

The Conan Doyle Estate, Ltd. has filed a Notice of Appeal in the U.S. District Court that ruled in favor of Leslie S. Klinger in a declaratory relief action on the copyright status of the Sherlock Holmes Canon.

Chief Judge Rubén Castillo ruled that all copyright-protected elements of the Canon that were first introduced in stories published in the United States prior to 1923 are now in the public domain, and “Klinger and the public may use the Pre-1923 Story Elements without seeking a license.” Indeed, the Court found that “[t]he evidence presented to the Court as to this first proposition is ‘so one-sided’ that Klinger must prevail as a matter of law.”

By filing a Notice of Appeal, the Conan Doyle Estate is entitled to present its legal arguments to the Seventh Circuit Court of Appeals in a formal brief. However, the deadline for filing the brief is March 3, 2014, and no appellate brief has yet been filed. For that reason, Klinger and his counsel do not yet know what arguments will be raised on appeal by the Estate if, in fact, the Estate proceeds with the appeal. If the CDE pursues its appeal, Klinger will file an appellate brief in response, and the matter will be argued and decided in the Seventh Circuit Court of Appeals.

In the meantime, the Order of the District Court remains in full force and effect unless the CDE seeks a stay of enforcement. In that case, Klinger will oppose any request for a stay of enforcement of the Order pending appeal and will seek a bond if the Order is stayed.

Klinger is also preparing a motion to be filed in U.S. District Court to require the Estate to pay the fees and costs he incurred in bringing the declaratory relief action in District Court. He will also ask the Court of Appeals to require the Estate to post a bond as security against his costs in litigating the appeal.

“Although the Estate has issued some self-serving press releases, we do not really know what they regard as reversible error in the decision of Judge Castillo,” says Klinger. “They can’t be encouraged by the Court’s observation that their legal theory is ‘novel,’ a word that is often used in legal circles to indicate that an argument is imaginative but unsupportable in the law.”

“We are confident that the decision of Judge Castillo is fully supported by the facts and the applicable law, and we expect the Order to be upheld on appeal,” says Klinger. “We will continue to carry the burden of litigating the public-domain status of the pre-1923 stories, not only for the benefit of my own books but for all creators who wish to draw on the public-domain elements of the Canon in their own work.”