

The Corporate Lawyer

The newsletter of the Illinois State Bar Association's Section on Corporate Law

Frivolous Appeal Results in Sanctions

BY MICHAEL R. LIED

THE SEVENTH CIRCUIT COURT OF Appeals recently reminded litigants about a couple of things. First, an order remanding a removed case to state court is almost never reviewable on appeal. Second, frivolous appeals really can result in sanctions under Federal Rule of Appellate Procedure 38. Excerpts from the opinion follow below.

The case arose out of prolonged divorce and custody proceedings in state court. In 2015, Jane and Kenton Girard were divorced in an order issued by the Cook County Circuit Court.

After the divorce, Kenton married Marissa Girard. Kenton and Jane later landed in court over a custody dispute.

In 2023 Jane moved to add Marissa to the postjudgment proceedings as a third-party respondent, accusing her of attempting to poison the mother–daughter relationship. The judge granted the joinder motion.

Things began to get uglier. A few days before a trial concerning custody issues, Kenton cross-claimed against his current wife, Marissa, seeking a declaration that he had no obligations under a “postnuptial indemnification agreement” that required him to reimburse her for legal expenses and any reduction in her earnings if Jane’s actions in the custody dispute “proximately cause[d]” a violation of her rights under

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Ethical Considerations for Lawyers Using AI-Generated Audio To Summarize Documents

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BY MARK C. PALMER

PICTURE A TOOL THAT CAN QUICKLY summarize dense, voluminous documents in short soundbites. Got your attention? Recently, a growing number of artificial intelligence (AI) platforms have begun experimenting with turning written content into highly tailored audio. For lawyers, these tools can transform long case opinions, pleadings, or appellate

briefs, for example, into audio formats that are easier to absorb during a commute, workout, or while multitasking.

These platforms allow users to upload PDFs, then use AI to generate audio overviews that are grounded strictly in those sources. This delivers more accurate and contextual answers based on the

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Frivolous Appeal

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the Constitution or federal law. (One wonders if this was a home-brewed contract.) That same day Marissa removed the entire case to federal court.

Jane moved to remand the case to state court, asserting that the case did not present a substantial federal question, but rather, only an interpretation of the postnuptial agreement, an issue governed exclusively by state contract law. The district judge agreed and remanded the case to state court.

Marissa appealed, beginning to dig herself into a hole. The appellate court quickly issued an order requiring Marissa to explain why her appeal should not be dismissed for lack of jurisdiction. This is because remand orders are not appealable unless the case is removed under 28 U.S.C. § 1442, the federal-officer removal provision, or § 1443, the civil-rights removal provision.

Digging deeper, Marissa then argued—for the first time—that she had removed the case pursuant to § 1443 because she faced a “barrage” of motions against her in the state-court proceedings, which she claimed amounted to discrimination based on her race and disability.

The court dismissed Marissa’s appeal for lack of jurisdiction, explaining that her belated invocation of § 1443 was frivolous. Digging yet deeper, Marissa moved for panel rehearing, and when that motion was denied, obtained an extension of time to file a petition for a writ of certiorari in the Supreme Court.

Jane moved for sanctions against Marissa under Rule 38 of the Federal Rules of Appellate Procedure, which authorizes an award of “just damages and single or double costs” incurred in defending against a frivolous appeal. She sought \$2,808.75 to cover her attorney’s fees and costs on appeal.

“An appeal is frivolous when the result is obvious or when the appellant’s argument is wholly without merit.” *Upchurch v. O’Brien*, 111 F.4th 805, 813 (7th Cir. 2024) (quotation marks omitted).

The court of appeals found Marissa’s appeal doubly frivolous. Marissa’s challenge to the judge’s removal order was doomed to fail, and the appeals court “unquestionably” lacked appellate jurisdiction to hear it.

First, there was never any basis to remove the case to federal court. Because the parties—all citizens of Illinois—were not diverse, “the propriety of removal depend[ed] on the existence of a federal question.” *Ne. Rural Elec. Membership Corp. v. Wabash Valley Power Ass’n*, 707 F.3d 883, 890 (7th Cir. 2013).

However, Kenton’s cross-claim—the basis for the removal—raised only contract and domestic-relations issues—the stuff of which state law is quintessentially concerned. *Wis. Cent. Ltd. v. TiEnergy, LLC*, 894 F.3d 851, 854 (7th Cir. 2018); *Allen v. Allen*, 48 F.3d 259, 261 (7th Cir. 1995). The postnuptial agreement fleetingly mentioned federal law, but the dispute remained one of state contract and domestic-relations law; it did not require the resolution of any federal question—much less a substantial one.

Second, the order was not reviewable on appeal. As the earlier dismissal order explained, the appeals court has “consistently reminded litigants” that remand orders are ordinarily not appealable. See, e.g., *Phoenix Container, L.P. v. Sokoloff*, 235 F.3d 352, 354-55 (7th Cir. 2000). Section 1447(d) makes this crystal clear: an order remanding a case to state court is not appealable—regardless of whether the decision was correct—unless § 1442 or § 1443 supplied the basis for removal. *N. League, Inc. v. Gidney*, 558 F.3d 614, 614 (7th Cir. 2009) (per curiam); see *Mac Naughton v. Asher Ventures, LLC*, 76 F.4th 539, 543 (7th Cir. 2023) (“We have held repeatedly that appellants risk Rule 38 sanctions when they litigate in the face of controlling authority that they pretend does not exist.”).

Marissa relied on neither provision when removing the case to federal district court. Although she cited § 1443 in response to the court’s jurisdictional order

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as part of a last-ditch attempt to justify her appeal, she failed to identify any state law that had denied or inhibited her ability to enforce federal racial-equality rights, as the statute requires. Instead, she offered vague assertions about the discriminatory application of general principles—assertions that did not come close to satisfying § 1443. Marissa’s invocation of that provision was not just tardy and contrived; it was frivolous.

As to the issue of sanctions, Marissa argued that because the district judge declined to impose an award of attorney’s fees under § 1447(c) for a frivolous removal, Jane’s request for sanctions necessitated a cross-appeal. This argument was a loser. Although the district judge

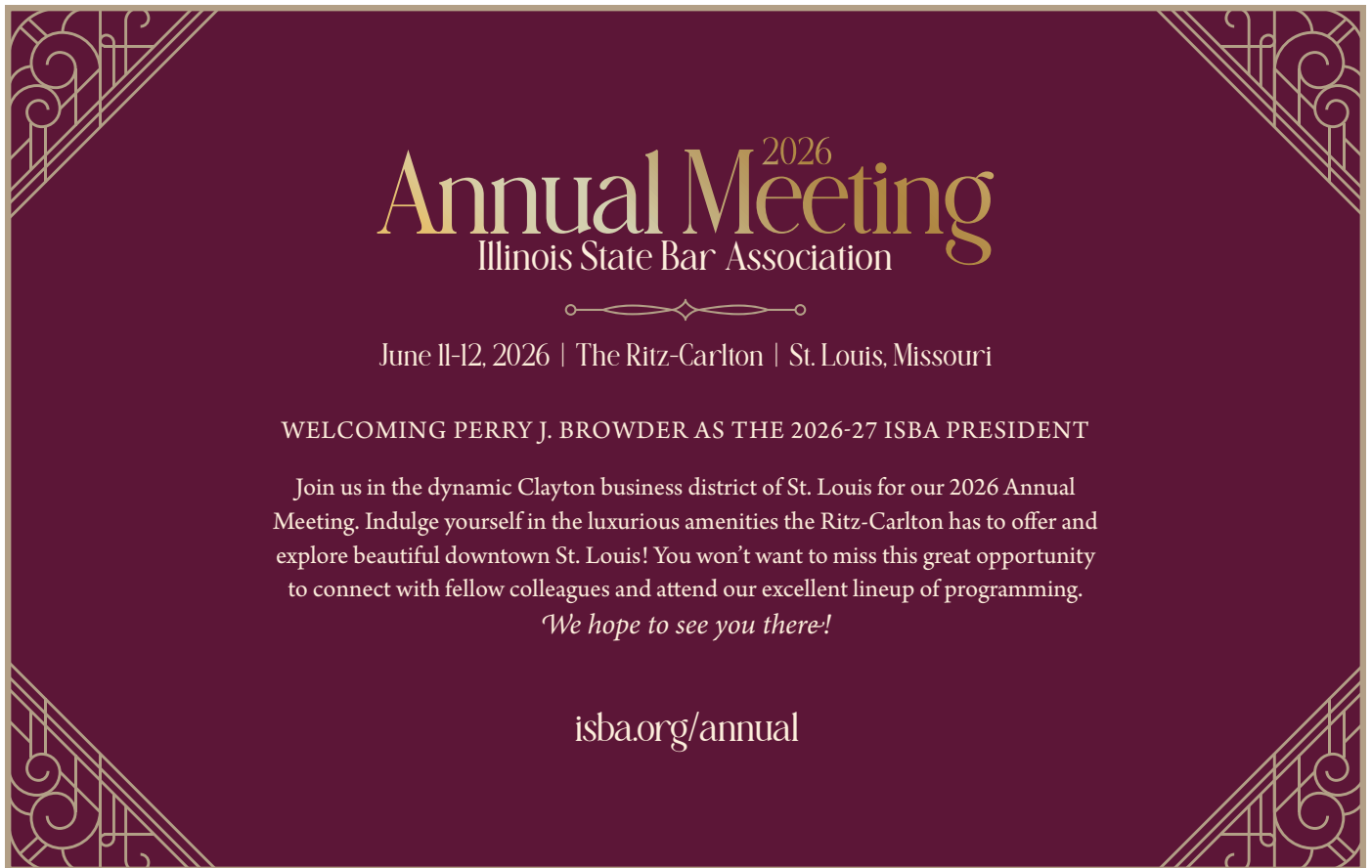
concluded that Marissa’s improper removal did not warrant awarding Jane her costs and attorney’s fees, the court of appeals retained authority to impose sanctions for Marissa’s frivolous appeal. Fed. R. App. P. 38; *Mac Naughton*, 76 F.4th at 543-44.

While Marissa insisted that she was proceeding in good faith, the record showed otherwise. After removing a case that clearly belonged in state court, Marissa prolonged the litigation by requiring Jane to defend a frivolous appeal. Under these circumstances, Rule 38 sanctions were warranted.

Jane’s modest attorney’s fees and costs on appeal were just and reasonable. The appeals court awarded her damages in the amount of \$2,808.75.

What are the takeaways? First, the party contemplating removal must be certain there is a solid legal basis to take the case into federal court. Next, if the removing party finds itself bounced back to state court, it must fight the urge to appeal the remand order. Finally, hire a lawyer. Kenton and Marissa appeared *pro se* in the court of appeals. Having counsel may have kept Marissa from digging the hole she later found herself in. The case is *Girard et al. v. Girard*, 160 F.4th 845 (7th Cir. 2025). ■

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Illinois State Bar Association

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We hope to see you there!

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Ethical Considerations

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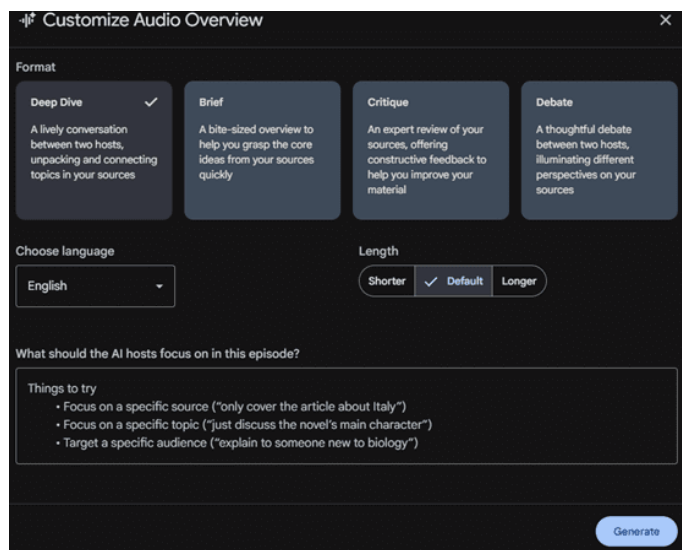
information provided and backed by prompt instructions, if desired.

Some of these AI-powered tools include **NotebookLM**, **Wondercraft**, and **Monica Podcast**. While not designed exclusively for legal work, they offer methods to turn complex documents into accessible audio summaries that can supplement—but never replace—a lawyer’s critical legal analysis and review.

Below, I look at what these tools offer and highlight important ethical considerations for lawyers who may use them.

NotebookLM

Google’s NotebookLM is an AI research and task assistant used by students and professionals across industries, including legal. For example, lawyers can request to hear a content overview by an AI-generated “expert,” listen to an AI-generated debate about differences in sources, or hear a critique of an argument.



Screenshot of NotebookLM audio options

Recently, NotebookLM introduced new podcast-style features—Deep Dive, Brief, Critique, and Debate. These allow lawyers to toggle between concise updates and more robust explorations of arguments, offering a flexible way to analyze evidence, highlight strengths and weaknesses, or predict counterarguments.

In addition, users can direct the AI “hosts” to focus on a particular area by typing instructions into a text field. Users may also adjust the desired length of the audio output (*i.e.*, make the produced podcast longer or shorter) and ask the “hosts” to speak in a variety of languages.

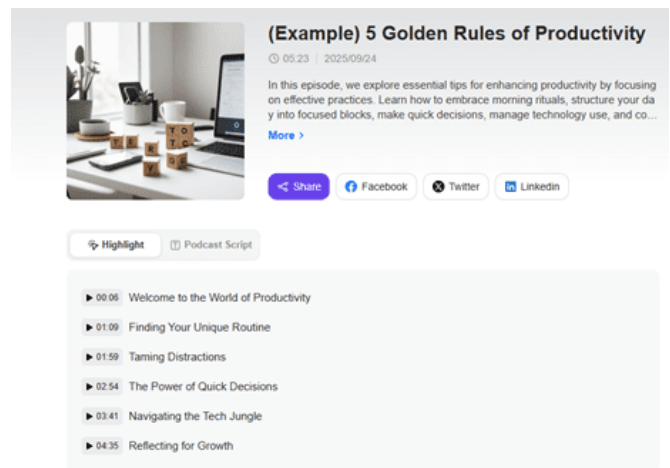
Wondercraft

Another tool, **Wondercraft**, specializes in transforming written material from opinions, articles, or other content into natural-sounding podcasts. Users can customize voice styles and lengths to suit different audiences, which could help law firms scale internal knowledge-sharing and client education efforts.

For lawyers, Wondercraft provides a relatively seamless way to convert documents into digestible on-demand audio. Document summaries or discussion-style presentations could be useful for both internal teams and external communications or marketing.

Monica Podcast

Likewise, **Monica Podcast** generates short podcast-like episodes from uploaded documents. It emphasizes simplicity and attempts to segment the uploaded content into topic areas when applicable, enabling users to quickly jump to relevant insights within the audio file.



Screenshot of output from Monica Podcast

Supplementing existing processes

As noted previously, audio overviews should supplement, but not replace, a lawyer’s professional analysis of content. However, when used to enhance traditional trial preparation, drafting, or critiques, this approach may offer a few benefits that text-based review cannot.

Instead of simply reading lengthy case files or research notes, audio options allow attorneys to listen to the material “come alive” in an efficient, dynamic, and conversational format.

Additionally, audio may boost information retention and comprehension, especially when dealing with complex content. Research has shown that learners exposed to audio

information show marked improvement in both immediate comprehension and long-term memory compared to those relying solely on reading.

For busy legal professionals, audio learning means that content can be reviewed while on the go, extending productive study time without added strain or fatigue.

Try them out! Make a few AI podcasts that review those new appellate court opinions impacting your practice and listen to them on a walk.

As always, ethics first

As with all uses of AI, these audio tools raise important ethical concerns, especially regarding confidentiality and supervision.

Lawyers must ensure that confidential client data is anonymized prior to uploading it into any public AI tool, with all names and identifying details redacted. Lawyers must also frequently review the platform's privacy terms and security protocols (currently, SOC 2 Type II certification).

Ideally, the tool has a zero data retention (ZDR) policy, meaning the provider does not store user prompts, responses, or other data after the AI has finished processing a task. Instead, the data is immediately deleted from memory outside the user's account,

preventing it from being used for future training or human review, helping to ensure privacy and security.

Firm policies and client agreements may dictate additional safeguards, including prohibitions of AI use altogether. And, for legal organizations and lawyers, all organizational policies on the use of AI must be coupled with training and supervision.

It is also vital to remember that these tools are only as good as the documents provided (*i.e.*, the documents users upload). Any AI summary or critique should be carefully cross-checked for accuracy, as lawyers are responsible for the content they rely on. You do not want to be featured in the next article that chastises an attorney for citing a hallucinated case.

By transforming dense legal content into dynamic audio, AI tools like NotebookLM, Wondercraft, and Monica Podcast may empower attorneys to collaborate, strategize, and improve client services.

Lawyers who embrace these new tools, while maintaining their ethical commitments to confidentiality and accuracy, will find themselves better equipped to meet the fast-paced demands of modern law practice. ■

This article was originally published on November 10, 2025, on [2Civility.org](https://www.2Civility.org), the blog of the Illinois Supreme Court Commission on Professionalism. It is republished with permission.

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