

DOWNLOAD PDF REMOVAL JURISDICTION : THE DEFENDANT CHOOSES THE FORUM

Chapter 1 : Forum Defendant Rule legal definition - Quimbee

The district court ultimately held that "whether or not Defendant was served with the Complaint, the forum defendant rule precludes removal based solely on diversity jurisdiction." Id. Likewise, in Reimold v.

Removal jurisdiction Save In the United States , removal jurisdiction refers to the right of a defendant to move a lawsuit filed in state court to the federal district court for the federal judicial district in which the state court sits. This is a general exception to the usual American rule giving the plaintiff the right to make the decision on the proper forum. Removal occurs when a defendant files a "notice of removal" in the state court where the lawsuit is filed and the federal court to which the defendant would like to remove the case. Removal is governed by statute , 28 U. With rare exceptions, a case may be removed only if, at the time of the initial filing, the case could have been filed in federal court. Removal requires an independent ground for subject-matter jurisdiction such as diversity jurisdiction or federal question jurisdiction. A case must be removed to the federal district court that encompasses the state court where the action was initiated. Ordinarily, defendants face no difficulty removing claims based on federal law if every defendant desires removal the unanimity rule. Removal of claims under state law, even when a federal court indisputably has diversity jurisdiction, is more restricted. Except in certain class actions governed by the Class Action Fairness Act of CAFA , a plaintiff can successfully object to removal in diversity actions if any defendant is a citizen of the forum state where the suit is taking place. With the exception of class actions under CAFA, every defendant must agree to remove; otherwise, the plaintiff or non-removing defendants can request remand for failure to satisfy the "rule of unanimity". Notably, there is a circuit split and several intracircuit splits over whether every defendant named in the complaint must join in the removal notice, or whether the rule of unanimity applies only to those defendants who have been properly served as of the date of removal. The reason this is important is that sometimes a plaintiff may not be able to or may deliberately choose not to formally serve all defendants on the same day, or some defendants may become aware of the existence of the complaint before it is formally served for example, if other already-served defendants send them a "courtesy copy". In courts that adhere to the latter rule, removal jurisdiction may be proper as long as defendants can show that all defendants who were properly served by the date of removal joined in the removal notice, even though not all named defendants joined in the notice. A plaintiff must seek a dismissal without prejudice and refile in federal court. There exists a small set of cases e. Removal of criminal cases A statute dating back to , the latest analogue of which is codified at 28 U. Under this, a number of state criminal cases have been removed to federal court and there summarily dismissed, thus preventing trial on the merits of whether the officer or agent was in fact carrying out his official duties, or acting outside of them. A famous example of such a removal was the case of Idaho v. The primary difference between the two statutes is that in the wording of the statute, the law provides that in the case of federal officers, the federal district court need not otherwise have subject-matter jurisdiction over the type of case presented so long as the federal officer was acting within the scope of the performance of a federal duty, where cases brought under require the requisite federal subject-matter jurisdiction specifically mentioned in the statute in order to survive. Timeliness of removal When defendants want to remove, they ordinarily must do so within 30 days of receiving the complaint, "through service or otherwise", under 28 U. An exception applies if diversity jurisdiction, and thus removal jurisdiction, is lacking at the time of the initial pleading in state court, but becomes available within a year after initiation of the suit. In such case, defendants may remove under 28 U. For example, a federal court would not initially have removal jurisdiction over claims under state law brought by a Texas citizen against another Texas citizen and a New York citizen. However, should the Texas defendant be dropped from the claim, the New York citizen can remove if one year has not passed since the initiation of the suit. The federal court has the discretion to accept the case as a whole or remand the issues of state law, however the court must apply state substantive law to state law claims, as opposed to federal law- a practice which is inline to actions

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brought under 42 U. Other issues State courts do not adjudicate whether an action could be properly removed. Once a defendant has filed a notice to remove a case, jurisdiction is transferred automatically and immediately by operation of law from the state court to the federal court. Any objection to removal must be presented to the federal court. If a federal court finds that the notice of removal was in fact defective, or that the federal court does not have jurisdiction, the case is remanded to the state court. A defendant used to have to formally petition the federal court for the right to remove, and jurisdiction was not transferred until the federal court entered a formal order to that effect. The petition procedure was abolished around by Congress and replaced with the simple filing-of-notice removal procedure, although federal courts still see the occasional petition for removal or a motion for remand due to the lack of such a petition. There is no reverse "removal". That is, if a case originates in a federal court, there is no ability for a defendant to remove a case from federal court into state court. If the federal court lacks jurisdiction, the case is dismissed. Only cases that originate in a state court and are improperly removed to a federal court may be sent back to the state court where they started. A defendant can waive the right to remove by contract, although courts take different positions about what language is necessary to create a waiver.

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Chapter 2 : Removal Jurisdiction | Federal Practice Manual for Legal Aid Attorneys

As we have previously discussed, removal of a medical device case to federal court can be an important strategic advantage for a defendant manufacturer. Even when proper diversity jurisdiction exists, there are several restrictions that limit a defendant's ability to remove a case to federal court.

Removal refers to the transfer of a civil action from state trial court to federal district court. A notice of removal is signed by the defendants and filed in federal court to begin the process of transferring the civil action from state court to federal court. In certain cases, the defendant may wish the case to be heard by a federal, rather than state, tribunal. Sometimes, the federal district courts will have original jurisdiction over a civil action filed in state court. In such a case, the defendant or defendants may remove the case to the federal district court for the district and division in which the action is pending. To where does the case get removed? Assume that a federal court also has jurisdiction, both personal and subject matter, over the parties and the case. Where the federal district courts have original jurisdiction over a civil action in state court that is not based on a federal claim i. Of course, the defendants must be properly joined and served. Where the federal district courts have original jurisdiction over a civil action in state court because the action arises under federal law i. The original defendant s may remove the action to federal court. Whether a defendant to a counterclaim, crossclaim or third party action, etc. The majority of courts hold that such removal is not allowed. If an original defendant moves for removal, the counterclaims and crossclaims, etc. Very often, plaintiffs will join multiple causes of action in one case filed in state court. In a case where the federal district court has original jurisdiction over some of the claims but not others, the entire case may be removed to federal court. This is similar to supplemental jurisdiction “ the non-removable claims can go along with the removable claims. Once removed, the federal district court will either hear the entire case or, if it feels that the state court is the more appropriate forum for certain claims in which state law predominates, it will remand those claims to state court. An additional requirement to removal is that all of the defendants who are eligible for removal must sign the removal notice. John brings a cause of action against Mike and Mark in state court. Further assume that Mike and Mark qualify for removal. If Mike seeks to remove the case to federal court but Mark does not agree, the case may not be moved. Just as fraudulently joining a party to create diversity of citizenship is not allowed, fraudulently joining a party to create a bar to removal to federal court is impermissible. If the joinder is legitimate, however, the bar to removal will stand. Parties can agree to waive removal. If, in a contract, a clause exists that a particular claim will be litigated in state court, that claim will not be removed to federal court. Bill and Ted enter into a contract in which Bill agrees to buy 84 widgets from Ted. The last clause of the contract provides: No claim arising under this contract may be removed to federal court. Ted files a notice of removal in federal district court. The federal district court will remand the case back to state court. Some state civil actions are not removable. The procedures through which a defendant may remove the case to federal court are detailed, but fairly simple. Generally, defendants must file a notice of removal with the appropriate federal court within 30 days of receiving the summons and complaint. The filing of the notice creates automatic removal “ the case is no longer under the jurisdiction of the state court. At this point, it is up to the appropriate federal court to determine whether the removal is proper, whether all claims are removable, etc. If need be, the court may remand either the entire case or certain claims back to state court. The case will not be dismissed for inappropriate removal; rather, the remedy is to remand it back to the state court. As stated above, the defendant s has 30 days from receipt of the summons and complaint to file the notice of removal. If, however, the case is not removable at this point, but becomes removable later, because, for example, the plaintiff amends the complaint, the defendant will again have 30 days by which to file a notice of removal, beginning on the date that the amendment is filed. After removal, a motion to remand the case based on any defect other than the lack of subject matter jurisdiction must be filed within 30 days after the filing of the notice of removal. A motion to remand based on lack of subject matter jurisdiction may be

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made, like in regular case procedure, at any time. The theory behind this is that once it has been determined that the court does not have the authority to hear a particular case, the case cannot continue. This is why the court may, on its own sua sponte remand the case or dismiss it, in regular case situations for lack of subject matter jurisdiction. Sometimes, after removal, the plaintiff will want to join additional defendants.

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Chapter 3 : Forum Selection Clause | Wex Legal Dictionary / Encyclopedia | LII / Legal Information Institute

The normal procedure is that the plaintiff chooses the forum and the defendant is bound to that. However, with removal, this is not the case; removal jurisdiction is the one instance where the defendant has an option to choose the forum.

In this case, the plaintiff cannot choose to make decision on the proper forum of the case. Venue is always proper in the state where the defendants and plaintiffs resides an in accordance with the rules on civil and criminal cases regarding venue. Venue is the place where the case is tried or decided by the court. Forum non conveniens means inconvenient forum. It refers to a situation wherein the venue of deciding a case is not convenient of one of the parties. A party is required to prove that the venue is not convenient for him so that the judge could allow to transfer or decline to try the case based on the principle of forum non conveniens. The Erie doctrine is a basic legitimate principle of civil procedure in the legal system of the United States which was taken from the case of Erie Railroad Co. Tompkins in the year His opinion in the aforementioned case remained his most influential decision and is even cited always in different cases regarding federal judicial opinions. Erie doctrine means that a federal court sitting in diversity jurisdiction over a state law claim must use state substantive common law in resolving the dispute. The judicial system in the United States is distinctive as it is in reality composed of two dissimilar court systems which are the federal court system and the state court systems. While it is true that each court system is accountable for considering definite kinds of lawsuits, neither is entirely autonomous of the other, since both systems often work together. Moreover, resolving lawful controversies and redressing lawful constitutional rights are central objectives of the two court systems. Abstention refers to a process when a participant in a vote either does not go to vote during election day or with respect to parliamentary procedure, is not absent during election but does not cast a ballot. Habeas corpus is a writ given to a public official by the court as an order for the release of a prisoner. Injunction is an order released by the federal court for a party ordering the same to perform or not to perform a particular act as opposed to judgment involving money. It is a relief granted by the court to an individual for his own advantage and protection. The Eleventh Amendment to the United States Constitution confers extraordinary protection upon the states: The provisions of the eleventh amendment of the Constitution give limitations of power of federal courts to try cases against state governments brought by the people of another state or the people of a foreign country. The amendment is also interpreted as a bar for federal courts from deciding cases filed by the people of the state being sued and cases brought out by the government of another country. Retrieved August 18, , from www.

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Chapter 4 : Venue – Removal to Federal Court - LawShelf Educational Media

The forum defendant rule supports the basis for diversity jurisdiction. The "purpose of diversity [jurisdiction] is to provide a separate forum for out-of-state citizens against the prejudices of local courts and local juries by making available to them the benefits and safeguards of the federal courts."

Updated by Jeffrey S. Sections and of Title 28 of the U. Code cover the removal of cases from state court to federal court. They are instead a mechanism to enable federal courts to hear the cases that are already within their original jurisdiction. The key provision of the principal federal removal statute, 28 U. Section and interpretive common law will govern the removal of diversity cases. For example, the All Writs Act, 12 which allows federal courts to issue writs in aid of their jurisdiction, but which does not itself provide an independent grant of federal jurisdiction, cannot provide the basis for removal. Most have applied a functional test, allowing removal in cases when a state agency functions like a court. In Wisconsin Department of Corrections v. Schacht, the Court held that the presence of an Eleventh Amendment-barred claim against a State defendant in an otherwise removable case did not deprive the federal court of the removal jurisdiction that would otherwise exist. Board of Regents that a State waived its Eleventh Amendment immunity when it removed a case from state court to federal court. Federal Officer Removal – 28 U. Removal of Joined State-Law Claims Should attorneys for plaintiffs file claims in state court that arise under both federal and state law, defendants may remove all claims. The codification of supplemental jurisdiction principles in 28 U. The Federal Courts Jurisdiction and Venue Clarification Act has clarified what a federal court must do when a federal question claim is joined by a state law claim that is not within the original or supplemental jurisdiction of the federal court. In such case, the entire case may be removed and the district court must then sever and remand the state law claims. Removal Procedure The statutory procedures for removal are to be strictly construed. The Supreme Court has clarified what triggers the thirty days to run: First, if the summons and complaint are served together, the day period for removal runs at once. Second, if the defendant is served with the summons but is furnished with the complaint sometime after, the removal period runs from the receipt of the complaint. Third, if the defendant is served with the summons and the complaint is filed in court, but under local rules, service of the complaint is not required, the removal period runs from the date the complaint is made available through filing. Finally, if the complaint is filed in court prior to any service, the removal period runs from the service of the summons. This implies that a motion to remand on subject matter jurisdiction grounds may be filed at any time. The Court in Carnegie-Mellon University v.

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Chapter 5 : 28 U.S. Code Â§ - Removal of civil actions | US Law | LII / Legal Information Institute

right to choose a state forum and a defendant's right to remove by requiring a defendant to prove the jurisdictional amount by a preponderance of the evidence. 4 Third, the stringent "legal certainty" standard" 5 forces a defendant.

Forum Selection Clause A contractual agreement that designates the court and location where the parties would like to have their legal dispute decided is commonly known as a "forum selection clause. Venue is the physical location where a court exercises its power. Thus, a forum selection clause seeks to provide a court located in a specific location with the power to resolve a dispute. Courts have historically declined to enforce forum selection clauses,. The Court stated that a forum selection clause "should receive neither dispositive consideration The court made three findings: A court may continue to consider public interest factors, however, the Court stated that they will "rarely" prevent a case from being transferred. Other than the existence of compelling public interest factors, Atlantic Marine does not state whether other factual circumstances may constitute an "exceptional case. In *Carnival Cruise Lines Inc.* Therefore, the mere fact that a form contract is not the product of negotiation and bargaining likely does not constitute an exceptional case under Atlantic Marine. However, Carnival Cruise stated that form contracts are "subject to judicial scrutiny for fundamental fairness. A negotiated contract generally eliminates this concern because there is actual bargaining between the parties, as well as mutual agreement regarding venue. The Second Circuit Court of Appeals has continued this deferential attitude toward forum selection clauses. In *Future Industries of America v. Courts*, however, will exercise selectivity in choosing whether to enforce a forum selection clause. Therefore, the forum selection clause was not valid. The Second Circuit in *Phillips v.* Whether the clause was reasonably communicated to the party resisting enforcement. Whether the clause is mandatory or permissive, so that the court may determine whether the parties are required to bring any dispute to the designated forum or simply permitted to do so. Whether the claims and parties involved in the suit are subject to the forum selection clause. If the forum selection clause was communicated to the resisting party, has mandatory force, and covers the claims and parties involved in the dispute, it is presumptively enforceable. In certain circumstances, a forum selection clause contained in a form contract may constitute an exceptional case.

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Chapter 6 : Removal jurisdiction | Revolv

Finally, there is an interesting question as to whether the revised statute supports an exception to the "Forum Defendant Rule" when an in-state defendant has not been properly served at the time of removal.

Resident Defendant Exception for Removal: A Clever Move or Legal Gamesmanship? This limitation on removal is generally referred to as the resident defendant rule or forum defendant rule. The first approach strictly applies the plain meaning of the statute and permits a resident defendant to remove a case to federal court if that defendant has not yet been properly joined and served. *Wyeth LLC*, Civ. May 22, concluding that the statutory language was unambiguous and that Congress clearly intended to require service of the complaint for the resident defendant rule to apply. Courts advancing the plain meaning approach generally agree that this approach could allow for gamesmanship on the part of the defendants, but these courts nevertheless hold that the plain meaning approach prevails. Under the second approach to analyzing these cases, courts acknowledge the plain meaning of the statute; however, these courts look past the plain language in order to effectuate presumed congressional intent. Indeed, in *Sullivan v. The courts* also point to the inequities involving the procedure and timing of service of process in different jurisdictions. *Bell Helicopter Textron Inc.* Likewise, in *Reimold v. Gokaslan*, F. Most recently in *Marsh v. ED CV*, U. The court remanded the matter, concluding that the resident defendant rule bars defendants from removing the action. There is small minority of cases that require at least one defendant to be served before any defendant may remove to federal court. Courts applying this approach hold that a resident defendant in a single defendant case cannot remove a case to federal court prior to being served. If you represent a resident defendant who has been sued in state court but has not yet been served, removal to federal court is an option worthy of consideration when your client prefers a federal venue. Whether removal survives a motion to remand depends on your jurisdiction and the predispositions of the judge to whom your case is assigned. And there is also the chance that your adversary decides not to challenge removal with a motion to remand. Whether you are successful in the removal or if the case is remanded, you just might win the admiration of the judge and opposing counsel for a well-played move in the procedural chess match created by 28 U. This information or any portion thereof may not be copied or disseminated in any form or by any means or downloaded or stored in an electronic database or retrieval system without the express written consent of the American Bar Association. The views expressed in this article are those of the author s and do not necessarily reflect the positions or policies of the American Bar Association, the Section of Litigation, this committee, or the employer s of the author s.

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Chapter 7 : Removal jurisdiction | The IT Law Wiki | FANDOM powered by Wikia

Ninth Circuit Court of Appeals decides that the forum defendant rule contained in 28 USC Â§ (b) is procedural, not jurisdictional, and therefore a violation of the rule is a waivable defect in the removal process that cannot form the basis for a district court's sua sponte remand order.

Related notions[edit] When a case is filed before a court, the court decides whether it has personal and subject matter jurisdiction , and if so, whether it is the most appropriate forum or venue. Under the doctrine of forum non conveniens , Latin for "inappropriate forum", a judge has a discretion to transfer a case if the court selected is not the most convenient one. If the courts in two states would accept civil jurisdiction, the plaintiff must be able to show that justice requires the trial to take place in the forum suggested by the plaintiff. The plaintiff might have selected one forum on the following grounds: The forum is not convenient to the defendant or his witnesses. There may be problems of expense of travel, health, or visa or entry permit. The defendant may take the following actions to seek a change of venue: The defendant may petition the forum court that it should reject the jurisdiction and petition to transfer the case to an allegedly more convenient forum; or If a case has been filed in another jurisdiction, the defendant may seek injunctive relief against the plaintiff in a second state, requiring that the plaintiff discontinue the action in the first forum and instead submit the case for hearing in this allegedly more convenient forum. In both instances, the first step is to determine whether the first instance forum is the natural forum, or whether the forum has the closest connection with the action and the parties. The court adjudicates whether there is another forum that is more appropriate under the doctrine of comity. The current forum court must respect the right of a foreign court to assume jurisdiction. A court must balance the interests of the parties, since there is injustice not only when a plaintiff is allowed to pursue the action in a forum inconvenient to the defendant, but also when a plaintiff is not allowed a timely trial. Generally, the court will not grant a petition to transfer or an injunction if the grant unjustly will deprive the plaintiff of advantages in the first instance forum. Nevertheless, a real and substantial connection between the venue and the cause s of action should exist to provide defendants some protection against being pursued in jurisdictions that have little or no connection with the transaction or the parties. If the alternative court concludes that another court has assumed jurisdiction either without considering whether an alternative forum was available or has reached an obviously unreasonable conclusion on the merits, then an injunction would sometimes be a reasonable response. If, on the other hand, the alternative court has reasonably concluded that no more convenient forum was available, then comity requires it to respect the decision of the court that has already assumed jurisdiction and dismiss the application for an injunction and transfer. In cases where there is a sound argument to be made in favour of both courts, the court in the second venue should not arbitrarily claim a better right to decide for both jurisdictions. In most cases the adherence of the foreign court to principles resembling those applied in the second venue court will be obvious; if the foreign court has adhered, then the second venue court should refuse relief. The term has become adopted in a wider context for the activity of repeatedly seeking a venue or willing listener for a concern, complaint or action, until one is found. In one case[citation needed], a court expressly acknowledged that the plaintiff had chosen to move to the state in order to benefit from the liberal divorce laws in that state. The court found that was perfectly appropriate and did not justify a stay or dismissal of the case. Forum shopping may be seen as inappropriate when it is intended to secure a more sympathetic forum in a child custody case. Some courts have noted that the Hague Abduction Convention was designed to deter parents from engaging in international forum shopping in custody cases. Nonetheless, at times, it may be in the best interests of a child to remove the child from a forum which does not apply the best interests test in child custody cases to a forum which has a "better" law and practice in such cases. She than makes her child that is born in the UK, live in the UK until child custody ends at age She will also prohibit her child from visiting the United States before child custody ends, in order to avoid a child custody dispute in the US legal system. This is because the courts in the United

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Kingdom are most likely to provide the British mother a more favorable child custody judgment. United States[edit] The United States has attracted foreign litigants wishing to take advantage of the more generous awards of damages and alimony , extensive discovery rules, and the contingent fee system. In addition, the Foreign Trade Antitrust Improvements Act , the Alien Tort Claims Act , and many state product liability laws create legal rights that often do not exist in other jurisdictions. By the plaintiff[edit] A plaintiff frequently can choose to file his case in one of several jurisdictions by picking a federal rather than a local jurisdiction , a local rather than federal jurisdiction, or one of several geographic localities. The defendant in a civil case can be sued in a jurisdiction where he lives or where the cause of action occurred. The defendant may invoke the removal jurisdiction of a federal court to take a claim out of the state court, request for a change of venue because the case was brought in the improper court within the jurisdiction, and move for forum non conveniens on the ground that the case was brought in an inappropriate forum based on the locations of the parties or evidence. In criminal cases[edit] Forum shopping also happens, albeit less frequently, in U. It is often claimed that the U. Criminal defendants have much less power to change the forum in which the case against them has been brought. Generally, they can do so only where they can show that localized notoriety or publicity makes it unlikely that an impartial jury can be selected in the district in which charges were brought. Efforts to discourage forum shopping[edit] Courts may object to forum shopping for several reasons. The fair resolution of a case hinging on technical differences from one jurisdiction to the next would offend the sense of justice, and more practically, judges may fear that having the reputation of a forum favorable to certain types of plaintiffs will delay the timely dispensation of justice in other cases by increasing their workload. Under the Erie doctrine , a federal court hearing a case under the diversity jurisdiction must apply the law of the state in which the court is sitting. Under the choice of law, the law of the state which has the closest nexus to the case is applied. Parties to a contract may seek to prevent forum shopping by inserting a forum selection clause or a choice of law clause in their contract. Such clauses are now generally enforced by the courts. Reduction by means of a unique judgement between both the plaintiff and the defendant. Philippines[edit] Forum shopping is considered a serious offense which can be made by a complainant. The law in the Philippines explicitly prohibits the filing of more than one case for the same cause of action in any forum or court of law so that the courts will not be clogged by complaints of people who may file more than one complaint in an effort to gain a favorable decision in any of the numerous cases filed. England and Wales[edit] Main article: Libel tourism In England and Welsh law, laws on libel can be considered to be more favourable to the plaintiff than in other jurisdictions, leading to a form of forum shopping sometimes called "defamation shopping" or "libel tourism". You may call this "forum shopping" if you please, but if the forum is England, it is a good place to shop in, both for the quality of the goods and the speed of service.

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Chapter 8 : Forum shopping - Wikipedia

In a concurrent fed-state jurisdiction case when does the DEFENDANT maybe have a right to removal. -A defendant may have a right to removal if the plaintiff choose state court over federal court. Within a short time after the plaintiff files the case in state court, defendant may have case moved to federal district court in same geographic area.

Subscribe to "Remove This" Blog via Email Enter your email address to subscribe to this blog and receive notifications of new posts by email. The relevant language is found in 28 U. This section of the statute has been interpreted to mean that even if complete diversity of citizenship exists between all plaintiffs and all defendants, the case cannot be removed if any of the defendants is a citizen of the same state in which the lawsuit has been brought. The state in which the lawsuit has been brought is called the forum state. Hence we call this section of the statute the forum defendant rule. The plaintiffs are citizens of Florida and Iowa, the defendants are citizens of Texas, California, and Georgia. The lawsuit has been filed in state court in Georgia. All Defendants have been properly served and joined as Parties prior to filing the Notice of Removal. Although complete diversity of citizenship exists, i. The forum defendant rule supports the basis for diversity jurisdiction. News , quoted in Swindell v. May 30, quoted in Swindell, F. There is a split of opinion amongst the circuits and often within the circuits as to whether or not the citizenship of a non-served forum defendant must be taken into consideration by the court in determining whether removal is proper. Dupont De Nemours and Co. This is true even when the forum defendant is served after the Notice of Removal is filed. There is also the argument that this view stops the Plaintiff from forum manipulation; naming a forum Defendant in the Complaint, but not serving the forum Defendant with process in an attempt to bar removal by other defendants. Other cases say the opposite: The absurd result being forum manipulation by the defendant; that the non-served forum defendant, by monitoring the docket, could remove the action, prior to being served by the Plaintiff to avoid the forum defendant rule. You can save yourself much pain and suffering not too mention client money if you inquire into the citizenship of all Defendants named in the Complaint, whether or not they have been served, before attempting to remove. If you find that there is a non-served forum defendant named in the Complaint, it is wise to discuss the effect this may have on the success of your removal and on your strategy for removal with your client prior to filing your Notice of Removal.

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Chapter 9 : Removal jurisdiction - Wikipedia

A civil action otherwise removable solely on the basis of the jurisdiction under section (a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

This is a general exception to the usual American rule giving the plaintiff the right to make the decision on the proper forum. Statutory basis Edit Removal is governed by a federal statute 28 U. With rare exceptions, a case may be removed only if, at the time of removal, the case could have been filed in federal court. Removal requires an independent ground for subject matter jurisdiction , such as diversity jurisdiction or federal question jurisdiction. If removal is granted, the case will be moved to the federal district court located in the state where the action was initiated. Ordinarily, defendants face no difficulty removing claims based on federal law if every defendant desires removal. Removal of claims under state law, even when a federal court indisputably has diversity jurisdiction , is more restricted. Except in certain class actions governed by the Class Action Fairness Act of CAFA , a plaintiff can successfully object to removal in diversity actions if any defendant is a citizen of the forum state where the suit is taking place. The reason for the rule is that diversity jurisdiction is granted to shield the defendants from possible discrimination in a foreign forum. When an in-state defendant is being sued in a state court, it is expected that he will not be subject to unfair prejudice. There exists a small set of cases e. A plaintiff may never remove its case. A plaintiff must seek a dismissal without prejudice and refile in federal court. With the exception of class actions under CAFA, every defendant must agree to remove, and the plaintiff or non-removing defendants can request remand. Timeliness of removal Edit When defendants want to remove, they ordinarily must do so within 30 days of receiving service of notice under 28 U. An exception applies if diversity jurisdiction , and thus removal jurisdiction, is lacking at the time of the initial pleading in state court, but becomes available within a year after initiation of the suit. In such case, defendants may remove under 28 U. For example, a federal court would not initially have removal jurisdiction over claims under state law brought by a Texas citizen against another Texas citizen and a New York citizen. However, should the Texas defendant be dropped from the claim, the New York citizen can remove if one year has not passed since the initiation of the suit. The federal court has the discretion to accept the case as a whole or remand the issues of state law. Other issues Edit State courts do not adjudicate whether an action could be properly removed. Once a defendant has filed a notice to remove a case, any objection to removal is handled by the federal court. If a federal court finds that the petition of removal was in fact defective or that the federal court does not have jurisdiction , the case will be remanded to the state court. There is no reverse removal. That is, there is no ability for a defendant to remove a case from federal court into state court. If the federal court lacks jurisdiction , the case will be dismissed. Remand orders are not generally appealable.