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Removal? Snap to it!

Minding Your Business on **August 11, 2025**

The forum defendant rule normally bars removing a state case to federal court when there is a forum defendant, even if the parties are otherwise diverse. A rarely-used method is the exception to this rule. Using a procedure called snap removal, defendants can avoid the forum defendant rule by removing before the forum defendant is served.

28 U.S.C. § 1441 allows a defendant to remove a case to federal court based on diversity jurisdiction except where "any of the parties in interest ***properly joined and served*** as defendants is a citizen of the State in which such action is brought." A snap removal defendant argues that the forum defendant rule does not apply because a forum defendant is not "served" at the time of removal.

Because snap removal can allow defendants to circumvent the forum defendant rule, it is crucial for state court litigants on both sides of the "v" to keep the practice in mind at the initial stages of litigation, including the mechanics of the practice and courts' views of it.

Legal Landscape

Though there is not a *bona fide* circuit split on the issue of snap removal, courts are divided. The Second, Third, and Fifth Circuits have interpreted section 1441(b) to allow snap removal. *See Gibbons v. Bristol-Myers Squibb Co.*, 919 F.3d 699 (2d Cir. 2019); *Encompass Ins. Co. v. Stone Mansion Rest. Inc.*, 902 F.3d 147 (3d Cir. 2018); *Texas Brine Co. LLC v. Am. Arbitration Ass'n. Inc.*, 955 F.3d 482 (5th Cir. 2020). The Sixth and Eleventh Circuits have endorsed that interpretation of section 1441(b), albeit in a footnote and dicta. *See McCall v. Scott*, 239 F.3d 808, 813 n.2 (6th Cir. 2001); *Goodwin v. Reynolds*, 757 F.3d 1216, 1220-21 (11th Cir. 2014). Meanwhile, just last year, the Ninth Circuit declined to express a view on snap removal while concluding "super snap removal" – removal before a complaint is even filed – is ineffectual. *Casola v. Dexcom, Inc.*, 98 F.4th 947, 950 (9th Cir. 2024).

Many federal district courts have expressed doubts of the practice, finding that it promotes gamesmanship, is counter to the purpose of section 1441(b), and creates absurd results. *See, e.g.*, *Carazo Reyes v. Harbor Freight Tools USA, Inc.*, 2025 WL 1683163 (C.D. Cal. 2025); *Rising Phoenix Holding Corp. v. Ross*, 2023 WL 3032095 (S.D. Fla. 2023); *Kirst v. Erck*, 2022 WL 2869742 (D. Md. 2022); *In re Abbott Lab'ys*, 2022 WL 2257182 (N.D. Ill. 2022); *In re Lipitor (Atorvstatin Calcium) Mktg., Sales Pratices & Prod. Liab. Litig.*, 2016 WL 7338594 (D.S.C. 2016). While others note that "policy appeals regarding the technological advantages of electronic dockets and resulting overuse of snap removal by defendants are unavailing [and that] it is for Congress, not this Court, to revise the statute." *Higgins v. Novartis Pharms. Corp.*, 2025 WL 1397045, at *2 (D. Del. 2025).

Where the maneuver is accepted, leveraging snap removal to one's benefit – by either utilizing it or avoiding it – can be a powerful tool.

Practice Tips

For Plaintiffs:

- **Understand applicable legal authority.** When filing a state court action where diversity jurisdiction exists, plaintiffs should check whether snap removal is available in the jurisdiction.
- **Speed is your friend.** Snap removal requires a defendant to remove to federal court before the citizen of the forum state is served. Plaintiffs should serve the complaint as soon as practicable, limiting the snap removal window, and if possible, avoid giving defendants a heads-up, even if courtesy might otherwise countenance it. A defendant cannot snap remove if it does not know a lawsuit is coming.
- **Defeat complete diversity.** Including a party that defeats complete diversity prevents a plaintiff from utilizing diversity jurisdiction as grounds for removal under 28 U.S.C. § 1441 in the first place. Courts will disregard fraudulently joined parties for diversity jurisdiction analysis, but to the extent a plaintiff can identify another properly joined party that eliminates diversity jurisdiction, they can protect against snap removal.

For Defendants:

- **Be cognizant of jurisdictions where snap removal is accepted.** As of this writing, no court of appeals has completely foreclosed snap removal. That said, district courts in certain circuits have taken a negative view of the practice and

granted remand motions filed in response to snap removal. Familiarity with these decisions, and district court judges' views toward snap removal, should guide defendants' removal strategy.

- **Anticipate the filing of a complaint**. Defendants may have an inkling when and where a lawsuit will be filed against them. Setting up automated alerts for notification when the complaint is filed and having removal papers ready to file will save critical time and increase the chances that the case is removed before the forum defendant is served.
- **File an early answer or summary judgment motion to lock-in federal jurisdiction and avoid voluntary dismissal.** After a defendant snap removes, a plaintiff may consider voluntarily dismissing their case to refile elsewhere. If a defendant files an answer or early summary judgment motion, the plaintiff is required, under Federal Rule of Civil Procedure 41, to seek a court order to voluntarily dismiss.

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