been unable to authorize the attorneys to represent them were not enough to overcome presumption that an attorney represents those for whom he enters appearance. [In re Sarah Allen Home, Inc., Bkrcty.E.D.Pa.1980](#), 7 B.R. 732. [Bankruptcy](#) 2151

### **Defenses**

Seller of tax credits to limited liability company (LLC) buyer, pursuant to purchase and sale agreement, had meritorious defense to buyer's complaint, under Louisiana law, barring foreign LLC that was transacting business in Louisiana from presenting any judicial demand before any court of Louisiana unless authorized to transact such business, in support of setting aside entry of default on buyer's claims against seller for breach of contract, unfair trade practices, intentional and negligent misrepresentations, and tortious interference with contractual relationship, since foreign corporation lacked capacity to **sue** in federal court, because the corporation was not authorized to do business in Louisiana. [Pelican Renewables 2, LLC v. Directsun Solar Energy & Technology, LLC](#), E.D.La.2016, 325 F.R.D. 570. [Federal Civil Procedure](#) 2450

### **Abatement of action**

Stockholder, who brought suit in nature of stockholder's derivative action, lost his capacity to **sue** and the corporation lost its capacity as defendant and its standing as a real party in interest when it merged with another corporation, but such merger did not abate the action in the sense that all prior proceedings had gone for naught, and it necessitated only reinstatement of suit by joinder of indispensable parties within a reasonable time. [DePinto v. Provident Sec. Life Ins. Co., C.A.9 \(Ariz.\) 1963](#), 323 F.2d 826, certiorari denied 84 S.Ct. 965, 376 U.S. 950, 11 L.Ed.2d 969, rehearing denied 86 S.Ct. 1269, 383 U.S. 973, 16 L.Ed.2d 313, certiorari denied 84 S.Ct. 968, 376 U.S. 950, 11 L.Ed.2d 970, certiorari denied 84 S.Ct. 969, 376 U.S. 950, 11 L.Ed.2d 970. [Corporations And Business Organizations](#) 2031

### Questions for jury

Where plaintiff brought suit for surplus remaining from proceeds of trust deed foreclosure, trustee admitted that he was accountable for certain amount but contended that plaintiff had assigned his interest in the surplus and had conveyed the incumbered property to third party before foreclosure, and plaintiff admitted the conveyance but contended that the third party held the property in trust for the plaintiff, whether third party held the record title to the property as trustee for plaintiff so as to authorize plaintiff to **sue** was for jury. [Wyant v. Crittenden, App.D.C.1940, 113 F.2d 170, 72 App.D.C. 163. Mortgages And Deeds Of Trust](#) ☐2109

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### Attorney fees

Fact that no party questioned propriety of contingent fee and that injured plaintiff's guardian ad litem acquiesced in its reasonableness did not shield fee from court's scrutiny as part of overall settlement of injured minor's products liability action since, having properly appointed guardian ad litem to represent injured minor's interest in litigation, district court was thereby vested with broad authority to inquire into whole range of issues bearing upon minor's recovery in order to guarantee that settlement agreement was in accord with his interests. [Hoffert v. General Motors Corp., C.A.5 \(Tex.\) 1981, 656 F.2d 161, rehearing denied 660 F.2d 497, certiorari denied 102 S.Ct. 2037, 456 U.S. 961, 72 L.Ed.2d 485. Attorneys And Legal Services](#) ☐265

In action by infant **suing** by guardian ad litem with respect to social security benefits, it was proper for judge of district court to award fees to counsel in suit to be paid from recovery obtained by them for infant. [Folsom v. McDonald, C.A.4 \(N.C.\) 1956, 237 F.2d 380. Social Security](#) ☐284

### Discretion of court

Where action is brought by party other than the real party in interest, district court has discretion ultimately to determine whether ratification, joinder, or substitution is appropriate in given case and must exercise its discretion consistent with purpose of protecting defendant against subsequent action by party actually entitled to recover and insuring **generally** that judgment will have its proper effect as res judicata. [James v. Nashville Bridge Co., N.D.Miss.1977, 74 F.R.D. 595. Federal Civil Procedure](#) ☐131

### Law governing--Generally

In action in federal court for injuries suffered in Kansas, right to recover was "substantive" and was therefore controlled by Kansas laws, G.S.1935, 60-306, but how plaintiff was required to proceed, and in whose name action **must be** filed, was "procedural" and hence determined by law of forum. [Montgomery Ward & Co. v. Callahan, C.C.A.10 \(Kan.\) 1942, 127 F.2d 32. Federal Courts](#) ☐3067(2)

### ---- Real party in interest, law governing

**General** rule is that the question of whether a **person** is a real party in interest is decided by the substantive law of the forum which created the right being **sued** on. [Martin v. Morgan Drive Away, Inc., C.A.5 \(La.\) 1982, 665 F.2d 598, certiorari dismissed 103 S.Ct. 5, 458 U.S. 1122, 73 L.Ed.2d 1394. Federal Courts](#) ☐3005

Question of in whose name a suit **must be** brought is within province of federal law. [Garcia v. Hall, C.A.10 \(Kan.\) 1980, 624 F.2d 150. Federal Courts](#) ☐3031(1)

While an analysis to determine whether a possible litigant is a real party in interest is a matter of federal procedure, reference **must be** made to state substantive law to identify the true owner of the legal interest at issue. [DM II, Ltd. v. Hospital Corp. of](#)

In a diversity case, forum state's procedural statute or rule defining real party in interest concept is not applicable because it governs only who may **sue** in the state courts. [Industrial Development Bd. of City of Prattville v. Brown & Root, Inc., M.D.Ala.1983, 99 F.R.D. 58](#), affirmed in part [795 F.2d 87](#). Federal Civil Procedure ☐ 131

Suit is brought by “real party in interest,” as that term is used in Federal Rule of Civil Procedure, if, under the relevant substantive law that creates right being **sued** upon, suit has been brought by party holding substantive right to relief. [MHI Shipbuilding, LLC v. National Fire Ins. Co. of Hartford, D.Mass.2002, 286 B.R. 16](#). Federal Civil Procedure ☐ 131

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**Rule 17. Plaintiff and Defendant; Capacity; Public Officers, FRCP Rule 17**

#### ---- Capacity to sue or be sued generally, law governing

This rule providing that capacity to **sue** or be **sued** of individual acting in representative capacity shall be determined by law of state in which district court is held refers to transferor federal district court and not transferee federal district court to which action has been transferred under § 1404 of this title. [Van Dusen v. Barrack, U.S.Pa.1964, 84 S.Ct. 805, 376 U.S. 612, 11 L.Ed.2d 945](#), on remand [236 F.Supp. 645](#). Federal Courts ☐ 2945

**Generally**, law of forum state determines representative party's capacity to **sue** or be **sued** in federal district court. [Martel v. Stafford, C.A.1 \(Mass.\) 1993, 992 F.2d 1244](#). Federal Courts ☐ 3031(1)

In diversity action, out-of-state defendant's capacity to be **sued** as an entity was governed by the law of the forum. **General Heat & Power Co., Inc. v. Diversified Mortg. Investors, C.A.3 (Pa.) 1977, 552 F.2d 556**. Federal Civil Procedure ☐ 111

Capacity of individual to **sue** or be **sued** in federal courts is ordinarily to be determined by law of his domicile. [Donnelly v. Parker, C.A.D.C.1973, 486 F.2d 402, 158 U.S.App.D.C. 335](#). Federal Civil Procedure ☐ 111

Capacity to **sue** is **generally** determined by law of forum. [Murphy v. Erwin-Wasey, Inc., C.A.1 \(Mass.\) 1972, 460 F.2d 661](#). Federal Civil Procedure ☐ 111

Federal law, not state law, determines whether a group is an unincorporated association and could be **sued** under Federal Rule of Civil Procedure governing whether entity has capacity to **sue** and be **sued**. [Goldenberg v. Indel, Inc., D.N.J.2010, 741 F.Supp.2d 618](#). Federal Courts ☐ 3087

Under this rule which governs capacity to **sue** or be **sued**, capacity to **sue** or be **sued** is matter of state law. [Board of Public Utilities of Kansas City v. City of Kansas City, D.C.Kan.1980, 496 F.Supp. 389](#). Federal Civil Procedure ☐ 111

Although a district court determining a party's capacity to **sue** or be **sued** must use the law of that party's domicile, the court need not adopt any procedure required by state law but must only satisfy the requirements of due process. [Scannavino v. Florida Dept. of Corrections, M.D.Fla.2007, 242 F.R.D. 662](#). Constitutional Law ☐ 3972; Federal Courts ☐ 3031(1)

#### ---- Corporations, capacity to sue or be sued, law governing

Issue of a corporation's capacity to **sue** is a question of substantive law to be determined by the law of the state in which it was organized. [Chrysler Credit Corp. v. Superior Dodge, Inc., C.A.4 \(Md.\) 1976, 538 F.2d 616](#), certiorari denied [97 S.Ct. 743, 429 U.S. 1042, 50 L.Ed.2d 754](#). See, also, [Smallwood v. Pearl Brewing Co., C.A.Tex.1974, 489 F.2d 579](#), certiorari denied [95 S.Ct. 134, 419 U.S. 873, 42 L.Ed.2d 113](#); [Weinstock v. Sinatra, D.C.Cal.1974, 379 F.Supp. 274](#); [Stone v. Gibson Refrigerator Sales Corp., D.C.Pa.1973, 366 F.Supp. 733](#); [American Optical Co. v. Philadelphia Elec. Co., D.C.Pa.1964, 228 F.Supp. 293](#). Federal Courts ☐ 3087

Law of Pennsylvania was controlling in determining whether surviving Pennsylvania corporation could **sue** to recover

premerger damages to merging corporation. *Sun Pipe Line Co. v. Altes*, C.A.8 (Ark.) 1975, 511 F.2d 280. Federal Courts ☐ 3087

Law of state of incorporation controls capacity of corporation to **sue** in federal court. *F.D.I.C. v. Heidrick*, D.Md.1991, 812 F.Supp. 586, affirmed 995 F.2d 471, as amended. Federal Courts ☐ 3087

Corporation exists only under laws of state of its incorporation; accordingly, right to **sue** corporation is limited by legislative mandate. *Showers v. Cassiar Asbestos Corp., Ltd.*, E.D.Pa.1983, 574 F.Supp. 322. Corporations And Business Organizations ☐ 2522

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**Rule 17. Plaintiff and Defendant; Capacity; Public Officers, FRCP Rule 17**

Where property which defendant wished to sell as a liquidating trustee was located in New Jersey, seller was a New Jersey corporation, fee agreement which was asserted as a basis for its entitlement to a finder's fee was executed in New Jersey, and sale with ready, willing and able buyers was entered into and executed in New Jersey, substantive law of New Jersey governed question of plaintiff's capacity to **sue**. *Baron & Co., Inc. v. Bank of New Jersey*, D.C.N.J.1981, 504 F.Supp. 1199. Brokers ☐ 81

Massachusetts law governs question of capacity of Massachusetts corporation to be **sued** in federal court. *Gonzalez v. Progressive Tool & Die Co.*, E.D.N.Y.1978, 455 F.Supp. 363. Federal Courts ☐ 3087

*West's F.S.A. § 607.354* precluding corporation transacting business in state from **suing** in state courts unless it has obtained authority to transact business there is highly influential in choice of forum and has purpose of encouraging corporate qualification for benefit of state's citizenry; thus it is substantive and, in diversity action brought by foreign corporation in federal court in Florida, *West's F.S.A. § 607.354 must be* given precedence over subd. (b) of this rule providing that law of state of incorporation determines corporation's capacity to **sue**. *McCollum Aviation, Inc. v. Cim Associates, Inc.*, S.D.Fla.1977, 438 F.Supp. 245. Corporations And Business Organizations ☐ 3178; Federal Courts ☐ 3087

This rule which provides that the capacity of a corporation to **sue** or be **sued** shall be determined by the law under which it was organized applies to dissolved as well as active corporations. *Johnson v. Helicopter & Airplane Services Corp.*, D.C.Md.1975, 404 F.Supp. 726. Corporations And Business Organizations ☐ 3187

Capacity to **sue** in federal court of corporation organized under law of Illinois was governed by Illinois law. *U.S. for Use of Triangle Landscaping Corp. v. Home Ins. Co.*, N.D.Ill.1975, 403 F.Supp. 320. Federal Courts ☐ 3087

#### ---- Government entities, capacity to sue or be sued, law governing

The capacity of an entity, such as a police department, to **sue** or to be **sued** is determined by the law of the state in which the district court is held. *Paredes v. City of Odessa*, W.D.Tex.2000, 128 F.Supp.2d 1009. Federal Courts ☐ 3031(1); Federal Courts ☐ 3071(1)

Capacity to **sue** of a municipal commission on human rights had to be determined by state law. *Yonkers Com'n on Human Rights v. City of Yonkers*, S.D.N.Y.1987, 654 F.Supp. 544. Federal Civil Procedure ☐ 111

Capacity of governmental unit within a state to be **sued** in federal court is to be determined by reference to state law. *Hearn v. Hudson*, W.D.Va.1982, 549 F.Supp. 949. Federal Courts ☐ 3071(2)

Capacity of governmental corporation to be **sued** in federal courts is governed by law of state in which district court is held. *Mayes v. Elrod*, N.D.Ill.1979, 470 F.Supp. 1188. Federal Courts ☐ 3087

#### ---- Partners and partnerships, capacity to sue or be sued, law governing

Asserted right under District of Columbia's long-arm statute, [D.C.C.E. § 13-401 et seq.](#), to subject partnerships to personal jurisdiction in litigation in District of Columbia was not “substantive right” within this rule providing that capacity of partnership to **sue** or be **sued** is determined by reference to law of forum state in cases not seeking enforcement of substantive right existing under Constitution or a federal law. [Day v. Avery, C.A.D.C.1976, 548 F.2d 1018, 179 U.S.App.D.C. 63, certiorari denied 97 S.Ct. 1706, 431 U.S. 908, 52 L.Ed.2d 394. Federal Courts](#) ☐ 3025(4)

Capacity to **sue** of a partnership or unincorporated association is determined by law in district where court sits. [Country Club Associates Ltd. Partnership v. F.D.I.C., D.D.C.1996, 918 F.Supp. 429. Federal Courts](#) ☐ 3087

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**Rule 17. Plaintiff and Defendant; Capacity; Public Officers, FRCP Rule 17**

Under subd. (b) of this rule, Pennsylvania law, law of domicile, was applicable to determine capacity of partnership to **sue** or be **sued** in railroad reorganization proceedings in which partnership filed petition seeking to recover amounts due under lease agreement. [Matter of Penn Cent. Transp. Co., E.D.Pa.1976, 419 F.Supp. 1376. Federal Courts](#) ☐ 3084(3)

The capacity of co-partners who were Iowa citizens and who operated interstate motor freight business between Iowa and Illinois to be **sued** in federal district court in Illinois by Illinois residents for alleged breach of written contract **must be** determined by Illinois law. [Gerut v. Poe, N.D.Ill.1951, 11 F.R.D. 281. Federal Courts](#) ☐ 3084(1)

**---- Unincorporated associations, capacity to sue or be sued, law governing**

McKinney's [N.Y. General Associations Law § 13](#), requiring that an unincorporated association be **sued** in name of its president or treasurer governed manner of **suing** such an association in federal court sitting in New York. [Mason v. American Exp. Co., C.A.2 \(N.Y.\) 1964, 334 F.2d 392. Federal Courts](#) ☐ 3087

Under this rule in cases by or against unincorporated associations, where jurisdiction is founded on diversity, as contrasted with jurisdiction based on a federal question, courts must determine the capacity of an unincorporated association to **sue** or be **sued** by reference to the law of the state in which the federal court is sitting. [Underwood v. Maloney, C.A.3 \(Pa.\) 1958, 256 F.2d 334, certiorari denied 79 S.Ct. 93, 358 U.S. 864, 3 L.Ed.2d 97. Federal Courts](#) ☐ 3087

Federal rule governing capacity to **sue** allows a partnership or other unincorporated association to **sue** in its common name only if state law for the state in which district court is located does not grant such a plaintiff capacity to **sue** and such a plaintiff is seeking redress for alleged violation of a federal right. [Arbor Hill Concerned Citizens Neighborhood Ass'n v. City of Albany, N.Y., N.D.N.Y.2003, 250 F.Supp.2d 48. Federal Courts](#) ☐ 3087

Unincorporated association's capacity to be **sued** in its common name in federal court on nonfederal claims was governed by McKinney's [N.Y. General Associations Law, § 13](#), permitting an unincorporated association to be **sued** only in name of president or treasurer of the unincorporated association. [Markewich v. Adikes, E.D.N.Y.1976, 422 F.Supp. 1144. Federal Courts](#) ☐ 3087

Under this rule respecting capacity of an individual, other than one acting in its representative capacity, to **sue** or be **sued**, in an action where a substantive federal right as distinguished from a right arising under local state law is involved, capacity of an unincorporated association to **sue** or be **sued** will be governed by federal law, but where no federal right is involved capacity of such an association to **sue** or be **sued** is governed by local law. [Wilson & Co. v. United Packinghouse Workers of America, N.D.Iowa 1960, 181 F.Supp. 809. Federal Courts](#) ☐ 3087

Under this rule, where federal jurisdiction is based on diversity of citizenship, capacity of unincorporated association to **sue** is determined by law of state in which the federal court is sitting. [Garfield Local 13-566 Oil, Chemical and Atomic Workers Intern. Union, AFL-CIO v. Heyden Newport Chemical Corp., D.C.N.J.1959, 172 F.Supp. 230. Federal Courts](#) ☐ 3087

Where count encompassed state law claim, capacity of association to **sue** or to be **sued** was to be determined by law of state in which federal district court was sitting. [Rota v. Brotherhood of Ry., Airline and S.S. Clerks, N.D.Ill.1974, 64 F.R.D. 699. Federal Courts](#) ☐ 3087

**---- Class representatives, capacity to sue or be sued, law governing**

Once class entity has been created under [Rule 23](#) of these rules, state law may define capacity of class representatives to **sue** and be **sued**. [In re Ross, 9th Cir.BAP \(Cal.\) 1984, 37 B.R. 656. Federal Civil Procedure](#) ☐ 164

**---- Representative capacity, capacity to sue or be sued, law governing**

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**Rule 17. Plaintiff and Defendant; Capacity; Public Officers, FRCP Rule 17**

The capacity to be **sued** of one acting in representative capacity is to be determined by the law of the forum state. [Gurley v. Lindsley, C.A.5 \(Tex.\) 1972, 459 F.2d 268, mandate withdrawn 466 F.2d 498. See, also, K L Cattle Co. v. Bunker, S.D.Tex.1980, 491 F.Supp. 1314. Trusts](#) ☐ 246

Texas procedural rules were not binding on federal court in diversity-based breach of contract action against personal representative of decedent's estate; however, since capacity of a personal representative to be **sued** is specifically referenced to forum law, the Texas procedural rules could not be totally ignored. [K L Cattle Co. v. Bunker, S.D.Tex.1980, 491 F.Supp. 1314. Executors And Administrators](#) ☐ 525; [Federal Courts](#) ☐ 3005

**Generally**, subd. (b) of this rule relating to capacity to **sue** or to be **sued** is construed to eliminate distinction between individuals acting in representative capacity and corporation so acting, with result that question of capacity of any entity acting as representative is governed by law of state in which court presides. [Clarkson Co. Ltd. v. Rockwell Intern. Corp., N.D.Cal.1977, 441 F.Supp. 792. Federal Civil Procedure](#) ☐ 111

Capacity of plaintiff, appointed administratrix by New York court, to **sue** as administratrix in Vermont federal court was determined according to Vermont law. [Weinstein v. Medical Center Hospital of Vermont, Inc., D.C.Vt.1972, 358 F.Supp. 297. Federal Courts](#) ☐ 3069(5)

Where party was **sued** in United States District Court for the Northern District of Indiana in her capacity as personal representative of decedent's estate, Indiana law applied to determination of her capacity to be **sued**. [Hawkeye Sec. Ins. Co. v. Porter, N.D.Ind.1982, 95 F.R.D. 417. Federal Courts](#) ☐ 3031(1)

State law dealing with warrants of attorney is not made applicable in bankruptcy proceeding by this rule providing that state law governs the capacity of a party to **sue**. [In re Sarah Allen Home, Inc., Bkrcty.E.D.Pa.1980, 7 B.R. 732. Bankruptcy](#) ☐ 2151

**---- Representation of minors or incompetents, law governing**

Law of individual's domicile determines individual's competence to **sue** on his own behalf in federal court for purposes of rule providing for appointment of guardian ad litem to represent incompetent **person** in legal action. [Thomas v. Humfield, C.A.5 \(Tex.\) 1990, 916 F.2d 1032. Federal Courts](#) ☐ 3059

Even if domiciliary law undertook to withdraw right of incompetent to **sue**, incompetent's rights in district court would still be governed by provision of this rule to effect that court shall appoint guardian ad litem for incompetent, not otherwise represented in action, or shall make other order for protection of incompetent. [Donnelly v. Parker, C.A.D.C.1973, 486 F.2d 402, 158 U.S.App.D.C. 335. Mental Health](#) ☐ 488

This rule providing that if infant or incompetent **person** does not have a duly appointed representative he may **sue** by his next



friend or by a guardian ad litem is unconditional and is in no way dependent upon the capacity under the law of the domicile or under law of state in which the federal district court is held. [Travelers Indem. Co. v. Bengtson, C.A.5 \(La.\) 1956, 231 F.2d 263. Federal Courts](#) ☐ 3059

Under this rule, capacity of a guardian to **sue** is governed by law of state in which district court is held. [DiStefano v. Lehigh Val. R. Co., E.D.Pa.1966, 258 F.Supp. 721. Federal Courts](#) ☐ 3059

#### ---- Real property actions and proceedings, actions and proceedings within rule

Ordinarily, quiet title action **must be** prosecuted in name of real party in interest. [Ronsick v. Phariss, C.A.10 \(Kan.\) 1960, 286 F.2d 316. Quieting Title](#) ☐ 30(1)

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**Rule 17. Plaintiff and Defendant; Capacity; Public Officers, FRCP Rule 17**

#### Challenges to status or capacity--Generally

Challenge to capacity raises only question whether plaintiff is free from **general** disability such as infancy, insanity or some other form of incompetency, or, if he **sues** in a representative capacity, whether he actually possesses character in which he **sues**. [De Franco v. U.S., S.D.Cal.1955, 18 F.R.D. 156. Federal Civil Procedure](#) ☐ 111; [Federal Civil Procedure](#) ☐ 161

#### ---- Persons entitled to make, challenges to status or capacity

#### ---- Time for asserting, challenges to status or capacity

However lack of real party in interest should be asserted, it should be done with reasonable promptness. [Pace v. General Elec. Co., W.D.Pa.1972, 55 F.R.D. 215. Federal Civil Procedure](#) ☐ 383.5

Where defendant delayed almost three years before moving to amend answer to include defense that plaintiff lacked capacity to **sue**, and, if motions were granted, plaintiff might be barred by statute of limitations from amending its complaint and bringing action in another capacity, motions to amend answer and for dismissal on same ground would not be granted. [Banking & Trading Corp. v. Reconstruction Finance Corp., S.D.N.Y.1954, 15 F.R.D. 360. Federal Civil Procedure](#) ☐ 388; [Federal Civil Procedure](#) ☐ 392

“Real party in interest” objection **must be** raised when joinder is practical and convenient. [Miller v. Lewis, E.D.Tex.2008, 391 B.R. 380, affirmed 307 Fed.Appx. 785, 2008 WL 5381303. Federal Civil Procedure](#) ☐ 383.5

#### Jurisdiction--Generally

Rather than addressing jurisdiction, federal civil procedure rule allowing continuation of lawsuit not brought by real party in interest when real party in interest ratifies it, relates only to the proper parties. [Associated Ins. Management Corp. v. Arkansas General Agency, Inc., C.A.8 \(Ark.\) 1998, 149 F.3d 794, rehearing and suggestion for rehearing en banc denied. Federal Civil Procedure](#) ☐ 131

Errors in appointment as guardian of wife **suing** for injuries suffered by her husband who had been rendered incompetent as a result of automobile accident did not go to the jurisdiction of the court in view of lack of any attack upon the wife's right to **sue** as guardian and this rule allowing appointment of an incompetent's next friend or guardian ad litem. [New Mexico Veterans' Service Commission v. United Van Lines, Inc., C.A.10 \(N.M.\) 1963, 325 F.2d 548. Mental Health](#) ☐ 484

The federal courts' jurisdiction is neither enlarged nor restricted by this rule that action shall be prosecuted in name of real party in interest, but that party with whom or in whose name a contract is made for another's benefit or party authorized by statute may **sue** in his own name without joining party for whose benefit action is brought; purport of this rule being to require that action be prosecuted in name of party having, by substantive law, right sought to be enforced. [Rock Drilling,](#)

Blasting, Roads, Sewers, Viaducts, Bridges, Foundations, Excavations & Concrete Work on All Const., Hod Carriers', Bldg. & Common Laborers' Local Union No. 17 v. Mason & Hanger Co., C.A.2 (N.Y.) 1954, 217 F.2d 687, certiorari denied 75 S.Ct. 604, 349 U.S. 915, 99 L.Ed. 1249. Federal Civil Procedure ☐ 131; Federal Civil Procedure ☐ 134

#### ---- Diversity of citizenship, jurisdiction

While division of a corporation may, if state law permits, **sue** and be **sued** in its own name, state of which it is citizen for purposes of determining diversity of citizenship for federal jurisdiction purposes is state of which corporation that owns division is citizen. *Wisconsin Knife Works v. National Metal Crafters*, C.A.7 (Wis.) 1986, 781 F.2d 1280. Federal Courts ☐ 2439

#### ---- Federal question, jurisdiction

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**Rule 17. Plaintiff and Defendant; Capacity; Public Officers, FRCP Rule 17**

An unincorporated association may not be **sued** in its common name in Arkansas and therefore suit against such association in its common name, not founded solely on diversity of citizenship could be maintained in Arkansas federal district court only if a substantive federal right were involved. *McNutt v. United Gas, Coke & Chemical Workers of America, C.I.O.*, W.D.Ark.1952, 108 F.Supp. 871. Associations ☐ 322; Federal Courts ☐ 3087

Where defendant was an organization of insurance companies and had one member that was a Massachusetts resident, and defendant carried on no business therein, if defendant was a “partnership” or “voluntary association” defendant had no capacity to be **sued** under law of Massachusetts, and therefore under this rule could not be **sued** in federal District Court for District of Massachusetts in absence of a federal question for determination. *Byrne v. American Foreign Ins. Ass'n*, D.C.Mass.1943, 3 F.R.D. 1. Corporations And Business Organizations ☐ 3536(2); Partnership ☐ 732

#### ---- Personal jurisdiction

Where unincorporated labor organization representing public employees of state of Illinois had capacity to **sue**, district court had jurisdiction over individual members of the organization in action to enjoin Governor and other state officials from enforcing certain rules which required various of the individual members to file financial disclosure statements. *Council No. 34, Am. Federation of State, County and Municipal Emp., AFL-CIO v. Ogilvie*, C.A.7 (Ill.) 1972, 465 F.2d 221. Federal Courts ☐ 2264(1)

This rule governing parties plaintiff and defendant and capacity to **sue** or be **sued** does not enlarge jurisdiction of federal district court over partnerships under § 1332 of this title. *Eastern Metals Corp. v. Martin*, S.D.N.Y.1960, 191 F.Supp. 245. Federal Courts ☐ 2447

#### ---- Subject-matter jurisdiction

This rule providing that all actions **must be** prosecuted in name of real party in interest does not create or affect federal subject matter jurisdiction. *Iowa Public Service Co. v. Medicine Bow Coal Co.*, C.A.8 (Iowa) 1977, 556 F.2d 400. Federal Courts ☐ 2428

#### Venue--Generally

New York limited partnership should be recognized as distinct entity for purpose of determining whether collective suit may be brought by it in federal courts without relying on residence of its members and collective capacity to **sue** should include collective location at its principal place of business for venue purpose. *Joscar Co. v. Consolidated Sun Ray, Inc.*, E.D.N.Y.1963, 212 F.Supp. 634. Federal Courts ☐ 2819(7)

In action in New York federal district court for return of New Jersey property which had belonged to New York corporations

and which had vested in Alien Property Custodian, venue was proper if plaintiffs sustained burden of proving that they had status to **sue** as trustees and were residents of the district, since corporations were proper but not necessary parties to action. [Pantzer v. Rogers, E.D.N.Y.1959, 180 F.Supp. 659. Federal Courts](#) ☐ 2819(10)

#### ---- Change or transfer, venue

This rule providing that capacity to **sue** of individual acting in representative capacity shall be determined by law of state in which federal district court is held did not require denial of defendants' motion to transfer wrongful death actions of personal representatives from federal district court in Pennsylvania to federal district court in Massachusetts because personal representatives had not qualified to **sue** as personal representatives in Massachusetts, since capacity to **sue** under this rule is governed by laws of transferor state. [Van Dusen v. Barrack, U.S.Pa.1964, 84 S.Ct. 805, 376 U.S. 612, 11 L.Ed.2d 945, on remand 236 F.Supp. 645. Federal Courts](#) ☐ 2935

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**Rule 17. Plaintiff and Defendant; Capacity; Public Officers, FRCP Rule 17**

Plaintiff Maryland corporation's lack of capacity to **sue** in Georgia at time action was commenced in state court of Maryland against Georgia corporation was not bar to transfer of suit from federal district court in Maryland to Southern District of Georgia. [John W. Johnson, Inc. v. Atlantic States Const. Co., D.C.Md.1967, 276 F.Supp. 379. Federal Courts](#) ☐ 2935

#### Removal of actions

Mississippi action by Missouri corporation and citizen for injunctive and **general** relief against two unincorporated labor organizations, five individual defendants who were Mississippi citizens, and one individual defendant who was citizen of Alabama, and individual defendants as representative of class consisting of all members of labor organizations could not be removed by defendants to federal court as a diversity action. [Day-Brite Lighting Division, Emerson Elec. Co. v. International Broth. of Elec. Workers, AFL-CIO, N.D.Miss.1969, 303 F.Supp. 1086. Removal Of Cases](#) ☐ 29

#### Standing to sue--Generally

Only plaintiffs who allege a concrete injury have standing to **sue** in federal court. [Acheson Hotels, LLC v. Laufer, U.S.2023, 144 S.Ct. 18, 601 U.S. 1, 217 L.Ed.2d 155. Federal Civil Procedure](#) ☐ 103.2

The question of standing to **sue** is a preliminary matter which does not go to the merits of the case. [Blackhawk Heating & Plumbing Co. v. Driver, C.A.D.C.1970, 433 F.2d 1137, 140 U.S.App.D.C. 31. Federal Civil Procedure](#) ☐ 103.2

A party bringing an action in federal court must have “standing to **sue**”; this status is personal and does not exist where one seeks to assert rights of another. [Trustees of Freeholders and Commonalty of Town of Huntington v. Environmental Protection Agency, E.D.N.Y.1972, 55 F.R.D. 445. Federal Civil Procedure](#) ☐ 103.4

Where pro se Chapter 7 debtor made an “understandable mistake” in **suing** in his own name, debtor's lack of standing with respect to counterclaims that he brought against creditor on behalf of his corporation was cured by subsequent abandonment of the claims by corporation's bankruptcy trustee. [In re Kreisel, Bkrcty.C.D.Cal.2008, 399 B.R. 679. Bankruptcy](#) ☐ 2154.1

#### ---- Associations, standing to sue

An association has standing to bring suit on behalf of its members when its members would otherwise have standing to **sue** in their own right, the interests it seeks to protect are germane to their organization's purpose and neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit. [Hunt v. Washington State Apple Advertising Commission, U.S.N.C.1977, 97 S.Ct. 2434, 432 U.S. 333, 53 L.Ed.2d 383. Associations](#) ☐ 277

Nonprofit ministry lacked third-party prudential standing to **sue** food service vendor for breach of contract on behalf of its non member volunteers who manned food vendor's booths at outdoor concert in exchange for payment of percentage of gross

sales to ministry, absent showing of hindrance to volunteers' ability to protect their own interests when organization was allegedly not paid. [Mid-Hudson Catskill Rural Migrant Ministry, Inc. v. Fine Host Corp., C.A.2 \(N.Y.\) 2005, 418 F.3d 168. Religious Societies](#) ☐ 31(1)

Association has standing to bring suit on behalf of its members if members otherwise would have standing to **sue** in their own right, the interest the association seeks to protect is germane to its purposes, and neither claim asserted nor the relief requested requires an individual participation of the members in the lawsuit. [Committee for Auto Responsibility \(C.A.R.\) v. Solomon, C.A.D.C.1979, 603 F.2d 992, 195 U.S.App.D.C. 410, certiorari denied 100 S.Ct. 1274, 445 U.S. 915, 63 L.Ed.2d 599. Associations](#) ☐ 277

Nontheistic religious group had associational standing to bring action against city, seeking declaratory judgment that city council's exclusion of minority religions and specific denial of member's invocation at public session violated Establishment Clause and Equal Protection Clause; member had standing to **sue** in her own right, interests group sought to protect were

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those described by member as purpose of group, and neither claim asserted nor relief requested required participation of individual members in lawsuit. [Satanic Temple, Inc. v. City of Scottsdale, D.Ariz.2019, 423 F.Supp.3d 766. Associations](#) ☐ 292; [Declaratory Judgment](#) ☐ 300

Salt trade association and business federation that brought action against National Heart, Lung and Blood Institute (NHLBI), stemming from failure to disclose data and methods used in preparing dietary study, failed to allege that their members suffered concrete and particularized injury that would give them right to **sue** on their own behalf, and thus lacked organizational standing. [Salt Institute v. Thompson, E.D.Va.2004, 345 F.Supp.2d 589, affirmed 440 F.3d 156. Corporations And Business Organizations](#) ☐ 3536(4)

#### **---- Cause of action distinguished, standing to sue**

Though court, in deciding whether a private cause of action may be implied in favor of plaintiff, must determine whether plaintiff is a member of the class for whose special benefit the statute in question was enacted and though the considerations that are relevant to such determination are similar to considerations involved in determining whether a plaintiff has satisfied the “zone of interests” test for standing, the tests are not identical; with respect to the cause of action issue, it **must be** determined whether a plaintiff possesses interests sought to be protected by particular legislation while the “zone of interest” test imposes on a plaintiff the requirement that he actually assert interests that are arguably within zone to be protected by the relevant statute. [Drake v. Detroit Edison Co., W.D.Mich.1978, 453 F.Supp. 1123. Federal Civil Procedure](#) ☐ 103

#### **---- Executors and estates, standing to sue**

Standing of executor of deceased debtors' estates was sufficient for executor and debtors' other heirs to proceed with their claim seeking preliminary injunction preventing the United States Department of Agriculture's Farm Service Agency from proceeding with foreclosure of the debtors' cotton and soybean farm based on their delinquent farm ownership loan; executor could **sue** on behalf of the estates under his own name, and, because the executor had standing, the district court was not required to delve further. [Watson v. Perdue, D.D.C.2019, 410 F.Supp.3d 122. Injunction](#) ☐ 1505

#### **---- Jus tertii, standing to sue**

Under the doctrine of jus tertii which permits a plaintiff to assert the rights of third parties, the relationship of the litigant to the **person** whose rights he seeks to protect and the ability of the third party to assert his own rights **must be** analyzed; however, basic standing requirements are still applicable and plaintiff must always meet the constitutional injury in fact test by alleging a personal stake in the outcome of the controversy as well as alleging concrete injury to the third party. [Drake v. Detroit Edison Co., W.D.Mich.1978, 453 F.Supp. 1123. Federal Civil Procedure](#) ☐ 103.4

#### **---- Nature and extent of interest, standing to sue**

In **general**, to have standing to litigate, a party must show that he has incurred, or is in immediate danger of incurring, some direct and personal injury resulting from the violation of a constitutional or statutory right designed to protect that party; to be sure, even a slight injury may suffice in some circumstances; yet, the fundamental principle remains inviolate that one who has no personal stake in the outcome of the controversy always lacks standing. [Ray Baillie Trash Hauling, Inc. v. Kleppe, C.A.5 \(Fla.\) 1973, 477 F.2d 696, rehearing denied 478 F.2d 1403, certiorari denied 94 S.Ct. 1410, 415 U.S. 914, 39 L.Ed.2d 468. Constitutional Law](#) ☐ 672; [Federal Civil Procedure](#) ☐ 103.2

Whether **person** is “real party in interest”, with standing to prosecute suit in federal courts, depends upon his substantive rights, which, in diversity cases and cases like federal condemnation cases, are determined by state law, and **person** has no standing to assert right if it is not his own and interest he seeks to so enforce **must be** present substantial interest, not contingent interest or mere expectancy. [U.S. v. 936.71 Acres of Land, More or Less, in Brevard County, State of Fla., C.A.5 \(Fla.\) 1969, 418 F.2d 551. Federal Civil Procedure](#) ☐ 131

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For a plaintiff to possess standing, there **must be** claimed injury to the legally protected interest, i.e., a wrong which directly results in violation of a legal right. [Wuillamey v. Werblin, D.C.N.J.1973, 364 F.Supp. 237. Federal Civil Procedure](#) ☐ 103.2

Constitutional procedural guarantees would not confer standing to **sue** upon one having no interest protected by act under which suit is proposed to be brought. [Schroeder Nursing Care, Inc. v. Mutual of Omaha Ins. Co., E.D.Wis.1970, 311 F.Supp. 405. Federal Civil Procedure](#) ☐ 103.2

In order to establish that he has standing, an aggrieved litigant must demonstrate that he has sustained an injury in fact, economic or otherwise; this injury **must be** direct and not merely a **general** interest common to all members of public. [MALE \(Men's Ass'n for Liberty and Equality\) v. U.S., M.D.Fla.1978, 79 F.R.D. 144. Federal Civil Procedure](#) ☐ 103.2

#### **---- Miscellaneous parties with standing, standing to sue**

States had standing to challenge action of Environmental Protection Agency (EPA) in requiring states to revise their state implementation plans (SIPs) as to nitrogen oxide (NOx) emissions and establishing emission limits for major NOx sources; states were not merely **suing** as parens patriae on behalf of electric generators inside their respective borders, since EPA's lower emissions “budgets” caused injury to states as states. [West Virginia v. E.P.A., C.A.D.C.2004, 362 F.3d 861, 360 U.S.App.D.C. 419. Environmental Law](#) ☐ 654

Where action was brought by **person** designated as acting secretary-treasurer of international union against certain labor leaders, charging them with breach of contract and misappropriations of assets of purportedly dissolved local union, allegations that plaintiff was the acting secretary-treasurer was sufficient to give him standing to **sue**, even though international's constitution describes only the office of secretary-treasurer. [Olson v. Miller, C.A.D.C.1959, 263 F.2d 738, 105 U.S.App.D.C. 54. Labor And Employment](#) ☐ 1089(1)

Satellite television broadcaster was “**person aggrieved**” by sale of private access devices, and thus had standing to bring civil claim against seller under Federal Communications Act, even though broadcaster sent programming directly to consumer rather than to cable operators for subsequent re-transmission to their subscribers, and seller did not himself intercept broadcasts, where broadcaster had proprietary rights in intercepted communications. [DirecTV, Inc. v. Tasche, E.D.Wis.2004, 316 F.Supp.2d 783, 72 U.S.P.Q.2d 1529. Telecommunications](#) ☐ 1822

Neighbors of airport had standing to **sue** Army Corps of Engineers and airport authority, seeking determination that Corps' permit allowing construction of new runway, improved flight facilities, and cargo facilities, that would involve deposit of wastes in wetlands, was invalid under Clean Water Act and also because proposed mitigation plan did not meet Environmental Protection Agency (EPA) requirements; claimants lived close enough to be adversely affected by flooding and water quality deterioration that would allegedly be caused by new construction and dumping of dirt into wetlands. [Alliance](#)



Limited partnerships which brought action to enforce rights deriving from contracts negotiated for benefit of individual partners had standing to **sue** for tax losses suffered by individual partners; tax liabilities of individual partners derived from contracts or dealings negotiated and executed by partnerships for benefit of partners. *Vista Co. v. Columbia Pictures Industries, Inc.*, S.D.N.Y.1989, 725 F.Supp. 1286. Partnership 1181

---- **Miscellaneous parties without standing, standing to sue**

In light of Supreme Court's determination that suit brought by public accommodations tester to force hotel operator's compliance with ADA, alleging hotel's website failed to state whether hotel had rooms accessible to individuals with disabilities, was rendered moot before Supreme Court by tester's voluntarily dismissal of her suit with prejudice in district court, the judgment of Court of Appeals below, that tester had standing to **sue** despite her lack of plans to stay at hotel, would be vacated and the case

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remanded to Court of Appeals with instructions to dismiss the case as moot, pursuant to Court's well-settled practice under *U.S. v. Munsingwear, Inc.*, 71 S.Ct. 104, of reversing or vacating the judgment below in a case that had become moot and remanding with direction to dismiss, to clear the path for future relitigation of the issues and to eliminate a judgment for which review was prevented through happenstance. *Acheson Hotels, LLC v. Laufer*, U.S.2023, 144 S.Ct. 18, 601 U.S. 1, 217 L.Ed.2d 155. Federal Courts 3216(2)

Not-for-profit New York corporation, one of whose purposes was to inquire into reasons for housing shortage for low and moderate income **persons** in the Rochester, New York area, was without standing to challenge the constitutionality of town zoning practices which effectively excluded **persons** of low and moderate income from living in the town, which was adjacent to Rochester, since, even though 9 percent of the corporation's membership was composed of town residents, prudential considerations strongly counseled against according such residents or the corporation standing on the basis of their complaint that they had been harmed indirectly by the exclusion of others. *Warth v. Seldin*, U.S.N.Y.1975, 95 S.Ct. 2197, 422 U.S. 490, 45 L.Ed.2d 343. Zoning And Planning 1586

Although logical nexus existed between unincorporated labor organization which represented Illinois state employees and claim that financial disclosure requirement of code of ethics violated state employees' right of privacy, where labor organization alleged merely **general** threat of possible interference to right of privacy of its members under Fourth Amendment by the promulgation of the ethics code and there was no showing that organization or any member was immediately in danger of sustaining some direct injury as result of enforcement of the provision, labor organization did not have standing to bring suit to enjoin enforcement of the provision. *Council No. 34, Am. Federation of State, County and Municipal Emp., AFL-CIO v. Ogilvie*, C.A.7 (Ill.) 1972, 465 F.2d 221. Labor And Employment 1982

Spouse of former employee who **sued** former employer and union, stemming from employee's termination after refusal to take alcohol breath test, lacked standing to maintain claims arising under collective bargaining agreement (CBA), pursuant to Labor Management Relations Act (LMRA); although spouse may have been beneficiary of husband's interest in CBA, she was neither employee nor member of bargaining unit. *Harmon v. American Elec. Power Service Corp.*, W.D.Va.2005, 371 F.Supp.2d 804. Labor And Employment 1323

Internet user, who allegedly copied and distributed copyright protected material through an online file-sharing system, failed to demonstrate that copyright owner, a California limited liability company (LLC), lacked capacity to **sue** for copyright infringement in Ohio by not registering as a foreign LLC before filing its complaint, as required by Ohio law governing limited liability companies' capacity to **sue**, as federal law determined the LLC's capacity to **sue**, and therefore dismissal was not warranted; unincorporated association exception to rule that capacity to **sue** in federal district court was to be determined by Ohio law did not apply since LLC sought to enforce a substantive right under Federal law. *Malibu Media, LLC v. Steiner*, S.D.Ohio 2015, 307 F.R.D. 470. Copyrights And Intellectual Property 214; Federal Courts 3080



Even though pro se Chapter 7 debtor had made an “understandable mistake” in **suing** in his own name, debtor still lacked standing to bring counterclaims against creditor where debtor's personal bankruptcy case remained open and trustee had not abandoned the subject claims, such that they remained property of the estate, and debtor had not sought abandonment of any of the estate's claims. [In re Kreisel, Bkrtcy.C.D.Cal.2008, 399 B.R. 679. Bankruptcy](#) ☐ 2154.1

### Joinder of parties

All **persons** materially interested in the result of a suit ought to be made parties so that the court may do complete justice. [N.L.R.B. v. Plasterers' Local Union No. 79, Operative Plasterers' & Cement Masons' Intern. Ass'n, AFL-CIO, U.S.Dist.Col.1971, 92 S.Ct. 360, 404 U.S. 116, 30 L.Ed.2d 312, on remand 461 F.2d 1235, 149 U.S.App.D.C. 149. Federal Civil Procedure](#) ☐ 201

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All the statutory trustees of a corporation which has forfeited its charter **must be** joined in a suit brought under law of Missouri or adequate reasons given to explain their absence. [Moore v. Matthew's Book Co., Inc., C.A.8 \(Mo.\) 1979, 597 F.2d 645. Corporations And Business Organizations](#) ☐ 3091

Ordinarily, if motion were seasonably made in action on fire loss, court would order joinder, as real parties in interest, of insurers which had made payments on the loss. [Pace v. General Elec. Co., W.D.Pa.1972, 55 F.R.D. 215.Federal Civil Procedure](#) ☐ 289

All **persons** having any interest in any recovery should be made parties, if jurisdiction can be obtained over them, and if not, plaintiff should declare for whose benefit the action is maintained. [Ward v. Franklin Equipment Co., E.D.Va.1970, 50 F.R.D. 93. Federal Civil Procedure](#) ☐ 101

### Substitution of parties--Generally

#### ---- Miscellaneous cases, substitution of parties

Insurer who, through mistake of attorney, had been named as subrogee of insured, in negligence action against lessee and sublessee of warehouse destroyed by fire, lacked standing to **sue** and thus could not move to substitute true subrogee insurer as real party in interest; purported subrogee had admittedly not suffered injury in fact. [Zurich Ins. Co. v. Logitrans, Inc., C.A.6 \(Mich.\) 2002, 297 F.3d 528. Insurance](#) ☐ 3526(6)

Upon timely motion the insurer-subrogee **mustbe** substituted as the party plaintiff. [Virginia Elec. & Power Co. v. Westinghouse Elec. Corp., C.A.4 \(Va.\) 1973, 485 F.2d 78, certiorari denied 94 S.Ct. 1450, 415 U.S. 935, 39 L.Ed.2d 493.](#)

Subd. (b) of this rule providing that in cases other than specified cases capacity to **sue** or be **sued** shall be determined by law of state in which district court is held, is not concerned with right of substitution of parties, and substitution of administrator de bonis non who was appointed at defendant's request by federal district court in which administratrix appointed in another state successfully maintained action for accounting, could not be ordered under authority of statute. [Jones v. Schellenberger, C.A.7 \(Ill.\) 1952, 196 F.2d 852, certiorari denied 73 S.Ct. 171, 344 U.S. 876, 97 L.Ed. 679. Federal Civil Procedure](#) ☐ 351; [Federal Civil Procedure](#) ☐ 362

Permitting substitution of corporation as plaintiff, rather than dismissal of landowner's suit against United States Forest Service (USFS) for lack of standing was proper where corporation, rather than plaintiff who was its president, owned the property at the time a special use permit at issue was sought, plaintiff had not engaged in deliberate tactical maneuvering or bad faith when **suing** in his own name based on the mistaken belief that he had requested a special use application for the land in his individual capacity, the USFS would not be prejudiced if corporation was joined in action because the claims and

factual allegations would not change, and joinder would protect USFS from a subsequent action by the corporation and avoid the injustice of dismissing plaintiff's claims without proceeding to the merits. [Breaker v. U.S., D.Minn.2013, 977 F.Supp.2d 921. Federal Civil Procedure](#) ☐ 383.5

Plaintiffs' failure to disclose until after close of discovery that owner of property destroyed by fire was not **general** contractor listed as plaintiff in action against subcontractor, but rather was related entity, was honest mistake, and thus plaintiffs were entitled to amend complaint to substitute owner for **general** contractor, even though subcontractor had asserted **general** contractor's comparative negligence as defense, where there was no apparent tactical advantage in failing to name proper party, and subcontractor could still attribute liability to contractor as non-party. [Fairfield Development, Inc. v. J.D.I. Contractor & Supply, Inc., D.Colo.2011, 782 F.Supp.2d 1205. Federal Civil Procedure](#) ☐ 392

Chapter 7 trustee could be substituted for debtor as party in debtor's employment discrimination civil rights claim, though Equal Employment Opportunity Commission (EEOC) notice of right to **sue** named debtor, where debtor received letter prepetition, and trustee filed timely motion for substitution. [Bickford v. Ponce de Leon Care Center, M.D.Fla.1996, 918 F.Supp. 377. Bankruptcy](#) ☐ 2154.1

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#### **Ratification of commencement--Generally**

Ratification from the party in interest, as needed to cure a claimant's standing defect, is contingent upon the claimant showing that the decision to **sue** in his own name was the result of "an understandable mistake." [In re Kreisel, Bkrcty.C.D.Cal.2008, 399 B.R. 679. Bankruptcy](#) ☐ 2159.1

#### **---- Miscellaneous cases, ratification of commencement**

Parents' explanation for their mistake in prosecuting their disabled child's claims brought under Americans with Disabilities Act (ADA) against school district in their own names, rather than in the name of child's legal guardian, was understandable, and thus guardian would be allowed to ratify parents' actions; parents believed that Texas law did not give guardian exclusive authority to **sue** on behalf of child, guardian, a bank with guardianship experience, shared parents' understanding of the law, and although court determined that guardian had exclusive authority to bring action, that answer was not obvious under Texas law. [Rideau v. Keller Independent School Dist., C.A.5 \(Tex.\) 2016, 819 F.3d 155, on remand 2016 WL 11782443. Federal Civil Procedure](#) ☐ 131

District court's order, which required plaintiff-investor "to identify the plaintiff expressly as the agent for each investor group, acting on behalf of each, and naming each **person** or entity on whose behalf the [plaintiff-investor] will purport to act," would be interpreted to call for ratification, in that district court's order was apparently primarily motivated by possibility of multiple litigation and possibility of prejudice to absent parties. [ICON Group, Inc. v. Mahogany Run Development Corp., C.A.3 \(Virgin Islands\) 1987, 829 F.2d 473. Federal Civil Procedure](#) ☐ 147

Ratification by pool chemical manufacturer's insurer, who was not party to pool chemical manufacturer's action for contribution and indemnity from manufacturer of engine degreaser, was not proper alternative to joinder of insurer, and thus would be stricken, where insurer was real party in interest, and pool chemical manufacturer did not make a mistake in **suing** in its own name. [Arch Chemicals, Inc. v. Radiator Specialty Co., D.Or.2009, 653 F.Supp.2d 1099. Federal Civil Procedure](#) ☐ 142

In view of controversy whether defendant distributor, **sued** by principal for declaration of "just cause" to terminate the relationship, had transferred dealership rights or whether purported assignee was merely an agent, and considering that on joinder or substitution the assignee would assert the same counterclaim, i.e., principal's violation of dealership law, based on the same set of facts, neither joinder nor substitution would be ordered and ratification by the alleged assignee was the most appropriate means of resolving controversy as to real party in interest. [National Safe Corp. v. Texidor Sec. Equipment, Inc., D.C.Puerto Rico 1984, 101 F.R.D. 467. Federal Civil Procedure](#) ☐ 251; [Federal Civil Procedure](#) ☐ 359

## **Complaint--Generally**

Where the capacity of plaintiff to **sue** was based solely upon alleged assignments, the nature of plaintiff's title was required to be made to appear for purpose of showing its right to maintain the action, and the names of the parties to whom the alleged causes of action accrued were required to be averred. [Louisiana Farmers' Protective Union v. Great Atlantic & Pac. Tea Co. of America](#), E.D.Ark.1940, 31 F.Supp. 483. [Assignments](#) ☐ 131

### **---- Amendment, complaint**

Plaintiffs **suing** manufacturers of asbestos cloth and blankets did not lose right to cure defect regarding naming of proper party simply because motion to dismiss, on grounds that plaintiffs were not properly appointed as personal representatives of deceased employees' estates, was made by judge, and not manufacturer. [Shetterly v. Raymark Industries, Inc.](#), C.A.4 (Md.) 1997, 117 F.3d 776. [Federal Civil Procedure](#) ☐ 381

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Question of standing is **generally** determined from the face of the complaint, and if the averments are not sufficient, trial court may require plaintiff to supply further particularized allegations of fact by amendments to the complaint or by affidavits. [Borelli v. City of Reading](#), C.A.3 (Pa.) 1976, 532 F.2d 950. [Federal Civil Procedure](#) ☐ 103.5

Patent assignor, **suing** for infringement, would not be allowed to amend complaint so as to substitute assignee as real party in interest absent showing that assignor's bringing of suit in his own name was honest and understandable mistake. [Lans v. Gateway 2000, Inc.](#), D.D.C.1999, 84 F.Supp.2d 112, affirmed 252 F.3d 1320, 59 U.S.P.Q.2d 1057, rehearing and rehearing en banc denied. [Patents](#) ☐ 1793

Periodontists who brought action against manufacturer of periodontal tool for breach of warranty and negligent design were not entitled to amend their complaint so as to substitute their corporate entities as plaintiffs pursuant to rule providing for substitution of a real party in interest when determination of the proper party to **sue** was difficult or when an understandable mistake had been made, even if they were unaware that it was technically necessary to name their corporate practice groups until manufacturer moved to dismiss for lack of standing, where they offered no explanation as to why it would have been difficult to determine that the corporate entities were the proper parties. [Hildebrand v. Dentsply Intern., Inc.](#), E.D.Pa.2010, 264 F.R.D. 192, reconsideration denied 2011 WL 4528343, entered 2011 WL 4528348. [Federal Civil Procedure](#) ☐ 392; [Federal Civil Procedure](#) ☐ 1935.1

Amendment of complaint in which committee established pursuant to Chapter 11 plan to oversee proceedings on behalf of unsecured creditors asserted negligence and contract claims against debtor's prepetition auditing firm would serve the ends of justice, warranting grant of leave to allow committee, which lacked capacity to **sue** under District of Columbia law, to amend complaint by joining or substituting entities that were real parties in interest with capacity to **sue**. [The Plan Committee v. PricewaterhouseCoopers, LLP](#), D.D.C.2005, 335 B.R. 234. [Bankruptcy](#) ☐ 3570; [Federal Civil Procedure](#) ☐ 383.5

### **---- Sufficiency, complaint**

Plaintiff's allegations that entities named as defendants were subsidiaries or affiliates of a corporation named as defendant and had a principal place of business in Texas were insufficient to allege that those entities had capacity to be **sued**; plaintiff provided no information to demonstrate that its statements were credible, such as information regarding the country of those entities' incorporation or their full corporate names. [Dodora Unified Communications, Inc. v. Direct Information Pvt. Ltd.](#), D.Mass.2005, 379 F.Supp.2d 10. [Corporations And Business Organizations](#) ☐ 3286

Under [Rule 10\(a\)](#) of these rules, complaints of executors and executrix which alleged that actions were brought on behalf of survivors and next of kin of **persons** killed in airplane crash in foreign country were defective, and by failing to allege law of

foreign country executors and executrix could not take advantage of fact that such law might permit them to bring actions for benefit of all concerned. [Supine v. Compagnie Nationale Air France](#), E.D.N.Y.1951, 100 F.Supp. 214. [Carriers](#) ☐ 314; [Federal Civil Procedure](#) ☐ 626

Complaint, which alleged that defendant defrauded plaintiff-buyer of shares of stock by not delivering stock to plaintiff and which did not allege that fraud was practiced prior to or contemporaneously with sale or alleged negligent misrepresentation or manipulation, did not state any claim under laws of the United States within this rule providing that partnership may be **sued** in its common name to enforce substantive right under constitutional laws of the United States though partnership has no such capacity by laws of state of its domicile. [Fuller v. F. I. duPont, Glore, Forgan & Co.](#), W.D.Mo.1971, 54 F.R.D. 557. [Partnership](#) ☐ 737

### Answer

Question of the authority of a personal representative **must be** raised, if at all, in the initial answer. [Scruggs v. Chesapeake & O. Ry. Co.](#), W.D.Va.1970, 320 F.Supp. 1248. [Executors And Administrators](#) ☐ 444(1)

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### Counterclaims

Once this rule, providing that capacity of individual acting in a representative capacity to **sue** or be **sued** shall be determined by law of state in which district court is held, has been satisfied for initial filing of complaint, Rule 13 of these rules, providing for compulsory and permissive counterclaims would be operative without further reference to state law governing counterclaims. [Tolson v. Hodge](#), C.A.4 (N.C.) 1969, 411 F.2d 123. [Federal Civil Procedure](#) ☐ 773

### Limitations

Statute of limitations on knife-attack victim's claims against attacker for intentional infliction of emotional distress, assault, and battery began to run when attacker stabbed victim, and therefore victim's actions, commenced more than three years after attack, were untimely; victim presented no authority to support her argument that statute of limitations should be tolled due to attacker's mental illness, and although attacker had been deemed incompetent to stand trial in related criminal matter, victim's complaint did not allege whether attacker had present legal capacity to be **sued** civilly. [Martineau v. Wier](#), D.S.C.2020, 485 F.Supp.3d 637, affirmed 2022 WL 2387073. [Limitation of Actions](#) ☐ 55(4)

Under Iowa law, brother of student who was attacked and killed on campus by another student ratified wrongful death action against university, brought on behalf of student's estate before brother became the real party in interest, i.e., when his letters of appointment as administrator for the estate were issued, and, thus, action was treated as if brought in the name of the real party in interest at its commencement, for purposes of Iowa's two-year statute of limitations for injuries to **persons**. [Estate of Butler ex rel. Butler v. Maharishi University of Management](#), S.D.Iowa 2006, 460 F.Supp.2d 1030. [Limitation Of Actions](#) ☐ 121(1)

### Waiver

Real-party-in-interest defense is not jurisdictional and is freely waivable. [Steger v. General Elec. Co.](#), C.A.11 (Ga.) 2003, 318 F.3d 1066. [Federal Civil Procedure](#) ☐ 131; [Federal Civil Procedure](#) ☐ 383.5

Defendant waived defense that plaintiff was not the real party in interest by failing to raise issue of whether plaintiff was assignee of third **person's** cause of action prior to raising it in its motion for directed verdict. [Gogolin & Stelter v. Karn's Auto Imports, Inc.](#), C.A.5 (Tex.) 1989, 886 F.2d 100, certiorari denied 110 S.Ct. 1480, 494 U.S. 1031, 108 L.Ed.2d 617. [Federal Civil Procedure](#) ☐ 383.5

Where parties stipulated at pretrial conference that capacity to **sue** existed in plaintiff and defendants failed to object to lack of capacity until posttrial conference, defendants waived their challenge to plaintiff's capacity to **sue**. [Myers v. Manchester](#)

Since this rule is for the protection of defendant, he may waive it by inaction, and the court may exercise its discretion on the question of waiver, unless the defect would deprive the court of jurisdiction. *Pace v. General Elec. Co.*, W.D.Pa.1972, 55 F.R.D. 215. Federal Civil Procedure 383.5

### **Dismissal--Generally**

When action is prosecuted in the name of a **person** who was not the real party in interest, dismissal is not necessarily the appropriate course. *Executive Jet Aviation, Inc. v. U.S.*, C.A.6 (Ohio) 1974, 507 F.2d 508. Federal Civil Procedure 1749

Even if plaintiffs who had originally commenced action as trustees had ceased to act as trustees and had thus lacked capacity to **sue**, where another having capacity to **sue** and **suing** in representative capacity was added, as there was a plaintiff entitled to go forward with action, it was proper not to dismiss for lack of a party plaintiff with capacity to **sue**. *Brown v. Keller*, C.A.6 (Ohio) 1960, 274 F.2d 779, certiorari denied 80 S.Ct. 1599, 363 U.S. 828, 4 L.Ed.2d 1523. Federal Civil Procedure 1748

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Motion to dismiss complaint on ground that capacity of plaintiffs to **sue** was questionable on basis of allegations of complaint was inappropriate under this rule concerning parties, but if evidence was adduced which raised substantial issue as to capacity, court would enter appropriate order pursuant to this rule concerning infants or incompetent **persons** as parties. *Downs v. Department of Public Welfare*, E.D.Pa.1973, 368 F.Supp. 454. Federal Civil Procedure 1745

#### **---- Miscellaneous cases dismissal denied**

Libel complaint of prisoner serving a life sentence and moving for leave to proceed in forma pauperis and for assignment of counsel was not so clearly frivolous as to justify dismissal on application for leave to proceed in forma pauperis and for assignment of counsel in connection with appeal from order dismissing complaint on ground of incapacity to **sue**. *Urbano v. News Syndicate Co.*, C.A.2 (N.Y.) 1966, 358 F.2d 145, certiorari denied 87 S.Ct. 68, 385 U.S. 831, 17 L.Ed.2d 66. Costs, Fees, And Sanctions 526(2)

Deprivation of constitutional rights is more properly asserted by **persons**, not organizations which merely claim to speak for **persons**, and it was doubtful that Mississippi Freedom Democratic Party had standing to **sue** in reapportionment case; but dismissal of Party would not affect litigation, where **persons** who had **sued** in their own names would remain, and court preferred to err on side of broad interpretation of this rule and, accordingly, overruled motion to drop Party. *Connor v. Johnson*, S.D.Miss.1966, 256 F.Supp. 962, supplemented 265 F.Supp. 492. Federal Civil Procedure 111; Federal Civil Procedure 388

#### **---- Miscellaneous cases dismissal granted**

Where complaint did not state proper claim, because, under Missouri law, partnership cannot be **sued** in its common or firm name, and plaintiff, who was given opportunity to amend complaint so as to correct such deficiency, failed to do so, it was appropriate that complaint be dismissed insofar as it attempted to state claim under § 1332 of this title. *Fuller v. F.I. duPont, Glore, Forgan & Co.*, W.D.Mo.1971, 54 F.R.D. 557. Federal Civil Procedure 1745

### **Judgment--Generally**

#### **---- Conclusiveness, judgment**

Partial subrogee is **generally** precluded from bringing a subsequent action against defendant where a judgment has been rendered in a suit for the subrogor for the entire loss. *Virginia Elec. & Power Co. v. Westinghouse Elec. Corp.*, C.A.4 (Va.)

#### ---- Registration, judgment

Defining “action” as lawsuit brought in court, and “to sue or be sued” as commencing or continuing legal proceedings for recovery of right, registration of 16-year-old wrongful death judgment in district court did not constitute action, and thus neither federal rule governing capacity of party to sue or be sued, nor North Carolina statute governing jurisdiction over domiciliary personal representative of nonresident decedent, applied to estate administrator's registration and proceedings to collect on judgment. *Powles v. Kandasiewicz*, W.D.N.C.1995, 886 F.Supp. 1261. Federal Civil Procedure 2621; Federal Courts 3025(4); Federal Courts 3031(1)

#### Review--Generally

#### ---- Persons entitled to seek review

### REAL PARTY IN INTEREST

#### Real party in interest generally

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“Real party in interest” is party that has substantive right that is enforceable under applicable substantive law. *Scheufler v. General Host Corp.*, D.Kan.1995, 895 F.Supp. 1416, affirmed 126 F.3d 1261. Federal Civil Procedure 131

#### Owner or holder of claim or right, real party in interest

The “real party in interest,” for purpose of determining whether his presence in case may be ignored for purpose of determining diversity jurisdiction, is the **person** who, under governing substantive law, is entitled to enforce the right asserted. *Iowa Public Service Co. v. Medicine Bow Coal Co.*, C.A.8 (Iowa) 1977, 556 F.2d 400. Federal Courts 2428

Meaning and object of real party in interest principle embodied in this rule is that action **must be** brought by **person** possessing right to enforce claim and having significant interest in litigation. *Virginia Elec. & Power Co. v. Westinghouse Elec. Corp.*, C.A.4 (Va.) 1973, 485 F.2d 78, certiorari denied 94 S.Ct. 1450, 415 U.S. 935, 39 L.Ed.2d 493. Federal Civil Procedure 131

Effect of this rule requiring that every action be prosecuted in name of real party in interest is that action **must be** brought by **person** who, according to governing substantive law, is entitled to enforce the right. *Petition of M/V Elaine Jones*, C.A.5 (Miss.) 1973, 480 F.2d 11, opinion amended on rehearing 513 F.2d 911, certiorari denied 96 S.Ct. 71, 423 U.S. 840, 46 L.Ed.2d 60. Federal Civil Procedure 131

Son of a deported alien was not a **person** who possessed right sought to be enforced, namely return of alien to United States, within this rule, and therefore, son of deported alien could not maintain action for return of his deported father. *Gagliano ex rel. Gagliano ex rel. Gagliano v. Bernsen*, C.A.5 (La.) 1957, 243 F.2d 880. Federal Civil Procedure 131

Real party in interest rule does not require action to be brought in name of **person** who ultimately will benefit from recovery but merely requires that action be brought by **person** who, according to governing substantive law, is entitled to enforce the right. *Reichhold Chemicals, Inc. v. Travelers Ins. Co.*, E.D.Mich.1982, 544 F.Supp. 645, reconsideration denied 549 F.Supp. 197. Federal Civil Procedure 131

Words “real party in interest,” within this rule providing that every action shall be prosecuted in name of real party in interest, should be understood as meaning that an action **must be** prosecuted in name of party who, by substantive law, has rights sought to be enforced. *U.S. v. Thomas B. Bourne Associates*, E.D.Pa.1973, 367 F.Supp. 919. Federal Civil Procedure 131



“Real party in interest” is the **person** holding the substantive right sought to be enforced, not necessarily the **person** who will benefit from the recovery. [Delor v. Intercosmos Media Group, Inc., E.D.La.2005, 232 F.R.D. 562. Federal Civil Procedure](#) ☐ 131

“Real party in interest” in whose name action is to be prosecuted is the **person** who, under governing substantive law, is entitled to enforce the right asserted. [Wattles v. Sears, Roebuck and Co., D.C.Neb.1979, 82 F.R.D. 446. Federal Civil Procedure](#) ☐ 131

### **Proper party, real party in interest**

For a plaintiff to be a proper and appropriate party to invoke federal jurisdiction, there **must be** a logical nexus between status asserted by plaintiff and claim sought to be adjudicated. [Mercer v. Michigan State Bd. of Ed., E.D.Mich.1974, 379 F.Supp. 580, affirmed 95 S.Ct. 673, 419 U.S. 1081, 42 L.Ed.2d 678. Federal Civil Procedure](#) ☐ 103

### **Agents, real party in interest**

**Person** who was an agent of lumber seller entitled to share in profits from transactions as his commission was not a “real party in interest” within this rule relating to party plaintiff in seller's suit against buyer. [B.L. Schrader, Inc. v. Anderson Lumber Co., D.C.Md.1966, 257 F.Supp. 794. Federal Civil Procedure](#) ☐ 229

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### **Antitrust, real party in interest**

Antitrust claim asserted under Sherman Act by investment fund that was dissolved limited partnership, arising from bank's alleged manipulation of interest rate benchmarks, was not assigned to purchaser of the fund's assets under asset purchase agreement, and thus purchaser could not be substituted for fund as real party in interest in antitrust action; agreement assigned claims relating to future “securities class action lawsuit[s],” but assignment did not extend to other types of lawsuits, agreement did not make any reference to Sherman Act specifically or to “antitrust claims” **generally**, and it did not make unambiguous assignment of causes of action in manner that would clearly encompass antitrust claim. [Sonterra Capital Master Fund, Ltd. v. Barclays Bank PLC, S.D.N.Y.2019, 403 F.Supp.3d 257. Assignments](#) ☐ 73; [Federal Civil Procedure](#) ☐ 132

### **Assignees, real party in interest--Generally**

An assignee for collection may **sue** as the real party in interest. [Staggers v. Otto Gerdau Co., C.A.2 \(N.Y.\) 1966, 359 F.2d 292. Assignments](#) ☐ 129

Under this rule, valid assignee can **sue** in his own name. [Kenrich Corp. v. Miller, E.D.Pa.1966, 256 F.Supp. 15, affirmed 377 F.2d 312. Federal Civil Procedure](#) ☐ 132

### **---- Miscellaneous cases, assignees, real party in interest**

Insurance agent which was not party to contract nevertheless was real party in interest and could **sue** for premiums owing on insurance contract in view of all inclusive assignment from insurer to agent, and assignment was not rendered invalid by having been made after filing where it was made before trial and where defendant showed no prejudice. [Dubuque Stone Products Co. v. Fred L. Gray Co., C.A.8 \(Iowa\) 1966, 356 F.2d 718. Federal Civil Procedure](#) ☐ 132

Amendment of complaint or alteration of caption to substitute patent assignee's insolvency administrator for assignee was not warranted in assignee's action against competitor alleging infringement of patents, where assignee had been proper real party in interest at commencement of action, and assignee had lost standing to **sue** by time it sought substitution. [Qimonda AG v. LSI Corp., E.D.Va.2012, 857 F.Supp.2d 570. Patents](#) ☐ 1743

Under the doctrine of assignment, liquidation trustee, as assignee, under confirmed Chapter 11 plan of liquidation, of causes of action brought by official committee of unsecured creditors could not receive more than committee, as assignor, held, and so, where committee lacked standing under applicable state law to assert derivative claims on behalf of debtors, liquidation trustee also lacked standing to **sue** derivatively. [In re Citadel Watford City Disposal Partners, L.P., Bkrcty.D.Del.2019, 603 B.R. 897. Bankruptcy](#) ☐ 3570

#### **Bailees, real party in interest**

Where bailor's insurers ratified the action which their counsel took in name of bailor and where bailee was aware that bailor's insurers were **suing** bailee in its insured's name, evidence of alleged agreement between bailor and bailee under which bailor would carry insurance on the bailed property in return for a lower storage rate was not admissible to establish that bailor's casualty insurers were the real parties in interest. [Big John, B.V. v. Indian Head Grain Co., C.A.5 \(Tex.\) 1983, 718 F.2d 143. Bailment](#) ☐ 31(2)

Under secured transactions provisions of 12A O.S. 1971, §§ 7-101 comment, 7-203, 7-204(1), 7-504, 9-101 et seq., and 9-102(2), borrower under field warehousing agreement remained real party in interest regardless of transfer of title of stored grain to lender, and thus had right to **sue** warehouseman for nondelivery, loss or damage to the grain. [American Triticale, Inc. v. Nyto Services, Inc., C.A.9 \(Idaho\) 1981, 664 F.2d 1136. Secured Transactions](#) ☐ 171

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Even if plaintiff which **sued** to recover for damage to produce shipped on defendant's vessels had been a bailee, that would not preclude it from maintaining its action. [Prevor-Mayorsohn Caribbean, Inc. v. Puerto Rico Marine Management, Inc., C.A.1 \(Puerto Rico\) 1980, 620 F.2d 1. Shipping](#) ☐ 132(1)

#### **Brokers, real party in interest**

Assertion by real estate investment trust that real estate broker was not entitled to commissions for which broker sought recovery because broker was not licensed was not “improper party defense,” in that trust was not challenging broker's status as real party in interest or its capacity to **sue** and be **sued**, but rather was contesting amount of damages that could be awarded to broker as a required element of its prima facie case; therefore, such defense was not precluded on grounds that it was not raised by scheduling order deadline set for motions to dismiss. [JDN Development Co., Inc. v. Terra Venture, Inc., D.Kan.2003, 265 F.Supp.2d 1239. Federal Civil Procedure](#) ☐ 1942

#### **Colleges and universities, real party in interest**

Georgia state university's Board of Regents was the proper party to **sue** for violation of student's constitutional rights, not the state university. [Barnes v. Zaccari, N.D.Ga.2010, 757 F.Supp.2d 1313, reconsideration denied in part 2010 WL 11530369, motion denied 2010 WL 11530371, affirmed in part, reversed in part and remanded 669 F.3d 1295, vacated in part 592 Fed.Appx. 859, 2015 WL 134362. Education](#) ☐ 1094

#### **Contractors and subcontractors, real party in interest**

Subcontractor, which was not in privity with parish or engineer on parish construction project, was not “real party in interest” in suit brought by **general** contractor against parish and engineer in which contractor asserted claims for delay on behalf of itself and subcontractor, either under Louisiana contract law or statutes; rather, contractor was real party in interest with respect to both contractor's and subcontractor's damages. [Farrell Const. Co. v. Jefferson Parish, La., C.A.5 \(La.\) 1990, 896 F.2d 136. Federal Civil Procedure](#) ☐ 131

#### **Copyright holders and licensees, real party in interest**

Proprietor of a copyright has standing to **sue** as does assignee, but a licensee does not have standing unless he is an exclusive licensee and takes advantage of procedural machinery to compel joinder of proprietor. [Nathan v. Monthly Review Press, Inc., S.D.N.Y.1969, 309 F.Supp. 130, 165 U.S.P.Q. 549. Copyrights And Intellectual Property](#) ☐ 947; [Copyrights And Intellectual Property](#) ☐ 949

#### **Corporations, real party in interest--Generally**

Corporation was not real party in interest to **sue** under executive liability clause of officers and directors policy since corporation had not formally indemnified its former officers and directors and there was no guarantee that officers and directors would not also seek to recover under policy. [Macmillan, Inc. v. Federal Ins. Co., S.D.N.Y.1990, 741 F.Supp. 1079. Insurance](#) ☐ 3567

#### **---- Derivative actions, corporations, real party in interest**

Minority stockholder and three directors of Ohio corporation were real parties in interest who had standing under this rule to **sue** the corporation and five directors in diversity stockholder's derivative suit. [Lapides v. Doner, E.D.Mich.1965, 248 F.Supp. 883. Corporations And Business Organizations](#) ☐ 2078; [Federal Civil Procedure](#) ☐ 135; [Federal Civil Procedure](#) ☐ 187

#### **---- Parent and subsidiaries, corporations, real party in interest**

Under Illinois law, dairy farmer, rather than limited liability companies (LLCs) that were subsidiaries of his holding company, was real party in interest for his tortious interference claims against cattle association, after he was banned from membership in

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association for five years and was instructed to sell his cattle or embryos that he owned solely or in partnership with association prior to his suspension for alleged fraudulent conduct; farmer entered into membership agreement with association in his individual capacity and alleged not only **general** harm to LLCs but also direct personal harm to himself due to expulsion from association that purportedly ended his career in industry and forced him to end all of his business relationships with third parties and other association members. [Butler v. Holstein Association, USA, Inc., C.D.Ill.2023, 2023 WL 8085847. Federal Civil Procedure](#) ☐ 135

#### **---- Stockholders, corporations, real party in interest**

Shareholder-standing rule prevented corporation's sole shareholder, officer, and director from pursuing PMPA claim against franchisor, since shareholder did not have direct, personal injury independent of derivative injury of shareholder **generally** and shareholder admitted that corporation was real party in interest. [Rawoof v. Texor Petroleum Co., Inc., C.A.7 \(Ill.\) 2008, 521 F.3d 750. Corporations And Business Organizations](#) ☐ 2129

Sole stockholder, who had advanced all capital for enterprise, was not, before corporation's assignment to him of claim against third **person**, real party in interest to claim. [Bradbury v. Dennis, C.A.10 \(Colo.\) 1962, 310 F.2d 73, certiorari denied 83 S.Ct. 874, 372 U.S. 928, 9 L.Ed.2d 733. Federal Civil Procedure](#) ☐ 135

#### **Employees, real party in interest**

Employee **suing** alleged third party tort-feasor for amount far in excess of sum recovered under Workmen's Compensation Act, [S.H.A.Ill. ch. 48, § 138.5\(b\)](#), was real party in interest, and employer's workmen's compensation carrier was not an indispensable party. [King v. Cairo Elks Home Ass'n, E.D.Ill.1956, 145 F.Supp. 681. Federal Civil Procedure](#) ☐ 137; [Federal Civil Procedure](#) ☐ 222

#### **Employers, real party in interest**

Employer, as real party in interest, would be substituted by Court of Appeals for employer's alleged name under which suit was brought to collect underpayments in contributions to pension and welfare funds, under ERISA, since alleged employer's name was merely description referring to series of business entities or "rubric," that was not juridical entity capable of being sued. *Teamsters Local Union No. 727 Health and Welfare Fund v. L & R Group of Companies*, C.A.7 (Ill.) 2016, 844 F.3d 649. [Federal Courts](#) ☐ 3254

Debtor's employer was proper party in interest to action seeking determination that embezzlement debt was nondischargeable, even though employer assigned its claim against debtor to its insurer, where employer sought enforcement of its claim for uncompensated deductible and Virginia law allowed subrogated insurer to sue both in its own name and in name of its insured. *In re Hutcherson*, Bkrcty.E.D.Va.1985, 50 B.R. 845. [Bankruptcy](#) ☐ 3400

#### **Executors and administrators, real party in interest**

Under Pennsylvania Rules of Procedure, "administrator" of estate of decedent had capacity to sue for wrongful death and, where his citizenship was diverse from that of defendants, he could maintain suit under this rule relating to prosecution of action in name of real party in interest. *Borror v. Sharon Steel Co.*, C.A.3 (Pa.) 1964, 327 F.2d 165. [Death](#) ☐ 41; [Federal Courts](#) ☐ 2431

Fact that employee's estate had not been joined as a party did not bar employment discrimination action, given civil rule providing that executor or administrator may sue in that person's own name without joining party for whose benefit action is brought. *Estwick v. U.S.Air Shuttle*, E.D.N.Y.1996, 950 F.Supp. 493. [Federal Civil Procedure](#) ☐ 138; [Federal Civil Procedure](#) ☐ 1748

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Authority given by the second sentence of subd. (a) of this rule to an executor, administrator, guardian, trustee of an express trust, party with whom or in whose name contract has been made for benefit of another, or party authorized by statute to sue in own name without joining party for whose benefit action is brought, is not exception to real party in interest provision of the first sentence of subd. (a) of this rule, but enumerates specific instances as illustrations of that provision to insure that real party in interest is not confined to person beneficially interested. *Galarza v. Union Bus Lines, Inc.*, S.D.Tex.1965, 38 F.R.D. 401, affirmed 369 F.2d 402. [Federal Civil Procedure](#) ☐ 131

#### **Guarantors, real party in interest**

Guarantor's action against principal-debtor to recover amount for which guarantor became liable upon his principal's default was brought for guarantor's benefit and not for that of the creditor and guarantor would have no standing to sue on behalf of creditor. *Wong v. Key Finance Corp.*, D.C.Puerto Rico 1967, 266 F.Supp. 149. [Guaranty](#) ☐ 102

#### **Investment advisors, real party in interest**

Investment advisor was real party in interest in putative securities fraud class action on behalf of its clients, where advisor was authorized to sue for recovery of investment losses on behalf of its clients, advisor was in privity with its clients, and clients were bound by outcome of the action. *In re Rent-Way Securities Litigation*, W.D.Pa.2003, 218 F.R.D. 101. [Federal Civil Procedure](#) ☐ 187

#### **Labor unions, real party in interest**

United Federation of Postal Clerks, which brought action challenging Postmaster General's construction of work schedule and overtime provisions of Federal Employees Salary Comparability Act of 1965, §§ 3571 and 3573 of former Title 39, was "real party in interest" within meaning of this rule. *United Federation of Postal Clerks, AFL-CIO v. Watson*, C.A.D.C.1969, 409 F.2d 462, 133 U.S.App.D.C. 176, certiorari denied 90 S.Ct. 212, 396 U.S. 902, 24 L.Ed.2d 178. [Federal Civil Procedure](#)

This rule that party in whose name contract is made for another's benefit or party authorized by statute may **sue** in his own name, without joining party for whose benefit action is brought, gave labor union no right to **sue** its members' employers in tort for damages sustained by such employees severally as results of conspiracy to bribe union officer representing union and its members in collective bargaining with employers, as § 185 of Title 29, authorizing labor organization to **sue** in federal courts as entity in behalf of employees whom it represents, is mere procedural regulation, conferring no substantive rights on union, and claim sought to be enforced related to collective bargaining contract only incidentally. [Rock Drilling, Blasting, Roads, Sewers, Viaducts, Bridges, Foundations, Excavations & Concrete Work on All Const., Hod Carriers', Bldg. & Common Laborers' Local Union No. 17 v. Mason & Hanger Co., C.A.2 \(N.Y.\) 1954, 217 F.2d 687, certiorari denied 75 S.Ct. 604, 349 U.S. 915, 99 L.Ed. 1249. Labor And Employment](#) 1978

#### **Insureds, real party in interest--Generally**

For purposes of determining the real party in interest, distinction between an insured who has received payment under a “loan receipt” and insured who has received payment under a right of subrogation has no real purpose. [Pace v. General Elec. Co., W.D.Pa.1972, 55 F.R.D. 215. Insurance](#) 3524; [Insurance](#) 3526(6)

#### **---- Miscellaneous cases, insureds, real party in interest**

A cotton merchant, though not first named assured in fidelity bond insuring against inventory shortages caused by employees' fraud or dishonesty, had right to maintain action against insurer for loss of cotton taken from such merchant's sample room floor, hauled away and sold by two porters employed by merchant, under provision of this rule, as provision of bond that first named assured **must be** plaintiff was not controlling. [New Amsterdam Cas. Co. v. W.D. Felder & Co., C.A.5 \(Tex.\) 1954, 214 F.2d 825. Federal Civil Procedure](#) 142

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Where both insured and insurer were before court and would be bound by its decision and where, although insurer had paid loss, insured had paid or was bound to pay \$275,000 of its own loss in the case, insured was real party at interest to **sue** for loss. [Gulf Oil Corp. v. Mobile Drilling Barge or Vessel Margaret, E.D.La.1975, 441 F.Supp. 1, affirmed 565 F.2d 958. Federal Civil Procedure](#) 142

#### **Insurers, real party in interest--Generally**

If the insurer has paid an entire loss suffered by the insured, it is the only real party in interest and must **sue** in its own name to recover its loss; if it has paid only part of the loss, both the insured and insurer have substantive rights against the tortfeasor which qualify them as real parties in interest. [Ocean Ships, Inc. v. Stiles, C.A.2 \(N.Y.\) 2002, 315 F.3d 111. Federal Civil Procedure](#) 142

#### **---- Partially subrogated insurers, real party in interest**

Although under Virginia law an action may be brought solely in name of an insured **person**, involuntary joinder of a partially subrogated insurer is not forbidden by this rule expressly incorporating state law, and providing that a “party authorized by statute may **sue** in his own name without joining with him the party for whose benefit the action is brought,” because this rule merely requires federal courts to look into state law for designation of those **persons** who, as parties in interest, may properly **sue** in their own names on state claims in federal courts, so that it defines only those **persons** who, as real parties in interest, have substantive rights of action, and does not enable those parties then to avoid joinder of other parties in interest. [Travelers Ins. Co. v. Riggs, C.A.4 \(Va.\) 1982, 671 F.2d 810. Federal Civil Procedure](#) 259

Fire insurer, as partial subrogator, was real party in interest as to entire claim against agency and its parent corporation for unauthorized issuance of policy where insurer was entitled, under Montana law, to enforce the entire claim, and payment to the insurer would completely extinguish liability of the agency and its parent. [Glacier General Assur. Co. v. G. Gordon](#)

Where, after barge and cargo damage allegedly occurred because of defendants' failure to package and secure cargo properly, vessel owner settled cargo claim with insurer, and insurer thereby became partial subrogee to vessel owner's claim against defendants, either vessel owner or insurer was entitled to proceed against defendants in its own name. [Prudential Lines, Inc. v. General Tire Intern. Co.](#), S.D.N.Y.1977, 74 F.R.D. 474. Federal Civil Procedure ☐ 222; Insurance ☐ 3526(6)

**---- Subrogated insurers, real party in interest**

Where an insurance company as subrogee has paid an entire loss suffered by insured, it is the only real party in interest and must **sue** in its own name; when loan receipt is utilized, however, insured retains sufficient interest so as not to displace him as real party in interest. [Frank Briscoe Co., Inc. v. Georgia Sprinkler Co., Inc.](#), C.A.11 (Ga.) 1983, 713 F.2d 1500. Insurance ☐ 3526(6)

Where an insurer pays insured in full for a loss and becomes subrogated to all rights of the insured against a wrongdoer, action against wrongdoer in a federal court to recover in tort **must be** maintained in the name of the insurer. [Gas Service Co. v. Hunt](#), C.A.10 (Kan.) 1950, 183 F.2d 417. Insurance ☐ 3526(5)

Equipment renter that **sued** rental company and its insurer, seeking damages for injuries resulting from operation of aerial scissor lift, would not be allowed to include his health insurer as defendant in amended pleading, where health insurer exercised its option under Wisconsin law as plaintiff-subrogee to move for dismissal of its claims against defendants. [Wimmer v. Rental Service Corp.](#), W.D.Wis.2005, 366 F.Supp.2d 814. Federal Civil Procedure ☐ 392

Where loan arrangements are made whereby an insurer advances amount of loss to assured as a loan repayable only out of proceeds of a suit brought by assured, assured is considered to be proper party plaintiff to bring suit, but when there is no such

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arrangement and payment is nevertheless made to assured, insurer is considered to be real party in interest under this rule and, in an action against party responsible for loss, is required to **sue** in its own name as subrogee. [American Dredging Co. v. Federal Ins. Co.](#), S.D.N.Y.1970, 309 F.Supp. 425. Insurance ☐ 3526(2); Insurance ☐ 3526(8)

**---- Reinsurers, real party in interest**

Insured's subsidiary reinsurer and underwriter would be permitted to voluntarily dismiss their claims for declaratory judgment and damages as plaintiffs in insurer's action against insured; there was no danger to insured that reinsurer and underwriter would bring further suits on the same transactions if insurer lost, since underwriter, as agent of insurer, had no independent right to **sue** on the contract, and reinsurer was not in privity with the insured. [U.S. Fidelity and Guar. Co. v. S.B. Phillips Co., Inc.](#), D.Conn.2005, 359 F.Supp.2d 189. Declaratory Judgment ☐ 327.1; Federal Civil Procedure ☐ 1695

**---- Underwriters, insurers, real party in interest**

Citizenship of insurance underwriters, who were agents for unincorporated syndicates, rather than citizenship of all members of syndicates, governed in determining existence of diversity jurisdiction; underwriters, in writing policy, functioned as agents for undisclosed principals, the syndicates, and when underwriters were **sued**, syndicates were no longer liable on contract under Tennessee law and, consequently, none were "real party in interest." [Certain Interested Underwriters at Lloyd's, London, England v. Layne](#), C.A.6 (Tenn.) 1994, 26 F.3d 39. Federal Courts ☐ 2430

**---- Workers' compensation, insurers, real party in interest**

Where compensation insurer **sues** to set aside award of Industrial Accident Board of Texas and the compensation claimant seeks affirmative relief by cross action and demands process thereon, the claimant is the real plaintiff in and master of the suit. [Liberty Mut. Ins. Co. v. Horton](#), C.A.5 (Tex.) 1960, 275 F.2d 148, certiorari granted 81 S.Ct. 79, 364 U.S. 814, 5



L.Ed.2d 46, affirmed 81 S.Ct. 1570, 367 U.S. 348, 6 L.Ed.2d 890, rehearing denied 82 S.Ct. 24, 368 U.S. 870, 7 L.Ed.2d 70. Workers' Compensation ☐ 1867

T.C.A. § 50-914 which permits an employer to intervene in an action brought by employees against third **person** to protect and enforce its subrogation lien in the event of recovery against the third **person** when the employer's maximum liability for workmen's compensation has been fully or partially paid and discharged did not give right to the third **person** to require that the employer or its insurer be joined as a real party in interest to the action. [McCoy v. Wean United, Inc.](#), E.D.Tenn.1973, 67 F.R.D. 491. [Federal Civil Procedure](#) ☐ 137; [Federal Civil Procedure](#) ☐ 142

#### ---- Miscellaneous cases, insurers, real party in interest

**General** liability insurer that entered "loan receipt" agreement with insured operator of apartment complex, whereby insurer funded settlement of negligence suit by tenant who was sexually assaulted at her apartment in return for operator's agreement to repay amounts recovered from third parties for loss, should not have been added as real party in interest in operator's suit against another insurer; insurer given loan receipt was not real party in interest under Georgia law, and action against third party could be brought in name of insured. [ECI Management Corp. v. Scottsdale Ins. Co.](#), C.A.11 (Ga.) 1994, 23 F.3d 354. [Parties](#) ☐ 51(4)

#### **Landlords and tenants, real party in interest**

Defendant owner of salt plant did not waive argument that sharecropping tenants, rather than landowners, were real parties in interest as to net profits to which tenants were entitled by failing to raise real party in interest argument until trial; while owner did not invoke rule addressing real parties in interest by its terms or seek ruling on real party in interest issue, it made clear from beginning of litigation its position that landowners' damages would be limited to their share of net profits and that they could not recover on behalf of their tenants. [Scheufler v. General Host Corp.](#), D.Kan.1995, 895 F.Supp. 1416, affirmed 126 F.3d 1261. [Federal Civil Procedure](#) ☐ 383.5

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#### **Legatees, devisees and heirs, real party in interest**

Sole legatee and devisee of beneficiary of policy had standing to **sue** insurer for declaratory judgment with respect to proceeds of policy held by insurer, and was real party in interest. [Zimmerman v. Mutual Life Ins. Co. of N.Y.](#), N.D.Ala.1957, 156 F.Supp. 589. [Declaratory Judgment](#) ☐ 292

#### **Mortgages, real party in interest**

Although legal title to commercial mortgage was held in securitization trust, mortgage servicer was real party in interest authorized, under pooling and servicing agreement, to file suit in own name against mortgagor and landlord, its owners who guaranteed mortgage loan, and former tenant to obtain money judgment for rent owed for time remaining on lease after tenant abandoned premises; agreement effectively delegated equitable ownership of claim to servicer by providing that servicer had "full power and authority, acting alone, to do or cause to be done any and all things in connection with such servicing," by requiring trustee to confer on servicer any authority needed to perform servicing duties, including filing suit, and by authorizing servicer to **sue** in own name if suit related to loan it was servicing. [CWC Capital Asset Management, LLC v. Chicago Properties, LLC](#), C.A.7 (Ill.) 2010, 610 F.3d 497. [Federal Civil Procedure](#) ☐ 144

#### **Parties authorized by statute, real party in interest**

Party may **sue** on behalf of one it represents as long as the relevant underlying federal and state statutes authorize such a suit. [State of N.Y. v. Cedar Park Concrete Corp.](#), S.D.N.Y.1987, 665 F.Supp. 238. [Federal Civil Procedure](#) ☐ 147

#### **Parties to contract for benefit of another, real party in interest**

Under Texas law, feedlot operators, who entered into agreements with cattle owners to provide custom feeding service and handling of all facets of subsequent sales of cattle in return for which they were authorized to collect payment and from the proceeds withhold payment for any and all advances and charges arising from the agreements, were entitled to **sue** in their own names to enforce the subsequent sales contracts, whether or not they had paid over to the cattle owners the full amount of the sales proceeds, and, thus, they were the real parties in interest in such action within the meaning of this rule and had standing to bring such action. [Lubbock Feed Lots, Inc. v. Iowa Beef Processors, Inc., C.A.5 \(Tex.\) 1980, 630 F.2d 250, rehearing denied 634 F.2d 1355. Federal Civil Procedure](#) ☐ 131

Fact that packing company bringing suit against manufacturers of shrimp processing machinery for alleged antitrust violations were merely working as a processor on a cost-plus basis and did not itself engage in the marketing of shrimp would not prevent it from maintaining the action under this rule providing that a party which whom or in whose name a contract has been made for benefit of another may **sue** in his own name without joining with him the party for whose benefit the action was brought. [Peelers Co. v. Wendt, W.D.Wash.1966, 260 F.Supp. 193, 151 U.S.P.Q. 378. Antitrust And Trade Regulation](#) ☐ 963(3)

#### **Parties benefitting from action, real party in interest**

It is not necessary that action be brought in name of **person** who ultimately will benefit from any recovery. [Honey v. George Hyman Const. Co., D.C.D.C.1974, 63 F.R.D. 443. See, also, Mitsui & Co., Inc. v. Puerto Rico Water Resources Authority, D.C.Puerto Rico 1981, 528 F.Supp. 768. Federal Civil Procedure](#) ☐ 103

#### **Partnerships, real party in interest**

Even if **general** partner's and limited partner's claims were derivative or otherwise on behalf of partnership, joinder of partnership was not required in declaratory judgment action so that action could be prosecuted in name of real party in interest; insofar as plaintiffs were authorized to bring suit under Delaware law, even derivatively or otherwise on behalf of partnership, they were also real parties in interest. [HB General Corp. v. Manchester Partners, L.P., C.A.3 \(N.J.\) 1996, 95 F.3d 1185. Declaratory Judgment](#) ☐ 295

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#### **Power of attorney, real party in interest**

**Person** authorized to bring suit solely on basis of power of attorney is not “real party in interest” for purposes of rule requiring that lawsuit be brought in name of real party in interest to suit. [Airlines Reporting Corp. v. S and N Travel, Inc., E.D.N.Y.1994, 857 F.Supp. 1043, affirmed 58 F.3d 857. Federal Civil Procedure](#) ☐ 131

#### **States, real party in interest**

Exception to **general** rule that state law governs whether unit of state or local government had capacity to **sue** or be **sued**, permitting partnership or unincorporated association with no capacity to **sue** or be **sued** under state law to be **sued** in its common name in action to enforce federal rights, did not apply to former employee's claims against state university's medical school for violations of Americans with Disabilities Act (ADA); South Dakota legislature did not deny university and its medical school capacity to **sue** and be **sued**, but rather mandated that such capacity resided in Board of Regents, as government unit that controlled university. [Lundquist v. University of South Dakota Sanford School of Medicine, C.A.8 \(S.D.\) 2013, 705 F.3d 378. Education](#) ☐ 1091; [Federal Courts](#) ☐ 3074(8)

Even though District of Columbia was not named as defendant, it was a real party in interest, and thus could be compelled to respond to discovery, in citizen's civil rights suit against police officer in both his individual and official capacities; District of Columbia had received notice of the suit when it was served upon mayor and attorney **general**, and had full opportunity to respond to the complaint. [Greene v. Shegan, D.D.C.2013, 917 F.Supp.2d 146. Federal Civil Procedure](#) ☐ 139; [Federal Civil Procedure](#) ☐ 1266

State was not entitled to bring tort action seeking damages for purported petroleum contamination of groundwater, where State's Environment Department had primary jurisdiction, under New Mexico law, over any purported groundwater contamination and State had duty to mitigate damages caused by such contamination as well as the power, pursuant to Department's remediation agreements with sources of the contamination, to require those sources to perform additional restoration. [New Mexico v. General Elec. Co., D.N.M.2004, 322 F.Supp.2d 1237](#), affirmed in part, dismissed in part [467 F.3d 1223](#). [Water Law](#) ☐ 2002; [Water Law](#) ☐ 2007

### **Third-party beneficiaries, real party in interest**

Plaintiff distributor had standing to **sue**, as third-party beneficiary, for defendant distributor's breach of contract by sales in plaintiff's exclusive territory, where provision in defendant's contract, that it should not sell products outside its own territory, was intended for protection of other distributors, including plaintiff. [Exercycle of Mich., Inc. v. Wayson, C.A.7 \(Ill.\) 1965, 341 F.2d 335](#). [Contracts](#) ☐ 187(1)

Where bond furnished by subcontractor to prime contractor guaranteed payment by subcontractor to all **persons** supplying labor and materials to him used in performance of subcontract, and bond provided that no right of action accrued thereon for use of any **person** or corporation other than contractor named, bond was not executed for benefit of materialman furnishing supplies to subcontractor, and materialman could not **sue** on bond for his own use. [Hopper Bros. Quarries v. Merchants Mut. Bonding Co., C.A.8 \(Neb.\) 1958, 255 F.2d 147](#). [Principal And Surety](#) ☐ 151

Under these rules, a beneficial owner is not precluded from **suing** or joining with the legal titleholder if the beneficial owner has the right sought to be enforced; purpose of such rule is to guarantee that the **person** who possesses the right to enforce a claim and has a significant interest in litigation will prosecute the matter. [Beascochea v. Sverdrup & Parcel and Associates, Inc., E.D.Pa.1980, 486 F.Supp. 169](#). [Federal Civil Procedure](#) ☐ 131

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One for whose benefit contract between other parties has been made is real party in interest and may **sue** obligated contracting party. [State Securities Co. v. Federated Mut. Implement & Hardware Ins. Co., D.C.Neb.1960, 204 F.Supp. 207](#), affirmed [308 F.2d 452](#). [Contracts](#) ☐ 187(1)

### **Trustees, real party in interest--Generally**

Federal rule authorizing trustee of express trust to **sue** on behalf of trust without joining **persons** for whose benefit the action is brought does not allow nonlawyer to maintain such a suit in propria persona. [C.E. Pope Equity Trust v. U.S., C.A.9 \(Or.\) 1987, 818 F.2d 696](#). [Attorneys And Legal Services](#) ☐ 1300

Attorney **General**, although attorney for beneficiaries of charitable estate, was not attorney for the trustee and trustee was possessed of right to bring an action against third parties for alleged wrongs against the trust. [Halladay v. Verschoor, C.A.8 \(S.D.\) 1967, 381 F.2d 100](#). [Charities](#) ☐ 50

Rule of civil procedure governing real party in interest and indicating that trustee of an express trust "may" **sue** in his own name without joining the trust as a plaintiff does not require that he do so and does not provide that an express trust cannot **sue** in its own name. [San Juan Basin Royalty Trust v. Burlington Resources Oil & Gas Co., L.P., D.N.M.2008, 588 F.Supp.2d 1274](#). [Federal Civil Procedure](#) ☐ 149

National banking association as trustee for investors in a pool of mortgages, rather than servicer of mortgage package, was real party in interest, and thus dismissal of association's action against corporations that sold package to investors was not warranted, although service agreement gave servicer power and authority to take certain actions with regard to servicing

loans, where association simply contractually delegated some of its duties to servicer, it was holder of legal title to mortgage package, and it had power and obligation to **sue** on behalf of investors. [LaSalle Bank National Ass'n v. Nomura Asset Capital Corp.](#), S.D.N.Y.2001, 180 F.Supp.2d 465. [Federal Civil Procedure](#) ☐ 149; [Federal Civil Procedure](#) ☐ 1744.1

Rule indicating trustee of express trust is real party in interest and may **sue** in his own name without joining party for whose benefit action is brought does not confer on indenture trustee authority that it otherwise lacks under indenture agreement. [Premier Bank v. Tierney](#), W.D.Mo.2000, 114 F.Supp.2d 877. [Corporations And Business Organizations](#) ☐ 2468

In action by National Credit Union Administration Board (NCUAB), as liquidating agent for credit unions, against trustee for trusts that issued residential mortgage-backed securities (RMBS), some of which had been sold to “purchaser-trusts,” defendant failed to establish that NCUAB failed to identify the proper party in interest out of bad faith, as opposed to because of an honest mistake, and so NCUAB's conduct was not a bar to supplementation of its complaint and substitution of individual as real party in interest; NCUAB's derivative standing theory was not legally frivolous, as, despite the assignments, NCUAB was beneficiary of purchaser-trusts and it was not frivolous to argue that, as beneficiary entitled to remainder of purchaser-trusts' assets, NCUAB had standing to **sue**. [National Credit Union Administration Board v. HSBC Bank US, National Association](#), S.D.N.Y.2019, 331 F.R.D. 63. [Federal Civil Procedure](#) ☐ 149; [Federal Civil Procedure](#) ☐ 864.1

### **United States, real party in interest**

When United States acts through agency of wholly owned corporation United States is real party in interest to **sue** to recover money due from party who has contracted with such agent in performance of that agency's official duties. [U.S. v. Techno Fund, Inc.](#), S.D.Ohio 1967, 270 F.Supp. 83. [United States](#) ☐ 556

Manufacturer of metal tower **sued** by executrix for death of federal employee fatally injured as result of fall from metal tower was not entitled to join United States as party plaintiff on ground that United States was partial subrogee of claim of executrix under Federal Employees' Compensation Act, § 8101 et seq. of Title 5, since United States was not a “real party in interest” and had no “joint interest” with executrix, in absence of any assignment to United States. [Arnold v. Aermotor, Inc.](#), E.D.Pa.1965, 244 F.Supp. 589. [Public Employment](#) ☐ 793; [United States](#) ☐ 1317(1)

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### **Vendors and vendees, real party in interest**

Conditional buyer was equitable owner of drilling rig which upset while being used by third party with which conditional seller was negotiating sale after conditional buyer's default, and, as such, could **sue** in his own name for damage done to drilling rig. [J.P. \(Bum\) Gibbins, Inc. v. Utah Home Fire Ins. Co.](#), C.A.10 (N.M.) 1953, 202 F.2d 469. [Sales](#) ☐ 3049

### **Patents and trademarks, real party in interest**

Finding that government-chartered Russian entity had standing to **sue** for trademark infringement under Lanham Act, on basis that Russia, as actual owner of “Stolichnaya” trademarks and real party in interest, purportedly ratified suit, would have amounted to improper expansion of substantive rights provided by Lanham Act; such extension of standing would have done more than alter manner and means for enforcing Russia's rights, and would have extended entitlement to **sue** to new party that was otherwise unauthorized under Lanham Act to bring suit to enforce whatever rights it might claim. [Federal Treasury Enterprise Sojuzplodoimport v. SPI Spirits Ltd.](#), C.A.2 (N.Y.) 2013, 726 F.3d 62, 107 U.S.P.Q.2d 1839, certiorari denied 134 S.Ct. 1291, 571 U.S. 1230, 188 L.Ed.2d 359. [Federal Civil Procedure](#) ☐ 131; [Trademarks](#) ☐ 1563

Where patentee assigns an undivided part of his patent, action for infringement begun subsequent to assignment **must be** brought in name of patentee and assignee as representing the entire interest. [Hurd v. Sheffield Steel Corp.](#), C.A.8 (Mo.) 1950, 181 F.2d 269, 85 U.S.P.Q. 147. [Patents](#) ☐ 1698

Although trade name was not formally transferred in writing, where **general** language used in bill of sale from individual to plaintiff was broad enough to include trademark or trade name, common-law right to trade name was transferred with bill of sale and therefore plaintiff owned right to trademark or trade name at time suit was instituted and was real party in interest as required by federal rule of civil procedure. [Discount Muffler Shop, Inc. v. Meineke Realty Corp., Inc., N.D.Ohio 1982, 535 F.Supp. 439, 217 U.S.P.Q. 1154. Trademarks](#) ☐ 1201(2); Trademarks ☐ 1567

Patent licensee, which had been maintained as inactive corporation and had contracted with sublicensee for payment of royalties, could **sue** thereon without joining parties for whose benefit the action was brought. [Imperial Appliance Corp. v. Hamilton Mfg. Co., E.D.Wis.1965, 239 F.Supp. 175, 145 U.S.P.Q. 376. Patents](#) ☐ 1509(2)

#### **Tax actions, real party in interest**

Following death of taxpayer, who had refused to pay a civil penalty assessed by the Internal Revenue Service (IRS) for his failure to file a Foreign Bank Account Report on an account in Switzerland as required by the Bank Secrecy Act (BSA), the IRS could not pursue its claim against the taxpayer's estate under statute providing for survival of civil action for damages instituted by the United States; estate lacked the capacity to be **sued**, as by its terms, the statute did not authorize the commencement of an action against an estate after a decedent passed, but instead addressed the effect of a party's death after an action had been commenced, contemplating the continuation of an action brought against a defendant who died after the suit's commencement. [United States v. Estate of Schoenfeld, M.D.Fla.2018, 344 F.Supp.3d 1354. Abatement and Revival](#) ☐ 52

“Real party in interest rule” did not provide automobile dealer with authority to **sue** for refund of federal excise tax on passenger automobiles. [Delaware Valley Automobiles, Inc. v. U.S., E.D.Pa.1974, 376 F.Supp. 395. Internal Revenue](#) ☐ 5055.1

#### **Trade secrets, real party in interest**

Automobile maker had standing to maintain action for theft of trade secrets and conspiracy against German competitor and others, even though maker assigned rights to its claims in separate German lawsuit brought by defendants to civil law association; maker was real party in interest because damages alleged could be traced directly to maker, assignment of German claims was merely technical pleading device, maker assigned only claims in German suit, and assignment did not bar other claims

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in Germany and was revocable. [General Motors Corp. v. Ignacio Lopez de Arriortua, E.D.Mich.1996, 948 F.Supp. 656. Assignments](#) ☐ 117; Federal Civil Procedure ☐ 132

#### **Trespass actions, real party in interest**

Mother who owned and lived in house near airport and not daughter who merely lived in house was the real party in interest to **sue** airlines for trespass by airplanes. [City of Newark, N. J. v. Eastern Airlines, Inc., D.C.N.J.1958, 159 F.Supp. 750. Aviation](#) ☐ 634(1)

#### **Wrongful death actions, real party in interest**

Under Iowa law, brother of student who was attacked and killed on campus by another student was not real party in interest in wrongful death action, and, thus, he lacked capacity to **sue** university on behalf of student's estate, where he filed the complaint before his letters of appointment as administrator for the estate were issued. [Estate of Butler ex rel. Butler v. Maharishi University of Management, S.D.Iowa 2006, 460 F.Supp.2d 1030. Death](#) ☐ 31(5); Death ☐ 41

District court had authority to determine who, as between decedent's parents and **person** claiming that he was decedent's

common-law husband, could bring wrongful death action, even though district court lacked authority to enjoin state probate proceedings in which question as to status of alleged common-law husband was raised. [Stegman v. Horton Homes, Inc.](#), M.D.Ga.1994, 843 F.Supp. 707. Courts ☐ 508(2.1); Death ☐ 31(6); Death ☐ 31(7)

Action brought by decedent's brother under Code Miss.1942, § 1453, was maintained by real party in interest where brother was entitled to **sue** under statute, although suit was for benefit of all survivors. [Allen v. Baker](#), N.D.Miss.1968, 327 F.Supp. 706. Death ☐ 41

### **Injunction proceedings, real party in interest**

Where prosecution for criminal contempt for violation of district court order requiring discontinuance of high school racial segregation was filed by the United State Attorney and a petition for temporary restraining order was filed by the high school principal and a member of the board of education and the Assistant Attorney **General** and other attorneys connected with the segregation litigation, the injunction was not improperly issued on the ground that the action was not prosecuted in the name of the real parties in interest. [Bullock v. U.S.](#), C.A.6 (Tenn.) 1959, 265 F.2d 683, certiorari denied 79 S.Ct. 1294, 360 U.S. 909, 3 L.Ed.2d 1260, certiorari denied 79 S.Ct. 1452, 360 U.S. 932, 3 L.Ed.2d 1546, rehearing denied 80 S.Ct. 46, 361 U.S. 855, 4 L.Ed.2d 95. Injunction ☐ 1764

### **Miscellaneous parties, real party in interest**

Where stock exchange petitioned brokerage partnership into receivership, paid off claims of public creditors, took assignments and appeared through its nominee to recover thereon, presence of nominee and **general** course of conduct of exchange made it the real party in interest in competition with limited partner and the “opposing party” to limited partner's claim that he had become a partner and had suffered loss due to sundry malfeasance and nonfeasance of exchange. [Legate v. Maloney](#), C.A.1 (Mass.) 1965, 348 F.2d 164. Federal Civil Procedure ☐ 131; Federal Civil Procedure ☐ 779

Although ticket purchaser was real party in interest insofar as he sought refund of price of airline ticket, he failed to establish standing to **sue** on behalf of ticketholder after he was denied boarding due to his lack of visa. [Chukwu v. Board of Directors British Airways](#), D.Mass.1996, 915 F.Supp. 454, affirmed 101 F.3d 106, certiorari denied 117 S.Ct. 1473, 520 U.S. 1188, 137 L.Ed.2d 685. Carriers ☐ 249

Personal representatives of deceased plaintiffs in asbestos-related litigation could not amend the complaints in order to be substituted as proper parties in interest, as actions were commenced after deaths of plaintiffs, and therefore, plaintiffs had no

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legal existence to **sue**, rendering complaints null and void, and leaving nothing with any legal effect to which an amended complaint could relate back. [In re Asbestos Products Liability Litigation](#) (No. VI), E.D.Pa.2015, 311 F.R.D. 152, entered 2015 WL 6872494. Death ☐ 44

## **CAPACITY TO SUE OR BE SUED**

### **Capacity to sue or be sued generally**

The question of capacity to **sue** is whether the **person** bringing the suit has authority to use the courts of the jurisdiction in which the suit is brought. [Moore v. Matthew's Book Co., Inc.](#), C.A.8 (Mo.) 1979, 597 F.2d 645. Federal Civil Procedure ☐ 111

Subd. (b) of this rule relating to capacity to **sue** or be **sued** does not relate to the effect of bringing a suit. [Matter of Penn Cent. Transp. Co.](#), E.D.Pa.1976, 419 F.Supp. 1376. Federal Civil Procedure ☐ 111

“Capacity” is the ability of a particular individual or entity to **sue**, or to be brought into, the courts of a forum; it has no direct correlation to the conducting of business, the existence of an enforceable right, interest, cause of action, claim or defense, or



whether a party is a real party in interest. [Johnson v. Helicopter & Airplane Services Corp., D.C.Md.1975, 404 F.Supp. 726. Federal Civil Procedure](#) ☐ 111

Provisions of subd. (b) of this rule, dealing with capacity of parties to **sue** or be **sued**, are merely declaratory of existing law. [Hellrung v. Lafayette Loan & Trust Co., N.D.Ind.1951, 102 F.Supp. 822. Federal Civil Procedure](#) ☐ 111

Although subcontractor on public utilities collection line project was not real party in interest to assert breach of contract claim directly against county under North Carolina law, **general** contractor who was party to construction contract with county had substantive right to **sue** county for breach of contract, unjust enrichment, and negligence, and request damages on subcontractor's behalf without defeating court's diversity jurisdiction. [Key Constructors, Inc. v. Harnett County, E.D.N.C.2016, 315 F.R.D. 179. Federal Civil Procedure](#) ☐ 131

Capacity to **sue** should not be confused with concept of standing or subject-matter jurisdiction. [In re Hashim, Bkrtcy.D.Ariz.1995, 188 B.R. 633. Federal Civil Procedure](#) ☐ 111

#### **Cause of action distinguished, capacity to sue or be sued**

“Cause of action” and “capacity to **sue**” are distinguishable in that “capacity to **sue**” is plaintiff's personal right to come into court, while his “cause of action” is his right to relief under the facts. [De Franco v. U.S., S.D.Cal.1955, 18 F.R.D. 156. Federal Civil Procedure](#) ☐ 111

#### **Sua sponte determination by court, capacity to sue or be sued**

##### **Accounts, capacity to sue or be sued**

Investor who had co-owned investment account with her mother prior to her mother's death was the real party in interest in lawsuit that investor brought against bank, alleging that bank mishandled account when it unilaterally removed her as co-owner and allowed her brother to steal from it; accepting facts alleged in complaint in the light most favorable to investor, she was **suing** on her own behalf, not on behalf of her mother's estate, even though the account was titled solely in her mother's name at the time of her mother's death, as the action was being brought by the **person** “entitled to enforce the right.” [Fisher v. PNC Bank, N.A., C.A.11 \(Fla.\) 2021, 2 F.4th 1352. Federal Civil Procedure](#) ☐ 131

Account owned by investor, which owned notes sold by Icelandic bank until bank bought them back under repurchase provision, had no legal capacity to be **sued** in Icelandic bank's diversity action under District of Columbia's Uniform Foreign-Country Money Judgments Recognition Act to enforce default judgment entered against account in bank's action in Icelandic court to

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rescind buy-back and recover the monies expended; account was a portfolio created to hold assets under control and for the benefit of investor, and because account was under investor's complete control and had no assets of its own, judgment obtained against account could not be satisfied without securing additional judgment imposing liability on investor. [Kaupthing ehf. v. Bricklayers and Trowel Trades International Pension Fund Liquidation Portfolio, D.D.C.2017, 291 F.Supp.3d 21. Judgment](#) ☐ 830.1

#### **Colleges and universities, capacity to sue or be sued**

State university's Board of Regents, and not university or its medical school, had personal capacity to **sue** and be **sued** under South Dakota law, precluding former employee's suit against medical school for violations of Americans with Disabilities Act (ADA); South Dakota law provided for legislature to direct by law in what manner and in what courts suits could be brought against state and its entities, and while university, and later its medical school, were created by state law, they were not granted power to **sue** or be **sued** and those powers were instead explicitly granted to Board of Regents that had control of university and its medical school. [Lundquist v. University of South Dakota Sanford School of Medicine, C.A.8 \(S.D.\) 2013, 705 F.3d 378. Education](#) ☐ 1091

### **Corporations, capacity to sue or be sued--Generally**

This rule governing capacity of parties to **sue** or be **sued** deals only with the **general** capacity of a corporation to **sue** or be **sued**. [Joseph Muller Corp. Zurich v. Societe Anonyme de Gerance et D'Armement, C.A.2 \(N.Y.\) 1971, 451 F.2d 727, certiorari denied 92 S.Ct. 1609, 406 U.S. 906, 31 L.Ed.2d 816. Corporations And Business Organizations](#) ☐ 2525

Rule 17 of Federal Rules of Civil Procedure concerns capacity of entities to **sue** and be **sued**; on question of who can represent whom in federal court, rule is silent and therefore inapplicable. [Brown v. Ortho Diagnostic Systems, Inc., E.D.Va.1994, 868 F.Supp. 168. Federal Civil Procedure](#) ☐ 111

Provision of this rule that capacity of a corporation to **sue** or be **sued** shall be determined by the law of the state under which it was organized was meant to be an adoption of local rules of capacity to **sue** and to be **sued** and was not intended to equate capacity with the concept of doing business. [Johnson v. Helicopter & Airplane Services Corp., D.C.Md.1975, 404 F.Supp. 726. Federal Civil Procedure](#) ☐ 111

Provision of this rule that capacity of corporation to **sue** or be **sued** shall be determined by law under which it was organized relates only to capacity to **sue** and be **sued** and not to place of suit. [John W. Johnson, Inc. v. Atlantic States Const. Co., D.C.Md.1967, 276 F.Supp. 379. Corporations And Business Organizations](#) ☐ 3187

### **---- Board of directors, corporations, capacity to sue or be sued**

Under Puerto Rico law, a board of directors is not a legal entity separate and apart from the corporation it directs and, thus, lacks capacity to be **sued**. [Lopez-Rosario v. Programa Seasonal Head Start/Early Head Start de la Diocesis de Mayaguez, D.Puerto Rico 2017, 245 F.Supp.3d 360, affirmed 847 Fed.Appx. 9, 2021 WL 827670. Corporations And Business Organizations](#) ☐ 2538

### **---- Dissolved, corporations, capacity to sue or be sued**

Once dissolved, investment funds that had been organized as limited liability companies (LLC) under Cayman Island law had no legal existence, and thus no standing, to bring suit in their own names against banks for violations of Sherman Act, Racketeer Influenced and Corrupt Organizations Act (RICO), and common law, based on alleged manipulation of Singapore based benchmark interest rates; under Cayman Island law, dissolved LLCs had neither capacity to **sue** nor legal existence following their dissolution, nor did Cayman Islands law permit dissolved entities to be restored as would allow for standing. [Fund Liquidation Holdings LLC v. Bank of America Corporation, C.A.2 \(N.Y.\) 2021, 991 F.3d 370, certiorari denied 142 S.Ct. 757,](#)

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[211 L.Ed.2d 475, on remand 2022 WL 2072555, on remand 2022 WL 2073881, on remand 2022 WL 2073927. Antitrust And Trade Regulation](#) ☐ 966; [Finance, Banking, And Credit](#) ☐ 820; [Racketeer Influenced And Corrupt Organizations](#) ☐ 57

Because no Georgia case has directly addressed when an administratively dissolved corporation has capacity to bring suit, question would be certified to the Georgia Supreme Court whether corporation that is administratively dissolved pursuant to Georgia statute has the capacity to bring a federal antitrust claim. [Gas Pump, Inc. v. General Cinema Beverages of North Florida, Inc., C.A.11 \(Ga.\) 1993, 982 F.2d 478, certified question answered 436 S.E.2d 207, 263 Ga. 583, answer to certified question conformed to 12 F.3d 181. Federal Courts](#) ☐ 3107

Assuming that employer was no longer a going concern and had no assets, it continued to have capacity to **sue** and be **sued** under District of Columbia law by employees, who brought wage-and-hour claims under Fair Labor Standards Act, (FLSA) and District law, where employer was formed under District law, which provided that even dissolved corporations could **sue** and be **sued**. [Giron v. Zeytuna, Inc., D.D.C.2022, 597 F.Supp.3d 29. Corporations and Business Organizations](#) ☐ 3151

When state law provides that dissolved corporation may maintain suit to collect its assets, such corporation will have capacity to **sue** in federal courts even after dissolution. [Race Safe Systems, Inc. v. Indy Racing League, N.D.N.Y.2003, 251 F.Supp.2d 1106, 66 U.S.P.Q.2d 1536. Corporations And Business Organizations](#) ☐ 3151

Federal civil procedure rule providing that capacity of corporation to **sue** or be **sued** will be determined by law under which it was organized applies to dissolved corporations as well as existing corporations. [Domino Media, Inc. v. Kranis, S.D.N.Y.1998, 9 F.Supp.2d 374, affirmed 173 F.3d 843. Corporations And Business Organizations](#) ☐ 3151

Corporations formed by owner of hazardous waste disposal site after site was closed were never properly dissolved under Pennsylvania law, and thus, corporations had capacity to be **sued** in CERCLA action seeking recovery of response costs for cleanup of site, where no articles of dissolution of corporations were received or filed with Pennsylvania Department of State; mere filing of out of existence affidavit did not dissolve corporations under Pennsylvania law. [Atlantic Richfield Co. v. Blosenski, E.D.Pa.1994, 847 F.Supp. 1261. Corporations And Business Organizations](#) ☐ 3030

Corporation had no capacity to be **sued** for contribution under CERCLA or Minnesota Environmental Response and Liability Act (MERLA) after expiration of three years following date on which it filed its certificate of voluntary dissolution. [Onan Corp. v. Industrial Steel Corp., D.Minn.1989, 770 F.Supp. 490, affirmed 909 F.2d 511, certiorari denied 111 S.Ct. 431, 498 U.S. 968, 112 L.Ed.2d 414. Corporations And Business Organizations](#) ☐ 3151

Where action was filed against corporation more than two years after issuance of certificate of dissolution by Secretary of State of Illinois, under 32 Ill.Stat.Ann. § 157.94, corporation no longer had capacity to be **sued**, despite contention that action should be permitted to proceed against corporation in order to reach corporation's parent, which was not party to action, and whose only asset in United States was interest in corporation's liquidating trust. [Showers v. Cassiar Asbestos Corp., Ltd., E.D.Pa.1983, 574 F.Supp. 322. Corporations And Business Organizations](#) ☐ 3151

#### ---- Forfeiture of status, corporations, capacity to sue or be sued

Corporate automobile dealer whose charter had been forfeited in 1973 for failure to pay taxes but which paid the taxes in 1975, while motions for judgment n.o.v. against it in action against automobile manufacturer was pending, and whose charter was revived when the taxes were paid had standing, under Maryland law, to **sue** the automobile manufacturer so that court should not have granted judgment n.o.v. in favor of the automobile manufacturer on the grounds that corporate automobile dealership did not have standing. [Chrysler Credit Corp. v. Superior Dodge, Inc., C.A.4 \(Md.\) 1976, 538 F.2d 616, certiorari denied 97 S.Ct. 743, 429 U.S. 1042, 50 L.Ed.2d 754. Corporations And Business Organizations](#) ☐ 3153

#### ---- Suspended, corporations, capacity to sue or be sued

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Where corporation by reason of its having failed to meet franchise tax obligations of [West's Ann.Rev. & Tax Code, § 23301 et seq.](#), had been suspended from conducting business operations in state of California, such suspension or forfeiture brought with it inability to either **sue** or be **sued** within the state of California. [Weinstock v. Sinatra, C.D.Cal.1974, 379 F.Supp. 274. Corporations And Business Organizations](#) ☐ 3151

Where Delaware corporation was suspended from doing business in Oklahoma for failure to pay its annual franchise tax, but was subsequently reinstated after paying the tax, corporation had capacity to **sue** in Oklahoma on contract entered into during period of suspension. [Flour Mills of America, Inc. v. Pace, E.D.Okla.1977, 75 F.R.D. 676. Federal Civil Procedure](#) ☐ 111

#### ---- Merger or change of name, corporations, capacity to sue or be sued

#### ---- Miscellaneous cases, corporations, capacity to sue or be sued

Corporations which were non-resident aliens having no assets in United States on which to base jurisdiction had no standing

to **sue** for injunction to have their names stricken from Securities and Exchange Commission's "Canadian Restricted List." [Kukatush Min. Corp. \(N.P.L.\) v. Securities and Exchange Commission, C.A.D.C.1962, 309 F.2d 647, 114 U.S.App.D.C. 27. Injunction](#) ☐ 1505

Florida-based limited liability companies (LLC) which engaged in business of property acquisition, but which had been administratively dissolved by the state of Florida, had capacity to **sue**, and thus, could participate action against multiple defendants, alleging that defendants stole more than \$44 million from them through a fraudulent financing scheme; action was brought in New York District Court, New York law allowed **persons** winding up affairs of LLCs to **sue** in the name of and on behalf of LLCs, and lawsuit was brought by LLCs before they were dissolved allegedly in effort to wind up their affairs. [Sands Harbor Marina Corp. v. Wells Fargo Insurance Services of Oregon, Inc., E.D.N.Y.2016, 156 F.Supp.3d 348. Corporations and Business Organizations](#) ☐ 3664

Where bulk of business dealings between New York factoring corporation and Georgia residents took place outside of Georgia and there was no regular scheme of supervision of Georgia customers, New York factoring corporation was not "doing business" in qualification sense in Georgia to extent that, under New York law, a Georgia corporation in like circumstances would be required to qualify in New York so as to bring suit and New York corporation had capacity to **sue** in federal court sitting in Georgia. [Textile Banking Co. v. Colonial Chemical Corp., N.D.Ga.1967, 285 F.Supp. 824. Corporations And Business Organizations](#) ☐ 3202

Cuban corporation, qualified to do business in New York, could **sue** bank for determination of corporation's rights to sums and securities deposited in bank in New York, even though corporation's existence had been purportedly terminated by Cuban expropriation law. [Compania Ron Bacardi, S. A. v. Bank of Nova Scotia, S.D.N.Y.1961, 193 F.Supp. 814. International Law](#) ☐ 359

Missouri limited liability company's (LLC's) failure to register to do business in Kansas, where it owned commercial property that it rented out to tenant that later filed for Chapter 11 relief, until after expiration of claims bar date in debtor-tenant's bankruptcy case did not require disallowance of proof of claim that it had filed prior to expiration of bar date on ground that it lacked the capacity to file proof of claim; LLC could file proof of claim, even though, at time that it filed its proof of claim, it lacked capacity to **sue** under Kansas state law, to enforce its substantive rights as creditor under the Bankruptcy Code. [In re Flex Financial Holding Company, Bkrcty.D.Kan.2014, 518 B.R. 891. Bankruptcy](#) ☐ 2895.1

#### **Endangered species, capacity to sue or be sued**

Bird protected by Endangered Species Act (ESA) was not authorized to bring suit as named plaintiff under rule of civil procedure addressing capacity of infants or incompetent **persons** to bring suit. [Hawaiian Crow \('Alala\) v. Lujan, D.Hawaii 1991, 906 F.Supp. 549. Environmental Law](#) ☐ 655; [Environmental Law](#) ☐ 657

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#### **Estates, capacity to sue or be sued**

Heir of art collector had capacity to be **sued** as individual in museums' declaratory judgment suit seeking determination that he had no right to paintings in museums' collections, where under law of Germany, where heir was domiciled, single co-heir could be **sued** for such a negative declaration. [Museum of Modern Art v. Schoeps, S.D.N.Y.2008, 549 F.Supp.2d 543. Declaratory Judgment](#) ☐ 300

#### **Foreign entities, capacity to sue or be sued**

##### **Government entities and employees, capacity to sue or be sued--Generally**

Under Virginia law, an operating division of a governmental entity cannot be **sued** unless the legislature has vested the operating division with the capacity to be **sued**. [Smith v. Town of South Hill, E.D.Va.2020, 611 F.Supp.3d 148. Municipal](#)

Capacity of governmental entity to be **sued** in federal courts is governed by state law. *Bonilla v. City Council of City of Chicago*, N.D.Ill.1992, 809 F.Supp. 590. Federal Courts 3071(1)

---- **Commission or agency, government entities and employees, capacity to sue or be sued** Farmers Home Administration, an unincorporated department of the federal government, is not a legal entity and may not be **sued** and, hence, action against Administration charging conspiracy to defraud intervenors of their membership rights in grazing association and challenging sale of association land, which had been mortgaged to Administration, without intervenor's approval was properly dismissed. *Owyhee Grazing Ass'n, Inc. v. Field*, C.A.9 (Idaho) 1981, 637 F.2d 694. United States 1535

The Yonkers Commission on Human Rights lacks capacity to **sue**, notwithstanding statute empowering it to appoint attorneys. *Yonkers Com'n on Human Rights v. City of Yonkers*, S.D.N.Y.1987, 654 F.Supp. 544. Municipal Corporations 1016

Since city planning commission was not given capacity to be **sued** by either state or local mandate, it could not be defendant in action alleging that city redevelopment plan was discriminatory. *Davis v. City of Portsmouth, Va.*, E.D.Va.1983, 579 F.Supp. 1205, affirmed 742 F.2d 1448. Civil Rights 1347

Defendant commission empowered by ordinance to classify and censor motion picture films to be exhibited in city of Milwaukee had capacity to be **sued** as a matter of state law and therefore had capacity to be **sued** as a matter of federal law. *National Ass'n of Theatre Owners of Wis., Inc. v. Motion Picture Commission of City of Milwaukee*, E.D.Wis.1971, 328 F.Supp. 6. Municipal Corporations 1016

County juvenile bureau had capacity to be **sued** in federal court, in former employee's employment discrimination action, although there was not an express "sue and be sued" provision in the Oklahoma Juvenile Code (OJC), where the OJC provided that the county in which a juvenile bureau sat was obligated to represent the juvenile bureau in any lawsuit, and the Oklahoma Attorney General stated in an opinion that counties were responsible for judgments against juvenile bureaus. *McClellan v. Board of County Com'rs of Tulsa County*, N.D.Okla.2009, 261 F.R.D. 595. Counties 208

---- **Courts and court officials, government entities and employees, capacity to sue or be sued** Supremacy Clause did not supersede Louisiana law establishing that a state court lacked capacity to be **sued**, in action brought by white former employee of Louisiana's 21st Judicial District against District for disparate treatment on the basis of her race in violation Title VII, alleging that her termination after her political speech on social media was reported was due to her race; there was no direct conflict of laws, rather, the federal rules merely dictated that state law determined what entities could be

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**sued** under Title VII. *McLin v. Twenty-First Judicial District*, M.D.La.2022, 614 F.Supp.3d 278, affirmed 79 F.4th 411. Civil Rights 1531; Federal Courts 3031(1); Federal Preemption 36

---- **Legislative entities or members, government entities and employees, capacity to sue or be sued** Under Louisiana law, parish council was acting as legislative agency for parish in enacting zoning plans at issue, and thus council was not juridical entity with procedural capacity to **sue** or be **sued**, necessitating dismissal of claims against council in action brought against council and others by organizations whose members claimed descent from formerly enslaved people, which arose from allegations that members' civil liberties, property rights, and religious rights were violated by parish's land use plan; parish's home rule charter vested council with all legislative power in parish, and charter was silent as to whether council could **sue** or be **sued**. *Inclusive Louisiana v. St. James Parish*, E.D.La.2023, 2023 WL 7920808. Counties 208; Zoning and Planning 1333(3)



#### ---- Police and sheriff, government entities and employees, capacity to sue or be sued

County sheriff's office was subdivision of county, rather than separate, independent entity, that did not have capacity to be **sued** under New York law, warranting dismissal of vehicle occupants' claims against sheriff's office for unlawful search and seizure, false arrest and false imprisonment, failure to intervene, and negligent hiring, training, retention, and supervision under New York law, and for § 1983 *Monell* liability; occupants specifically alleged that sheriff's office was “department,” “bureau,” “office,” “unit,” and “subdivision” of county, and nothing supported conclusion that sheriff's office was independent entity. *Forrest v. County of Greene*, N.D.N.Y.2023, 676 F.Supp.3d 69, reconsideration denied 2023 WL 5097970. [Civil Rights](#) ☐ 1348

Sheriff department was not juridical **person** capable of being **sued** under Louisiana or federal law; Louisiana law governed whether the department had capacity to be **sued** in action alleging denial of adequate medical care for prisoner, department must have qualified as juridical **person**, juridical **person** was an entity to which the law attributed personality, and department was not legal entity capable of being **sued**. *Brown v. St. Landry Parish Sheriff's Dept.*, W.D.La.2018, 298 F.Supp.3d 879. [Counties](#) ☐ 208; [Federal Courts](#) ☐ 3031(1)

The police department of a home rule municipality under Texas law was not a separate legal entity apart from the city, and thus lacked the legal existence and capacity to be **sued** for constitutional and civil rights violations under § 1983, where the city charter reserved all the **general** powers of a city to the city itself and nowhere granted the police department the power to **sue** or be **sued**. *Paredes v. City of Odessa*, W.D.Tex.2000, 128 F.Supp.2d 1009. [Municipal Corporations](#) ☐ 1016

Under Arizona law, county sheriff had capacity to **sue** and to be **sued**, even though no statute expressly so stated. *Mack v. U.S.*, D.Ariz.1994, 856 F.Supp. 1372, affirmed in part, reversed in part, dismissed in part 66 F.3d 1025, certiorari granted 116 S.Ct. 2521, 518 U.S. 1003, 135 L.Ed.2d 1046, reversed 117 S.Ct. 2365, 521 U.S. 898, 138 L.Ed.2d 914. [Public Employment](#) ☐ 987; [Sheriffs And Constables](#) ☐ 134

Municipal police department was department within city rather than separate individual, corporation, partnership or unincorporated association, and thus, police department lacked legal existence and capacity to be **sued** independently for alleged civil rights violations. *Maxwell v. Henry*, S.D.Tex.1993, 815 F.Supp. 213. [Civil Rights](#) ☐ 1389

County jail inmate's suit against sheriff, alleging that inmate was incarcerated for protracted period of time without outdoor exercise, was against sheriff as employee of county office of sheriff, not as employee of county, for purpose of determining whether county had to be served in order for suit to be maintained, even if office of sheriff was not cognizable legal entity that could be **sued**. *Guy v. Jones*, E.D.N.C.1990, 747 F.Supp. 314. [Counties](#) ☐ 219

#### ---- Miscellaneous cases, government entities and employees, capacity to sue or be sued

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The National Park Foundation (NPF), a non-profit, non-governmental organization chartered by Congress to accept private gifts for the benefit of, or in connection with, the National Park Service (NPS), was not itself a federal entity entitled to sovereign immunity, and thus the Federal Tort Claims Act's (FTCA) exhaustion provisions did not bar tort claims brought by a commercial boat rental business against the NPF for intentional interference with business relations, conspiracy to carry out an unlawful eviction and interfere with business relations, and negligent interference with business relations, in connection with efforts to terminate its lease on land administered by the NPS; business alleged that the NPS took action to terminate business's lease on behalf of the NPF, and NPF's charter contained a “**sue and be sued**” provision. *Jack's Canoes & Kayaks, LLC v. National Park Service*, D.D.C.2013, 937 F.Supp.2d 18. [United States](#) ☐ 954; [United States](#) ☐ 1536

Under Texas law, county juvenile board did not have the capacity to be **sued** by county juvenile probation department employees, who asserted § 1983 and Title VII claims, where no legislation had vested the board with jural authority, and the board was a county agency, rather than an arm of the state, which formulated detention policy on behalf of the county. *Coates*



Youth organization was a state program facilitated by the South Dakota State University (SDSU) and overseen by its Board of Regents, and as such, under South Dakota law, did not have the capacity to be **sued**. [B.K. ex rel. Kroupa v. 4-H, D.S.D.2012, 877 F.Supp.2d 804](#), stay denied, affirmed 731 F.3d 813. Education ☐ 1015

County jail was not a “**person**” under North Carolina law, and thus lacked the capacity to be **sued** in pre-trial detainee's § 1983 suit. [Wiley v. Buncombe County, W.D.N.C.2012, 846 F.Supp.2d 480](#), affirmed 474 Fed.Appx. 285, 2012 WL 2389266. Civil Rights ☐ 1348

Various village officials could not be **sued**, in their official capacities, in Racketeer Influenced and Corrupt Organizations Act (RICO) suit alleging illegal scheme to ticket and fine motorists; official capacity suit was equivalent to suit against village, which could not be maintained. [Wood v. Incorporated Village of Patchogue of New York, E.D.N.Y.2004, 311 F.Supp.2d 344](#). Racketeer Influenced And Corrupt Organizations ☐ 64

Kansas City, Missouri school district has legal capacity to institute school desegregation suit and upon being realigned as party defendant had legal capacity to be **sued**. [School Dist. of Kansas City, Mo. v. State of Mo., W.D.Mo.1978, 460 F.Supp. 421](#), appeal dismissed 592 F.2d 493. Education ☐ 849

### **Political parties, capacity to sue or be sued**

The National Republican Party has the capacity to be **sued**. (Per McGowan, Circuit Judge, with four Judges concurring and four Judges concurring in the result.) [Ripon Soc., Inc. v. National Republican Party, C.A.D.C.1975, 525 F.2d 567, 173 U.S.App.D.C. 350](#), certiorari denied 96 S.Ct. 1147, 424 U.S. 933, 47 L.Ed.2d 341, certiorari denied 96 S.Ct. 1148, 424 U.S. 933, 47 L.Ed.2d 341. Election Law ☐ 167

### **Prisoners, capacity to sue or be sued**

Section 1983 of Title 42, which affords right to **sue** to any citizen of United States who has been deprived of any right, privilege or immunity, should prevail over conflicting policy purportedly expressed in this rule stating that capacity of an individual to **sue** or to be **sued** should be determined by law of his domicile, when applied in light of rationale of Virginia statutes, Code 1950, §§ 53-305 to 53-307, providing for appointment of a committee which may **sue** and be **sued** in respect to all claims or demands of any nature in favor of or against a **person** convicted of a felony. [Almond v. Kent, C.A.4 \(Va.\) 1972, 459 F.2d 200](#). Civil Rights ☐ 1389

Even if prisoner, an alleged domiciliary of Massachusetts who was serving a life sentence in New Jersey prison and who was **suing** for libel in federal court in New York, lacked capacity to **sue** under New York statute declaring that **person** sentenced to life imprisonment is thereafter deemed civilly dead, it was error to apply law of New York and dismiss action rather than

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law of plaintiff's domicile to determine his capacity to **sue**. [Urbano v. News Syndicate Co., C.A.2 \(N.Y.\) 1966, 358 F.2d 145](#), certiorari denied 87 S.Ct. 68, 385 U.S. 831, 17 L.Ed.2d 66. Action ☐ 66

Inmate bringing § 1983 claims against corrections officer was competent, and therefore, did not warrant appointment of a guardian or counsel to represent his interests; most recent mental health status examination contained normal findings, despite previously being diagnosed with **generalized** anxiety disorder and a paranoid personality disorder, health record indicated inmate responded well to treatment, he had not been adjudicated incompetent by any court, and inmate understood nature of action he commenced and responded appropriately to orders entered by the court. [Monroe v. Bryan, D.Del.2012, 881 F.Supp.2d 623](#), affirmed 520 Fed.Appx. 67, 2013 WL 1397820. Civil Rights ☐ 1445; Mental Health ☐ 488

Defendants, who were served with process in civil Racketeer Influenced and Corrupt Organizations Act (RICO) suit after their bid-rigging and bribery convictions but before their incarceration, had capacity to be **sued** under Virginia law, even

though no committee had been appointed for them as required to institute suit against incarcerated prisoners under Virginia law. [Buchanan County, VA v. Blankenship, W.D.Va.2005, 406 F.Supp.2d 642. Prisons](#)  308

New York state prisoner could not maintain an action where his capacity to **sue** was determined by New York law, which provided that **person** sentenced to imprisonment for life was civilly dead and could bring no action nor perform any legal function. [Lombardi v. Peace, S.D.N.Y.1966, 259 F.Supp. 222. Prisons](#)  309

Capacity to **sue** of New York state prisoner in civil rights action would be governed by New York law. [Lombardi v. Peace, S.D.N.Y.1966, 259 F.Supp. 222. Federal Courts](#)  3031(1)

#### **Receivers, capacity to sue or be sued**

If a corporation becomes insolvent, and a receiver of all its estate and effects is appointed right to enforce the rights of property of the corporation vests in the receiver, and he is the proper party to bring a suit, and, if he does not himself **sue**, he should be made a defendant to any suit by stockholders in the rights of the corporation. [Schmidt v. Esquire, Inc., C.A.7 \(Ind.\) 1954, 210 F.2d 908, certiorari denied 75 S.Ct. 31, 348 U.S. 819, 99 L.Ed. 646. Corporations And Business Organizations](#)  2044

A temporary receiver, appointed in accordance with McKinney's N.Y. **General** Corporation Law, § 162 [now McKinney's [N.Y. Business Corporation Law, § 1203](#)], had authority to receive the property of the corporation to be held subject to order of the court, and to maintain suit to obtain the possession of such property, and such a suit could be maintained in a foreign jurisdiction. [Cohen v. La Vin, C.A.2 \(Conn.\) 1954, 210 F.2d 550. Corporations And Business Organizations](#)  2924

Canadian corporation's assignment of all its claims to banks prior to appointment of private receiver did not preclude private receiver from bringing antitrust and breach of contract action, in view of fact that private receiver could **sue** in Canadian courts on any claim formerly held by Canadian corporation and in view of fact that partial assignment for collateral security could not deprive Canadian corporation of the right to **sue**. [Clarkson Co. Ltd. v. Rockwell Intern. Corp., N.D.Cal.1977, 441 F.Supp. 792. Corporations And Business Organizations](#)  3321

Federal Deposit Insurance Corporation as receiver of insolvent bank and Federal Deposit Insurance Corporation as corporation which bought assets from receiver **must be** treated as separate parties and Federal Deposit Insurance Corporation as corporation, rather than Federal Deposit Insurance Corporation as receiver, was proper party defendant in action for declaration that note which plaintiff gave to bank and which Federal Deposit Insurance Corporation as receiver sold to Federal Deposit Insurance Corporation as corporation was null and void. [Stern v. American Bankshares Corp., E.D.Wis.1977, 429 F.Supp. 818. Cancellation Of Instruments](#)  35(3)

#### **Stockholders, capacity to sue or be sued**

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Stockholder of merged Pennsylvania corporation had capacity to **sue** derivatively, under federal securities laws, on behalf of merged corporation and against directors and officers of merged corporation, surviving corporation, investment banking firm and other defendants, although under Pennsylvania law merged corporation had lost any legal identity, and failure to serve merged corporation, merely a nominal party, was not fatal since recovery could go directly to shareholders of merged corporation. [Miller v. Steinbach, S.D.N.Y.1967, 268 F.Supp. 255. Corporations And Business Organizations](#)  2081;  
[Corporations And Business Organizations](#)  2094

#### **Terrorist groups, capacity to sue or be sued**

District court lacked personal jurisdiction over Palestinian terrorist group in claims, arising under Israeli law, alleging that group carried out the bombing of a bus in Israel which resulted in the death of plaintiff's mother; group was an unincorporated

association, claims did not arise under the Constitution or laws of the United States, and law of the forum, the District of Columbia, did not permit an unincorporated association to **sue** or be **sued** directly. [Sisso v. Islamic Republic of Iran](#), D.D.C.2006, 448 F.Supp.2d 76. [Federal Courts](#) ☐ 2760(2)

District court would decline, in suit against terrorist group and its leader for wrongful death and other torts, to reevaluate issue of its jurisdiction over group or to consider distinct issue of group's capacity to be **sued** following death of group's leader, and court would instead proceed with issuance of its Findings of Fact and Conclusions of Law with respect to surviving claims against group, leaving for another day resolution of any challenge to proceeding against group on grounds that it lacked capacity to be **sued**, in light of prior Court of Appeals conclusion that service had been effected against group and that exercise of jurisdiction over it was constitutional and consistent with due process, as well as district court's previous entry of default judgment against group. [Mwani v. Bin Laden](#), D.D.C.2014, 302 F.R.D. 22. [Federal Courts](#) ☐ 3795

#### **Trade names, capacity to sue or be sued**

One may not **sue** a name unless some one is doing business under that name, in which case the party so doing business, may be **sued** individually as trading under that name or by the trade name as provided in subd. (b) of this rule. [In re Midwest Athletic Club](#), C.C.A.7 (Ill.) 1947, 161 F.2d 1005. [Federal Civil Procedure](#) ☐ 111

#### **Unrecognized political regimes, capacity to sue or be sued**

##### **Representative capacity, capacity to sue or be sued--Generally**

This rule providing that capacity to **sue** or be **sued** in representative capacity in federal court is to be determined by law of state of district presupposes federal jurisdiction, but relegates capacity to maintain suit within that jurisdiction to state law. [Erwin v. Barrow](#), C.A.10 (Okla.) 1954, 217 F.2d 522. [Federal Civil Procedure](#) ☐ 111

Son of deceased federal prison inmate, though older than 18 years of age, the age of majority in Florida, at the time lawsuit was initiated against the United States pursuant to the Federal Tort Claims Act and applying the laws of the state of Florida, did not have capacity to **sue** directly and could only prosecute his claims through a representative, since the age of majority under Puerto Rico law was 21 and son was a domiciliary of Puerto Rico. [Gonzalez-Gonzalez-Jimenez de Ruiz v. U.S.](#), M.D.Fla.2002, 231 F.Supp.2d 1187, affirmed 378 F.3d 1229. [Infants](#) ☐ 1273

**Generally**, authority of a personal representative to **sue** does not extend beyond territorial jurisdiction of court from which he derives his appointment. [Elliott v. Day](#), D.C.Or.1962, 218 F.Supp. 90. [Executors And Administrators](#) ☐ 420; [Executors And Administrators](#) ☐ 524(1)

#### **---- Organizations, representative capacity, capacity to sue or be sued**

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Where rights which belong to individuals cannot be adequately protected solely by means of lawsuits brought by the injured **persons**, organizations may **sue** on behalf of those whose rights have been infringed. [Independent Investor Protective League v. Saunders](#), E.D.Pa.1974, 64 F.R.D. 564. [Associations](#) ☐ 279

#### **---- Parents, representative capacity, capacity to sue or be sued**

Juvenile's mother, on behalf of juvenile, could not maintain action against county probation department for violating § 1983, Rehabilitation Act, ADA, and New York law by discriminating against and punishing juvenile based on his disability, type 1 diabetes, where department was administrative arm of county, and thus under New York law lacked capacity to **sue** or be **sued**. [Piotrowski on behalf of J.P. v. Rocky Point Union Free School District](#), E.D.N.Y.2020, 462 F.Supp.3d 270. [Civil Rights](#) ☐ 1348

To the extent father of minor ERISA plan beneficiary, who was also husband of plan participant, brought claim against plan administrator and plan challenging denial of benefits for beneficiary's residential mental health treatment, as a **general** guardian, father had standing to pursue claim seeking to enforce beneficiary's rights and recover damages for benefits due to beneficiary under plan; while father did not have standing to raise claims on his own, even to the extent he was also a beneficiary under plan, he was entitled to act as his son's **general** guardian, and bring suit on son's behalf. [Christine S. v. Blue Cross Blue Shield of New Mexico, D.Utah 2019, 428 F.Supp.3d 1209. Labor and Employment](#) ☐ 678

In action brought by minor children, although mother was asserting no rights of her own with respect to the children's claims, she could maintain the action as their representative since they lacked capacity to **sue**. [Kedra v. City of Philadelphia, E.D.Pa.1978, 454 F.Supp. 652. Infants](#) ☐ 1245; [Infants](#) ☐ 1273

**---- Parens patriae, representative capacity, capacity to sue or be sued**

**---- Executors and administrators, representative capacity, capacity to sue or be sued**

Since Arizona administratrix of decedent's estate cannot be **sued** under Arizona law in such state on claim arising therein for tort committed by decedent before his death, a nonresident of Arizona cannot **sue** such administratrix in federal court for District of Arizona on claim arising in another state for personal injuries caused by decedent's negligence during his lifetime. [Butcher v. Maffeo, C.A.9 \(Ariz.\) 1955, 225 F.2d 713. Courts](#) ☐ 8

Under S.H.A.Ill. c. 3, § 419, a nonresident administratrix appointed in another state had the capacity to **sue** as a personal representative in a federal district court sitting in Illinois. [O'Donnell v. Elgin, J. & E. Ry. Co., C.A.7 \(Ill.\) 1951, 193 F.2d 348, certiorari denied 72 S.Ct. 1051, 343 U.S. 956, 96 L.Ed. 1356. Executors And Administrators](#) ☐ 524(.5)

Daughter of deceased mortgagor failed to disclose her capacity as executrix of her father's estate in caption and initial pleading in Fair Debt Collection Practices Act (FDCPA) action in which she **sued** in her individual capacity, and thus daughter was not a "consumer" for purposes of FDCPA and lacked standing to bring action alleging that mortgagor violated the FDCPA by sending two letters to father's estate despite knowing that daughter was represented by counsel. [Hall v. Nationstar Mortg., LLC, E.D.Pa.2015, 255 F.Supp.3d 625. Finance, Banking, And Credit](#) ☐ 1475

Decedent's mother, appointed administratrix by New York court, lacked capacity to **sue** in Vermont federal court for death of decedent in Vermont, without having obtained ancillary letters of administration in Vermont. [Weinstein v. Medical Center Hospital of Vermont, Inc., D.C.Vt.1972, 358 F.Supp. 297. Death](#) ☐ 31(4)

11 V.S.A. § 1630, requiring nonresidents doing business in their individual capacity within Vermont to appoint process agent did not confer capacity to be **sued** on foreign executrix of nonresident's estate. [Palmer v. L.E. Leach Co., Inc., D.C.Vt.1973, 60 F.R.D. 602. Executors And Administrators](#) ☐ 525

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Where suit was filed more than six calendar months after death of deceased against Texas defendants in federal district court in Texas, Illinois resident, as executor of estate, had authority under [Vernon's Ann.Civ.St. art. 4675](#) to bring action on behalf of wife and children of deceased, Texas residents, he had capacity to **sue** on behalf of beneficiaries without joining them as parties and presence of beneficiaries in suit as those on whose behalf suit was brought was not enough to destroy diversity. [Johnson's Estate v. Bellville Hospital, S.D.Tex.1972, 56 F.R.D. 380. Federal Courts](#) ☐ 2427

**---- Trustees, representative capacity, capacity to sue or be sued**

Proper remedy for lack of capacity to **sue** by environmental remediation trust established by consent decree and settlement agreement in federal bankruptcy proceeding was allowing trust to amend complaint to substitute its trustee as plaintiff, rather

than dismissing trust's action under CERCLA against potentially responsible parties seeking cost recovery and contribution with respect to cleanup of additional 22 acres outside scope of original agreement; dismissal would lead to trustee simply refiling the complaint and completely wasteful repetition of proceedings that had already occurred. [Revitalizing Auto Communities Environmental Response Trust v. National Grid USA, C.A.2 \(N.Y.\) 2021, 10 F.4th 87, on remand 610 F.Supp.3d 451. Federal Civil Procedure](#) ☐ 392; [Federal Civil Procedure](#) ☐ 1746

Where recovery was sought for personal injuries occurring on Indian reservation belonging to tribe under tutelage of the United States, it was not permissible to **sue** Indians indirectly by **suing** United States guardian or trustee for them. [Haile v. Saunooke, C.A.4 \(N.C.\) 1957, 246 F.2d 293, certiorari denied 78 S.Ct. 268, 355 U.S. 893, 2 L.Ed.2d 191. Indians](#) ☐ 235

Bank had capacity, either as trustee of express trust for holders of certain home equity loan asset backed certificates or as party with whom or in whose name contract was made for another's benefit, to **sue** individual claiming to be owner of subject property, alleging interference with sale of property and harassment; federal rule provided that trustee of express trust could **sue** in its own name without joining trust as plaintiff, Delaware law provided that trustee could exercise powers as appropriate to wind up administration of estate and to distribute trust property to **persons** entitled to it, and pooling and servicing agreement entered into by bank and trust entities specifically provided bank with capacity to initiate and maintain suit. [U.S. Bank National Association v. La Mar Gunn, D.Del.2014, 31 F.Supp.3d 636, reconsideration denied 2014 WL 4364529.Finance, Banking, And Credit](#) ☐ 813; [Mortgages And Deeds Of Trust](#) ☐ 1645; [Trusts](#) ☐ 246

Under Maryland law, resident homeowners could not be accorded complete relief without nonresident contractor as a party, and, thus, dismissal of homeowners' action against contractor and his defunct corporation, seeking damages for claims arising out of a home improvement contract, was not warranted for joinder of improper party, where corporation had forfeited its corporate charter, had not revived its charter, and therefore had no legal existence, such that contractor was deemed corporation's trustee and could be **sued** on its behalf in suits related to winding up its affairs. [Djourabchi v. Self, D.D.C.2006, 240 F.R.D. 5. Federal Civil Procedure](#) ☐ 214; [Federal Civil Procedure](#) ☐ 1750

#### **Unincorporated associations, capacity to sue or be sued--Generally**

In states where an unincorporated association can neither **sue** nor be **sued** as a class, individual members of an association lack the capacity to **sue** or be **sued** in federal courts in a diversity action as class representatives of the unincorporated association. [Underwood v. Maloney, C.A.3 \(Pa.\) 1958, 256 F.2d 334, certiorari denied 79 S.Ct. 93, 358 U.S. 864, 3 L.Ed.2d 97. Federal Civil Procedure](#) ☐ 181

Federal Rule of Civil Procedure governing whether entity has capacity to **sue** and be **sued** only gives unincorporated associations the capacity to make and be subject to federal claims; it does not transform any particular group of individuals into an unincorporated association, and instead, such an association **must be** recognized as a legal entity by other law. [Goldenberg v. Indel, Inc., D.N.J.2010, 741 F.Supp.2d 618. Associations](#) ☐ 246

Under this rule permitting an unincorporated association to **sue** or be **sued** in its common name for purpose of enforcing for or against it a substantive right existing under Constitution or laws of the United States, capacity to **sue** is not limited to those

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instances where substantive right asserted belongs to unincorporated association as entity and not to its individual members. [Action Alliance for Senior Citizens of Greater Philadelphia v. Shapp, E.D.Pa.1975, 400 F.Supp. 1208. Associations](#) ☐ 322; [Constitutional Law](#) ☐ 687

When a party seeks to take advantage of exception in this rule allowing an unincorporated association to **sue** or be **sued** for purpose of enforcing a substantive right existing under laws of United States and where the laws under which that alleged right originates do not specifically limit the right to “**persons**” but rather say nothing one way or the other, a court is free to decide applicability of the substantive right exception on the merits of the particular case before it. [National Ass'n For Community Development v. Hodgson, D.C.D.C.1973, 356 F.Supp. 1399. Associations](#) ☐ 246



**---- Cooperatives, unincorporated associations, capacity to sue or be sued**

A Missouri voluntary, co-operative, mutual association could be **sued** in federal district court under Fair Labor Standards Act of 1938, § 201 et seq. of Title 29, notwithstanding that under laws of Missouri associations could not be **sued** or summoned as an entity. [Schmidt v. Peoples Telephone Union of Maryville, Mo., C.C.A.8 \(Mo.\) 1943, 138 F.2d 13. Labor And Employment](#) ☐ 2372

Cooperative engaging in insurance business had same right to **sue** as if it were a corporation. [Cooperativa De Seguros Multiples De Puerto Rico v. San Juan, D.C.Puerto Rico 1968, 294 F.Supp. 638. Insurance](#) ☐ 1207

**---- Labor unions, unincorporated associations, capacity to sue or be sued**

Where action based on diversity of citizenship was brought in federal district court in Rhode Island against union, in order for plaintiffs to have complied with subd. (b) of this rule respecting capacity of unincorporated associations to **sue** or be **sued**, plaintiffs were required to have brought suit by one of the two state-created methods, that is against union as an entity under Rhode Island statute, Gen.Laws 1956, § 9-2-12, authorizing such an action upon joining of designated officers as parties, or against all of its members. [Oskoian v. Canuel, C.A.1 \(R.I.\) 1959, 269 F.2d 311. Federal Civil Procedure](#) ☐ 217

In view of this rule stating that an unincorporated association may **sue** or be **sued** in its common name for purpose of enforcing for or against it a substantive right existing under Constitution or laws of the United States, local union had capacity to be **sued** for breach of no-strike provisions of collective bargaining agreement irrespective of state law. [Jersey Farms Milk Service, Inc. v. Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, M.D.Tenn.1969, 297 F.Supp. 1098. Labor And Employment](#) ☐ 1323

Absent congressional indication that a necessary remedy in dealing with racial discrimination in employment should be a federal common-law action for tortious interference with the affirmative action and nondiscrimination covenants in government contracts, building and construction trades council and unions which were voluntary, unincorporated associations lacking capacity to **sue** or be **sued** under Missouri law could not be **sued** by government for tortious interference with performance of such covenants. [U.S. v. Building and Const. Trades Council of St. Louis, Mo., AFL-CIO, E.D.Mo.1966, 271 F.Supp. 447. Corporations And Business Organizations](#) ☐ 3536(2); [Labor And Employment](#) ☐ 1978

Local union was voluntary unincorporated labor organization which might be **sued** in its common name. [Tennessee Val. Authority v. Local Union No. 110 of Sheet Metal Workers' Intern. Ass'n of Louisville, Ky., W.D.Ky.1962, 233 F.Supp. 997. Labor And Employment](#) ☐ 1978

**---- Retirement or pension programs, unincorporated associations, capacity to sue or be sued** Pension boards, which were organized and existed under laws of Pennsylvania, were entities which the law recognized and therefore had capacity to **sue** for alleged violations of federal securities laws; furthermore, even if pension boards were not proper plaintiffs, action would not be dismissed since reasonable time had not been allowed for joinder or substitution of a

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real party in interest. [Williamsport Firemen Pension Boards I and II v. E.F. Hutton & Co., Inc., M.D.Pa.1983, 567 F.Supp. 140. Federal Civil Procedure](#) ☐ 1828; [Securities Regulation](#) ☐ 27.29

In action in which retired employee alleged that defendants failed to award employee credit for his employment by predecessor company for purposes of computing amount of his pension benefits under successor company's retirement annuity plan, retired employee could not **sue** retirement committee which was unincorporated association not subject to suit under state law. [Comstock v. Pfizer Retirement Annuity Plan, D.C.Mass.1981, 524 F.Supp. 999. Associations](#) ☐ 246

The United Mine Workers of America Welfare and Retirement Fund is a trust and not an unincorporated association in the



sense contemplated by this rule and Code Va.1950, § 8-66 relating to the capacity to **sue** or be **sued** and the method of serving process. [Yonce v. Miners Memorial Hospital Ass'n, W.D.Va.1958, 161 F.Supp. 178. Associations](#) ☐ 251; [Labor And Employment](#) ☐ 246; [Labor And Employment](#) ☐ 1978; [Labor And Employment](#) ☐ 1984

**---- Student organizations, unincorporated associations, capacity to sue or be sued**

Complaint which was filed under § 1983 of Title 42 by individual students and a student organization and which alleged that student organization was a political organization whose activities depended upon abilities of its members to exercise constitutional rights that were purportedly limited by [S.H.A. ch. 122, § 30-17](#) authorizing revocation of scholarship aid for misconduct and being challenged as unconstitutional, sufficiently alleged injury to interest of student organization to accord student organization a capacity to **sue** and standing to represent its members. [Undergraduate Student Ass'n v. Peltason, N.D.Ill.1973, 359 F.Supp. 320. Civil Rights](#) ☐ 1395(2)

Official student government organization at state university constituted an “unincorporated association” within rule permitting an unincorporated association to **sue** to enforce a federal substantive right. [Associated Students of University of California at Riverside v. Kleindienst, C.D.Cal.1973, 60 F.R.D. 65. Associations](#) ☐ 246

**---- Tenant associations, unincorporated associations, capacity to sue or be sued**

Federal law, rather than Puerto Rico law, applied to determine the capacity to **sue** condominium's board of directors, and, thus, board had capacity to be **sued** under federal rule establishing that unincorporated associations had capacity to **sue** and be **sued**, in action brought by owner of condominium unit for violations of the ADA and the Fair Housing Act (FHA); claims concerned substantive rights pursuant to federal law. [Rivera v. Mora Development Corporation, D.Puerto Rico 2022, 624 F.Supp.3d 80. Federal Courts](#) ☐ 3031(1)

Tenants union which had office space, full-time staff **person**, and funding, but which lacked structure of elected officers, budget, and by-laws, was “unincorporated association” capable of bringing suit in its own name to enforce Fair Housing Act, civil rights laws, Thirteenth Amendment, Fourteenth Amendment, and United States Housing Act. [Project Basic Tenants Union v. Rhode Island Housing and Mortg. Finance Corp., D.R.I.1986, 636 F.Supp. 1453. Associations](#) ☐ 322; [Civil Rights](#) ☐ 1388

**---- Miscellaneous cases, unincorporated associations, capacity to sue or be sued**

Unincorporated associations, which could not be **sued** in their own names under Illinois law applicable at time in question, could not be served with process by delivering copy of summons and complaint alleging state common-law fraud to an officer, managing or **general** agent, or any other agent authorized to receive service of process. [Oyler v. National Guard Ass'n of U.S., C.A.7 \(Ill.\) 1984, 743 F.2d 545. Associations](#) ☐ 251

Plaintiff's complaint, alleging that certain entities assisted government officials perpetrate sexual assaults on her in her apartment, was not deficient for having named an entity not capable of being **sued**, based on her naming property manager, an unincorporated entity, as defendant, since building owner stood in shoes of manager and was a suable California corporation, and thus leave to amend to replace manager's name with that of owner was warranted; plaintiff brought suit against owner,

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despite her mistaken identity, as internet search and records from the California Secretary of State revealed that owner and manager were linked or related entities, and that owner's listed address was exact address that plaintiff provided for manager in her complaint, and exact address at which she attempted to serve manager by mail. [Canuto v. Mattis, D.D.C.2017, 273 F.Supp.3d 127. Federal Civil Procedure](#) ☐ 392

Under District of Columbia law, unincorporated division of corporation lacked legal capacity to be **sued**, and thus defendant identified in complaint as division of corporation lacked capacity to be **sued**, as so identified, in action by patentee for patent

infringement and misappropriation of trade secrets in United States District Court for the District of Columbia. [Smartdoor Holdings, Inc. v. Edmit Industries, Inc.](#), D.D.C.2015, 78 F.Supp.3d 275. Corporations and Business Organizations ☐ 2522

Professional investment advisor group, which operated as branch office of independent securities broker-dealer, was “unincorporated association,” and thus, could be **sued** under Federal Rule of Civil Procedure governing whether entity had capacity to **sue** and be **sued**. [Goldenberg v. Indel, Inc.](#), D.N.J.2010, 741 F.Supp.2d 618. Corporations And Business Organizations ☐ 3510; Corporations And Business Organizations ☐ 3536(2)

National Collegiate Athletic Association (NCAA), as unincorporated association, may properly be **sued** under ADA, Rehabilitation Act, and Sherman Act. [Bowers v. National Collegiate Athletic Ass'n](#), D.N.J.1998, 9 F.Supp.2d 460. Education ☐ 1225

Trademark infringement complaint filed by author of newspaper advice column against publisher of magazine that contained similar advice column, and against magazine itself, had to be dismissed as to the magazine, given complete lack of evidence that there was any such unincorporated partnership or association, or that magazine was entity capable of being **sued**. [Ludden v. Metro Weekly](#), D.D.C.1998, 8 F.Supp.2d 7, 47 U.S.P.Q.2d 1087. Trademarks ☐ 1567

Entity purporting to be merely gathering of **persons** sharing similar outlook or philosophy was subject to suit as unincorporated association, in view of evidence that entity, although informal and loosely knit, nonetheless operated as organization, with decision-making “councils,” individuals who acted as agents, representatives, or leaders on voluntary basis, and with informational network, that meetings or gatherings were held in many parts of country throughout year, and that recognized decision-making structure existed within entity. [U.S. v. Rainbow Family](#), E.D.Tex.1988, 695 F.Supp. 294. Associations ☐ 103; Associations ☐ 246

Although executive committee of board of directors of Iowa corporation was not type of organization ordinarily considered an association, it came within broad definition of association, with capacity to **sue** in federal district court. [Health Care Equalization Committee of Iowa Chiropractic Soc. v. Iowa Medical Soc.](#), S.D.Iowa 1980, 501 F.Supp. 970, affirmed 851 F.2d 1020, rehearing denied. Corporations And Business Organizations ☐ 3536(2)

Intergovernmental committee formed by Alaskan city, village, and borough to advise city and village on matters related to village's relocation was not an “unincorporated association” with capacity to **sue** under federal law; committee's continued existence was determined by the borough, city, and village, not the individuals serving on the committee, and those individuals did not determine who could serve on committee, finance its operations, determine its functions or scope of authority, control its continued existence, or bear ultimate responsibility for its actions. [Kivalina Relocation Planning Committee v. Teck Cominco Alaska, Inc.](#), D.Alaska 2004, 227 F.R.D. 523, affirmed 141 Fed.Appx. 650, 2005 WL 1939873. Municipal Corporations ☐ 1016

Action could not be brought against unincorporated association by suit against representatives; such suit was permissible only where association could not be **sued** as entity under state law, and Massachusetts permitted suit against association directly. [Northbrook Excess and Surplus Ins. Co. v. Medical Malpractice Joint Underwriting Ass'n of Massachusetts](#), D.Mass.1989, 128 F.R.D. 10, affirmed 900 F.2d 476. Associations ☐ 246; Federal Civil Procedure ☐ 186.5

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### **Partners and partnerships, capacity to sue or be sued--Generally**

Under local rule of civil procedure authorizing partnerships to **sue** or be **sued** in partnership name, partnership is treated as a legal entity, at least to the extent of obtaining and enforcing judgment by or against it. [Taormina Corp. v. Escobedo](#), C.A.5 (Tex.) 1958, 254 F.2d 171, certiorari denied 79 S.Ct. 44, 358 U.S. 827, 3 L.Ed.2d 66. Partnership ☐ 737

**Generally**, all partners are necessary parties-plaintiff in actions to enforce an obligation due the partnership, and a partner

may not **sue** in his own name on cause of action accruing to partnership. [Hartong v. Blue Valley Federal Sav. & Loan Ass'n](#), W.D.Mo.1990, 767 F.Supp. 1017. Partnership ☐ 741(2)

Under Illinois law, partnership may be **sued** in its firm name, but partnership must **sue** in names of all its partners. [Excalibur Oil, Inc. v. Sullivan](#), N.D.Ill.1987, 659 F.Supp. 1539. Partnership ☐ 741(1); Partnership ☐ 742(1)

Partnership itself could **sue** in its common name under specific provisions of this rule. [West Zion Highlands v. City of Zion](#), N.D.Ill.1982, 549 F.Supp. 673. Partnership ☐ 737

Since partnership could not be **sued** in state court, it could not be **sued** in federal forum. [Tiffany Industries, Inc. v. Harbor Ins. Co.](#), W.D.Mo.1982, 536 F.Supp. 432. Partnership ☐ 742(1)

**---- General partners, partners and partnerships, capacity to sue or be sued**

**General** partners of Tennessee **general** partnership could be **sued** in New York bankruptcy court for breaches of the partnership's contracts with Chapter 11 debtor. [In re Residential Capital, LLC](#), Bkrcty.S.D.N.Y.2015, 527 B.R. 590. Bankruptcy ☐ 3117

**---- Limited partners, partners and partnerships, capacity to sue or be sued**

Under Missouri law, limited partners had capacity to bring federal and Missouri securities law claims derivatively against **general** partners. [Allright Missouri, Inc. v. Billeter](#), C.A.8 (Mo.) 1987, 829 F.2d 631. Partnership ☐ 1159(1)

**---- Federal questions, partners and partnerships, capacity to sue or be sued**

Where count set forth claim based on law of United States against partnership, partnership as such could be **sued** in its common name in federal district court in Massachusetts, even if it could not be **sued** as such under Massachusetts law. [Feldberg v. O'Connell](#), D.C.Mass.1972, 338 F.Supp. 744. Federal Courts ☐ 3087

**---- Insurance actions, partners and partnerships, capacity to sue or be sued**

**---- Legal services, partners and partnerships, capacity to sue or be sued**

**---- Malpractice actions, partners and partnerships, capacity to sue or be sued**

Despite rule in District of Columbia that partnership was not entity capable of **suing** or being **sued**, action for professional malpractice, fraud, and tortious misrepresentation asserted against attorney could be maintained against his law firm as well, in that action had been commenced in Ohio, which was client's domicile, and was subsequently transferred to the District of Columbia, and action could have been maintained in Ohio against the law firm. [Applegate v. Dobrovir, Oakes & Gebhardt](#), D.D.C.1985, 628 F.Supp. 378, affirmed 809 F.2d 930, 258 U.S.App.D.C. 89, certiorari denied 107 S.Ct. 2181, 481 U.S. 1049, 95 L.Ed.2d 837. Attorneys And Legal Services ☐ 32

**---- Termination, partners and partnerships, capacity to sue or be sued**

Although partnership could maintain suit to recover for damages suffered in fire in which sole **general** partner was killed, even though partnership was technically terminated upon death of **general** partner, partnership would be permitted to file amended complaint adding individual partners as alternate plaintiffs. [Werner v. Illinois Cent. Gulf R.R.](#), E.D.La.1984, 578 F.Supp. 384. Federal Civil Procedure ☐ 365

#### ---- Trade secrets, partners and partnerships, capacity to sue or be sued

##### **Arbitration actions, capacity to sue or be sued**

Right under Title 9 was a “substantive right existing under the laws of the United States” within this rule excepting determination of question of capacity to **sue** or be **sued** under state law in case of partnership or other unincorporated association which has no capacity by law of state and allowing it to **sue** or be **sued** in its common name with respect to substantive right existing under laws of the United States. [Petrol Shipping Corp. v. Kingdom of Greece, Ministry of Commerce, Purchase Directorate, C.A.2 \(N.Y.\) 1966, 360 F.2d 103, certiorari denied 87 S.Ct. 291, 385 U.S. 931, 17 L.Ed.2d 213. Federal Courts](#) ☐ 3053

Notwithstanding that under law of District of Columbia **general** partnership could not bring action in its own name, **general** partnership could bring action to compel three individuals to join arbitration proceeding between **general** partnership and second **general** partnership in which individuals were **general** partners; Federal Arbitration Act creates substantive federal right for purposes of civil rule which states that partnership or other unincorporated association with no capacity to **sue** by law of state may **sue** or be **sued** in its common name to enforce substantive right existing under Constitution or laws of United States. [O & Y Landmark Associates of Virginia v. Nordheimer, D.D.C.1989, 725 F.Supp. 578. Alternative Dispute Resolution](#) ☐ 208

##### **Antitrust actions, capacity to sue or be sued**

New York law was applicable, in private antitrust action instituted in New York federal district court, on issue of capacity of individual plaintiffs to **sue**. [D'Ippolito v. Cities Service Co., C.A.2 \(N.Y.\) 1967, 374 F.2d 643. Federal Civil Procedure](#) ☐

111

Federal rules do not require that a corporation itself be **sued** in a private antitrust action; subd. (b) of this rule only comes into play when an injured party in such action chooses to **sue** the corporation directly. [Tondas v. Amateur Hockey Ass'n of U.S., W.D.N.Y.1977, 438 F.Supp. 310. Antitrust And Trade Regulation](#) ☐ 967

##### **Contract actions, capacity to sue or be sued**

##### **Malpractice actions, capacity to sue or be sued**

Plaintiff bringing diversity action alleging legal malpractice met both “capacity” and “standing” requirements, where applicable New Jersey law did not deny plaintiff the right to **sue** or be **sued** and standing was sufficiently pled by plaintiff's assertion that, due to defendant's conduct, plaintiff suffered an injury redressable by the court. [Felson v. Miller, E.D.N.Y.1987, 674 F.Supp. 975. Attorneys And Legal Services](#) ☐ 659

##### **Wrongful death actions, capacity to sue or be sued**

Administrator of estate of decedent, **su**ing for wrongful death under Pennsylvania law, had capacity to **sue** in federal court under this rule. [Borror v. Sharon Steel Co., C.A.3 \(Pa.\) 1964, 327 F.2d 165. Executors And Administrators](#) ☐ 420; [Federal Courts](#) ☐ 3069(5)

Plaintiff had standing to **sue** railroad for death of her son who was run over by train notwithstanding alleged common-law marriage of son. [Bennett v. Seaboard Coast Line R. Co., S.D.Ga.1969, 302 F.Supp. 271. Death](#) ☐ 31(7)

##### **Zoning ordinances and practices, capacity to sue or be sued**

##### **Warranty claims, capacity to sue or be sued**

## REPRESENTATION OF MINORS OR INCOMPETENTS

### Representation of minors or incompetents generally

Under this rule concerning representation of an infant in judicial proceedings, if a **general** guardian for a minor already has been appointed and qualified by state court, and he seeks to act as such in a federal court, his appointment and qualifications as such are tested by procedural law of state of appointment, but if minor does not have a validly appointed and qualified **general** guardian, federal court in which suit is brought may appoint a guardian ad litem to represent him. [Bengtson v. Travelers Indem. Co.](#), W.D.La.1955, 132 F.Supp. 512, affirmed 231 F.2d 263. [Infants](#) ☐ 1240(1)

### Discretion of court, representation of minors or incompetents

The requirement that a district court implement safeguards sufficient to protect an incompetent **person's** interests presupposes the existence of interests, and thus when it is clear that a potentially incompetent party has no interest that could be protected by appointing a guardian ad litem or issuing another appropriate order, a district court does not abuse its discretion when it declines to assess the party's competence. [Harris v. Mangum](#), C.A.9 (Ariz.) 2017, 863 F.3d 1133. [Mental Health](#) ☐ 488

Decision whether to appoint special representative for infant or incompetent **person** rests within sound discretion of court and will not be disturbed on appeal unless court has abused its authority. [Rubin v. Smith](#), D.N.H.1995, 882 F.Supp. 212. [Infants](#) ☐ 1237(2); [Infants](#) ☐ 1366; [Mental Health](#) ☐ 485.1; [Mental Health](#) ☐ 517

### Guardians, representation of minors or incompetents

**General** guardian of minor children appointed by state court in Mississippi did not have power to **sue** as such guardian in federal district court of Louisiana when she would lack power to **sue** in such capacity in state courts of Louisiana. [Slade v. Louisiana Power & Light Co.](#), C.A.5 (La.) 1969, 418 F.2d 125, certiorari denied 90 S.Ct. 1233, 397 U.S. 1007, 25 L.Ed.2d 419. [Federal Courts](#) ☐ 3059

While executor or administrator takes title to property of decedent, guardian of **person** of minor or other incompetent has no interest in his ward's property and guardian of his estate does not take legal title to the property, which remains in the ward, but merely acts as its custodian or manager. [McSparran v. Weist](#), C.A.3 (Pa.) 1968, 402 F.2d 867, certiorari denied 89 S.Ct. 1739, 395 U.S. 903, 23 L.Ed.2d 217. [Guardian And Ward](#) ☐ 34; [Mental Health](#) ☐ 220

Where law of foreign country in which plaintiff was resident and of which plaintiff was a citizen placed plaintiff in position of natural guardian of plaintiff's daughter and made relationship between plaintiff and plaintiff's minor daughter similar to relationship of trustee and cestui que trust, and gave plaintiff an interest in notes and income from notes, plaintiff was entitled as real party in interest to **sue** on notes in her own name without joining her daughter. [Chuchuru v. Chutchurru](#), C.A.10 (Colo.) 1950, 185 F.2d 62. [Federal Civil Procedure](#) ☐ 140

District court lacked the authority to appoint a **general** guardian or conservator rather than guardian ad litem for incompetent defendant in proceedings on government's petition for writ of ne exeat republica relating to tax matter. [U.S. v. Maryans](#), N.D.Ind.1992, 803 F.Supp. 1378. [Mental Health](#) ☐ 109; [Mental Health](#) ☐ 487

### Next friend, representation of minors or incompetents--Generally

Existence of relatives of minor children who were, or had been, placed in Rhode Island foster care system did not preclude federal court from appointing other individuals as next friends to represent minor children, in class action lawsuit, challenging the constitutionality of the foster care system, where the children's relatives did not move to represent them in federal court, there was no showing that the relatives were willing or able to represent them, and the relatives allegedly either refused to

represent the children or were unable to **sue** on their behalf. *Sam M. ex rel. Elliott v. Carcieri*, C.A.1 (R.I.) 2010, 608 F.3d 77, on remand 800 F.Supp.2d 363. **Infants** ☐ 1241

A self-appointed “next friend” who files a complaint on behalf of another must still meet at least two firmly rooted prerequisites for “next friend” standing: first, a “next friend” must provide an adequate explanation, such as inaccessibility, mental incompetence, or other disability, why the real party in interest cannot appear on his own behalf to prosecute the action; second, the “next friend” **must be** truly dedicated to the best interests of the **person** on whose behalf he seeks to litigate, and it has been further suggested that a “next friend” must have some significant relationship with the real party in interest. *Jonathan R. v. Justice*, S.D.W.Va.2023, 2023 WL 5500837. **Federal Civil Procedure** ☐ 103.4; **Mental Health** ☐ 492

Next friend need not be appointed by court and need not be lawyer but must provide adequate explanation why real parties in interest cannot bring suit, **must be** dedicated to the minor's best interests, and must have some significant relationship with the minor. *T.W. v. Brophy*, E.D.Wis.1996, 954 F.Supp. 1306, affirmed as modified 124 F.3d 893. **Infants** ☐ 1241

Incompetent **person** may **sue** by next friend without necessity of appointment of **general** guardian. *Bradley v. Harrelson*, M.D.Ala.1993, 151 F.R.D. 422. **Mental Health** ☐ 472.1

Incompetent **person** appears by his next friend, a nominal party; the **person** under the disability is the real party. *Crawford v. Loving*, E.D.Va.1979, 84 F.R.D. 80. **Federal Civil Procedure** ☐ 131

**Person** appointed by state court as guardian was entitled to be substituted as next friend to plaintiff. *Burns v. Phillips*, N.D.Ga.1970, 50 F.R.D. 187. **Federal Civil Procedure** ☐ 362

---- **Necessity and propriety of appointment, next friend, representation of minors or incompetents** Next friend should have been appointed for severely mentally retarded teenager after determining that her grandmother was inappropriate **person** where civil rights claims brought on behalf of the teenager were being subjected to dismissal. *Gardner by Gardner v. Parson*, C.A.3 (Del.) 1989, 874 F.2d 131. **Mental Health** ☐ 486

---- **Persons or entities entitled to bring action, next friend, representation of minors or incompetents** Pleadings in minor plaintiffs' suit stemming from their union leader fathers' deaths in Colombia were insufficient to assure Court that those asserting claims for minor children in prior action had interests identical to those being asserted by plaintiffs, as required for application of res judicata; in prior suit, family members of decedents were permitted to assert their claims anonymously, and there was nothing on face of complaint in prior case or notice of identities of plaintiffs that would allow court to conclude that children-plaintiffs in that case **sued** either by “next friend” or through guardian ad litem or that court appointed representative on their behalf. *Baloco ex rel. Tapia v. Drummond Co., Inc.*, C.A.11 (Ala.) 2011, 640 F.3d 1338, rehearing and rehearing en banc denied 437 Fed.Appx. 885, 2011 WL 3556920, on remand 2012 WL 4009432. **Res Judicata** ☐ 623; **Res Judicata** ☐ 652

Disqualification of next friends for subset of adopted minors, in action brought by class of current and former foster children against West Virginia officials challenging several key aspects of the state's child-welfare system, was not warranted, despite officials' assertion that disqualification of next friends was required because the minors' adoptive parents had become the minors' **general** guardians upon finalization of the adoptions; adopted minors' new **general** guardians had not moved to represent them in federal court or given any indication that they were willing to represent them, and, in the three or four years since the adoptions were finalized, the minors' adoptive parents had not expressed any disapproval of the lawsuit or of the next friends. *Jonathan R. v. Justice*, S.D.W.Va.2023, 2023 WL 5500837. **Infants** ☐ 1243

Foster parent's § 1983 claim against school district and superintendent, alleging she was retaliated against for her objection on religious grounds to school's “Opposite Dress Day,” would not be dismissed on basis of defendants' assertion she lacked capacity



to sue on behalf of her foster children. *Stanley v. Carrier Mills-Stonefront School Dist. No. 2*, S.D.Ill.2006, 459 F.Supp.2d 766. Civil Rights 1332(2)

Child welfare organization incorporated as nonprofit corporation had capacity of legal **person** to initiate actions on behalf of surviving orphans as “next friend.” *In re Air Crash Disaster Near Saigon, South Vietnam on April 4, 1975*, D.C.D.C.1979, 476 F.Supp. 521. Infants 1241

#### **Guardian ad litem, representation of minors or incompetents--Generally**

When conflict of interest exists between guardian and ward, court is required to determine whether appointment of guardian ad litem is necessary to protect the interests of the ward, even if incompetent already has a **general** representative, and where conflict of interest becomes apparent early in the litigation, appointment of guardian ad litem would be the customary and appropriate course. *Egan by Keith v. Jackson*, E.D.Pa.1994, 855 F.Supp. 765.

This rule relating to infants or incompetent **persons** as parties gives court power to appoint guardian ad litem. *Friends for all Children, Inc. v. Lockheed Aircraft Corp.*, D.C.D.C.1982, 533 F.Supp. 895. Infants 1237(2); Mental Health 487

#### **---- Mandatory or discretionary nature of appointment, guardian ad litem, representation of minors or incompetents**

Prior appointments of guardians ad litem or Court Appointed Special Advocates (CASA) to represent minor children in Rhode Island family court proceedings did not preclude other individuals who were not so appointed from filing suit as next friends on behalf of minor children, in federal putative class action lawsuit, challenging the constitutionality of Rhode Island foster care system; Rhode Island law did not confer **general** authority on guardians ad litem or CASA attorneys to represent the children outside family court proceedings. *Sam M. ex rel. Elliott v. Carcieri*, C.A.1 (R.I.) 2010, 608 F.3d 77, on remand 800 F.Supp.2d 363. Infants 1237(5)

**---- Necessity and propriety of appointment, guardian ad litem, representation of minors or incompetents** District Court erred in sua sponte dismissing claims asserted against city housing authority on behalf of alleged incompetent **person** by his uncle, arising out of its alleged mishandling of incompetent **person's** application for public housing, without first determining whether uncle was a proper guardian ad litem and without alleged incompetent **person's** having the benefit of counsel. *Berrios v. New York City Housing Authority*, C.A.2 (N.Y.) 2009, 564 F.3d 130. Costs, Fees, And Sanctions 481; Mental Health 500; Mental Health 517

District court in civil rights action brought on behalf of infant by unrelated **person** was required to appoint guardian ad litem or next friend who qualified under Mississippi law or to enter finding that infant's interests were adequately protected without appointment; complaint showed conflict of interest between infant and her father, only surviving parent, who allegedly abused her; and interests of **person** who sued on behalf of infant were not necessarily the same as those of infant. *Chrissy F. by Medley v. Mississippi Dept. of Public Welfare*, C.A.5 (Miss.) 1989, 883 F.2d 25. Infants 1238(1); Infants 2102

If infant or incompetent **person** is unrepresented, court should not enter judgment which operates as a judgment on the merits without complying with Federal Rule of Civil Procedure relating to appointment of guardian ad litem. *Krain v. Smallwood*, C.A.9 (Cal.) 1989, 880 F.2d 1119. Infants 1237(3); Mental Health 488

Purported conduct of counsel for mother, who was mentally incapacitated, and daughter, who was appointed mother's guardian ad litem, and counsel of other unrelated plaintiffs in cases involving settlements with minors or incompetent **persons**, did not create a conflict that would preclude daughter from continuing to act as mother's guardian ad litem; although defendants suggested that throughout the federal courts in California, competent plaintiff guardians ad litem conspired with their counsel to exact higher settlement awards and attorneys' fees whereas minor and incompetent plaintiffs received far less,

inapposite, as the case had not settled, and the court had not been presented with a motion to approve a settlement on behalf of mother. [Elliott v. Versa CIC, L.P., S.D.Cal.2018, 328 F.R.D. 554. Mental Health](#) 494

---- **Persons who may be appointed, guardian ad litem, representation of minors or incompetents** A federal court has the power to authorize someone other than a lawful representative to **sue** on behalf of a minor or incompetent **person** where that representative is unable, unwilling or refuses to act or has interests which conflict with those of the minor or incompetent. [Sam M. ex rel. Elliott v. Carcieri, C.A.1 \(R.I.\) 2010, 608 F.3d 77, on remand 800 F.Supp.2d 363. Infants](#) 1237(3); [Mental Health](#) 479

It would not be just or appropriate to add minor child as plaintiff in defamation and invasion of privacy action arising out of custody dispute concerning that child; there was no authority indicating that father, as noncustodial parent, could **sue** as next friend under District of Columbia law, and father could not be appointed as guardian ad litem, as custody battle continued, and it would be inappropriate to recognize either parent as appropriate guardian in any case. [Foretich v. Glamour, D.D.C.1990, 741 F.Supp. 247. Infants](#) 1241; [Infants](#) 1288

---- **Powers and duties, guardian ad litem, representation of minors or incompetents**  
An appointed guardian ad litem was an “other like fiduciary” pursuant to rule, providing that when infant or incompetent has representative such as **general** guardian, committee, conservator, or other like fiduciary, representative may **sue** or defend on behalf of infant or incompetent, and appointment barred mother from proceeding as next friend for her children on a matter for which guardian ad litem had been appointed. [Garrick v. Weaver, C.A.10 \(N.M.\) 1989, 888 F.2d 687. Infants](#) 1233; [Infants](#) 1236; [Mental Health](#) 491

Although in precise legal parlance, a minor plaintiff **sues** by a “next friend,” while a minor defendant defends by a “guardian ad litem,” the duties and powers of a minor's representative in litigation are identical, regardless of which title appropriately applies. [Dacanay v. Mendoza, C.A.9 \(Guam\) 1978, 573 F.2d 1075. Infants](#) 1246(1)

There were adequate reasons for daughter to continue acting as mother's guardian ad litem, in action to which both mother and daughter were plaintiffs; even if daughter had a defective power of attorney document, court's appointment made clear that daughter was appointed to represent mother specifically for the purposes of the action and not on the ground that she was mother's **general** representative, court's order did not identify the power of attorney, and defendants did not argue that the other four reasons identified in daughters motion, i.e., that she was the natural-born daughter of mother, she was also a named plaintiff in the action, mother was mentally incapacitated due to Alzheimer's disease, and she was competent and willing to act as guardian ad litem for mother, were false. [Elliott v. Versa CIC, L.P., S.D.Cal.2018, 328 F.R.D. 554. Mental Health](#) 494

---- **Unborn children, guardian ad litem, representation of minors or incompetents**  
Unborn children were not “**persons**” with a legally protectible interest so as to warrant the appointment of guardians ad litem in action challenging state provisions prohibiting the payment of state medical assistance funds for medically necessary abortions for women otherwise eligible to receive medical assistance except in cases where abortion is necessary to save the life of the mother. [Roe v. Casey, E.D.Pa.1978, 464 F.Supp. 483. Abortion And Birth Control](#) 126; [Infants](#) 1021; [Infants](#) 1238(1)

---- **Miscellaneous cases, guardian ad litem, representation of minors or incompetents**  
In action by union to require employer, formed as a partnership, to submit a mid-contract wage dispute to binding arbitration, judgment against three minor defendants was not subject to being set aside as having been imposed on them without prior

appointment of a guardian ad litem, inasmuch as a partnership may be **sued** in its common name for purpose of enforcing against it a substantive right existing under the laws of the United States, the right to arbitrate being such a right, and minors'

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**Rule 17. Plaintiff and Defendant; Capacity; Public Officers, FRCP Rule 17**

interests were adequately protected by the presence of their parents as defendants. (Per Heaney, Circuit Judge, with two Circuit Judges concurring and one Circuit Judge concurring in result.) [Laundry, Dry Cleaning and Dye House Workers Intern. Union, Local 93, of Springfield, Mo. v. Mahoney, C.A.8 \(Mo.\) 1974, 491 F.2d 1029, certiorari denied 95 S.Ct. 42, 419 U.S. 825, 42 L.Ed.2d 49. Federal Civil Procedure](#) 2651.1

**Types of representation, representation of minors or incompetents**

A **person** need not be a pro se litigant to be “unrepresented in an action,” under rule requiring district court to sua sponte consider whether to appoint a representative for an allegedly incompetent **person** who is unrepresented in an action; in context of rule, “unrepresented” does not refer to whether the party has counsel but rather whether they have a representative of the type that would be appointed pursuant to that rule. [Mondelli v. Berkeley Heights Nursing and Rehabilitation Center, C.A.3 \(N.J.\) 2021, 1 F.4th 145. Mental Health](#) 488

Fed. Rules Civ. Proc. Rule 17, 28 U.S.C.A., FRCP Rule 17

Including Amendments Received Through 5-1-24

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