

CIVIL PROCEDURE REDUX: THE JURISDICTION AND VENUE ACT OF 2011

By Emily Breslin

Your 1L Civil Procedure and Pennsylvania Bar Exam outlines are now, unfortunately, antiquated documents, outlining old rules that are a thing of the past. They can only be shared with future generations of lawyers with an express disclaimer that the Jurisdiction and Venue Act of 2011, Public Law 112-63, effective Jan. 6, 2012, changed the rules regarding federal jurisdiction, removal and venue.

While some of the changes brought by the act are essentially academic, codifying well-established practices and majority rules, other changes drastically alter the analysis of how and when district courts may invoke jurisdiction.

The below is a very brief overview of the new rules, designed to alert young litigators that the rule statements we once committed to memory may no longer apply. Of course, some of these rules are nuanced in their construction and application, and independent research should always be conducted before federal jurisdiction is invoked or contested.

FEDERAL JURISDICTION:

- **Lawful permanent residents, who are not U.S. citizens but are authorized to reside here, are no longer “deemed” citizens of the state where they reside.** It has always been the case that there is no federal jurisdiction over a controversy between two lawful permanent residents. However, the “deeming” language of the old rule created confusion and seemed to conflict with this principle. The new rule simply provides that federal courts do not have jurisdiction over a dispute between a citizen of a state and a lawful permanent resident domiciled in the same state.

The below is a very brief overview of the new rules, designed to alert young litigators that the rule statements we once committed to memory may no longer apply.

- **Foreign corporations (corporations incorporated or with its principal places of business abroad) are now treated exactly like domestic corporations; they are a citizen of both the foreign state of incorporation and the foreign state of its principal place of business.** Therefore, federal courts do not have jurisdiction over a dispute, for example, between a citizen of France and a Delaware corporation with its principal place of business in France. Courts were previously split on whether jurisdiction was proper in that scenario. The same rule applies to insurance companies in direct action lawsuits.

REMOVAL:

- **A district court must sever and remand unrelated state law claims.** Previously, district courts ostensibly had discretion to hear claims that were not within the original or supplemental jurisdiction of the court, although many courts declined to do so, finding that it crossed the bounds of Article III.

- **The judicially-established “rule of unanimity” is codified, which provides that all defendants must join in, or consent to, the removal of the case.**
- **Each defendant in a case has its own 30-day window in which to remove the case.** Previously, courts were split on whether the time for removal was triggered only by the first defendant served or whether each added defendant was entitled to its own 30-day removal clock. The rule is now the latter.
- **Defendants can invoke a “bad faith” exception to the one-year expiration date on removal.** A district court can now allow a defendant to remove a case after one year, if it finds that the plaintiff acted in “bad faith” to prevent timely removal. Prior to the act, the judicially-created “fraudulent joinder” doctrine provided that a defendant could remove a case later than a year if plaintiff had brought in non-diverse defendants simply for the purpose of defeating diversity jurisdiction and had no possibility of actually recovering against those defendants. Under the new rule, this equitable doctrine is expanded and codified.
- **The amount in controversy can be established by defendant in its removal papers, and the standard to be applied is preponderance of the evidence.** Previously, the

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satisfaction of the amount in controversy requirement had to be apparent from the face of plaintiff's pleading, and there was a split in authority over the standard to be applied. The "bad faith" exception discussed above explicitly applies if a plaintiff deliberately fails to disclose the amount in controversy to prevent removal.

VENUE:

- **A natural person is a resident of the judicial district in which that person is domiciled.** Some courts previously held that a natural person could be a resident in a district and state other than one's domicile; for example, residency could be established by a vacation home.
- **An unincorporated association, as a defendant in a case, is a resident of any judicial district where it is subject to the court's personal jurisdiction. As a plaintiff in a case, it is a resident only where it maintains its principal place of business.** Some courts previously held that an unincorporated association was a resident where it was licensed to do business or actually doing business.

The new rule treats unincorporated associations like corporations for residency purposes.

- **A district court can transfer a case to any district "to which all parties have consented," even if the case could not have originally been brought in that district.** There was previously no mechanism to consent to venue, and this addition furthers the goal of convenience and fairness to litigants.
- **Abrogation of the "local action rule."** The act states that venue can be determined without regard to whether the action is local or transitory in nature. This eliminates the so-called "local action rule," which provided that actions involving real property could only be brought in the district in which the property was located.
- **The "fallback" venue provision for both diversity and federal question cases is the same and provides that a case in which the fallback venue provision is necessary can be brought in any district in which any defendant is subject to the court's personal**

jurisdiction. Under the previous rule, the fallback venue provision, which kicks in only when all defendants do not reside in the same state and the claim cannot be brought in a district where the acts or omission occurred, for diversity and federal question cases was different. The act puts forth a unified approach to fallback venue.

- **In states in which there is more than one federal district, a corporation is a "resident" of any judicial district where it would be subject to personal jurisdiction if that district were a separate state.** This rule prevents a corporation with its center of operations in a major metropolitan area from being sued in a remote and unfamiliar district court within the same state. ■



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Sept. 13-14, 2012
**PBA Workers' Compensation
Law Section Fall Meeting**
Hershey Lodge, Hershey, Pa.

Oct. 26, 2012
**PBA Minority Bar Committee
Diversity Summit**
Omni William Penn Hotel, Pittsburgh

Nov. 14, 2012
PBA Board of Governors Meeting
Holiday Inn East, Harrisburg, Pa.

Nov. 15, 2012
PBA Committee/Section Day
Holiday Inn East, Harrisburg, Pa.

Nov. 16, 2012
PBA House of Delegates Meeting
Sheraton Harrisburg Hershey,
Harrisburg, Pa.

Jan. 30 - Feb. 3, 2013
PBA Midyear Meeting
St. Maarten, Netherlands Antilles