OH SNAP!: HOW ARTIFICIAL INTELLIGENCE INCREASES THE ABSURDITY OF PRE-SERVICE REMOVAL

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INTRODUCTION

On January 7, 2019, John Williams sued Johnson & Johnson and Ethicon, Inc. in New Jersey Superior Court for an alleged defect in a surgical product that caused severe injury and economic loss.[1] Traditionally, the law affords Mr. Williams, as the injured party, immense control over litigating his claim.[2] He can retain counsel and make a variety of strategic decisions, including whom to sue, when to sue, and—arguably most important—*where* to sue.[3] Although Mr. Williams was a resident of North Carolina, had surgery there, and suffered the harm there, he chose to sue in New Jersey.[4]

At first glance, the choice to bring suit over 500 miles from home may appear extremely inconvenient for Mr. Williams. However, his strategic choice arose out of a desire to litigate the claims in New Jersey state court. Both defendants are incorporated in New Jersey.[5] Because the claim is between citizens of two states and alleges more than $75,000 in damages, if Williams had sued in North Carolina, the defendants could have removed the lawsuit to a North Carolina federal court.[6] However, federal removal law gives plaintiffs the opportunity to remain out of federal court by bringing suit in the defendants' home state.[7]

** Candidate for Juris Doctor 2026; Bachelor of Arts in Political Science and Criminal Justice, Bellarmine University. I extend my sincere gratitude to all who helped formulate this Note, including friends, family, professors, co-workers, and others who assisted and supported me throughout my experience. Special thanks to Professor Leslie Abramson, who assisted me with editing my Note and constantly reminded me to put my best self forward. This Note is dedicated to my dear uncle, Keith Hart. Thank you for being a guiding light in my life and encouraging me through my legal journey. I will forever cherish our talks over breakfast and your advice. This Note and my journey would not be possible without the support of you and my family.

[1] Notice of Removal, Exhibit A, Williams v. Ethicon, Inc., No. 3:19-cv-00174-FLW-DEA (D.N.J. filed Jan. 7, 2019), *sub nom*. Dutton v. Ethicon, Inc., 423 F. Supp. 3d 81, 86 (D.N.J. 2019) [https://perma.cc/5JQX-LX28].

[2] *Id.*; *see* Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987) (discussing that a well-pleaded complaint gives the plaintiff control over their suit).

[3] *See Caterpillar*, 482 U.S. at 392.

[4] Notice of Removal, *supra* note 1, at 2–3.

[5] *Id.* at 3.

[6] *See* 28 U.S.C. § 1332(a) ("The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs").

[7] *See* 28 U.S.C. § 1441(b)(2) ("A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(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.").

John Williams chose to file six claims in New Jersey State Court.[8] A complaint was filed on his behalf at 3:10 p.m. on January 7, 2019.[9] However, just 11 minutes later, the defendants filed a notice of removal of the claims to the United States District Court for New Jersey.[10] Although the law provides plaintiffs with the opportunity to stay out of federal court, a maneuver known as a "snap removal" has threatened plaintiffs' mastery over the complaint.[11] While never recognized as a constitutional right, a plaintiff has mastery over drafting the complaint and filing the lawsuit, which traditionally defendants cannot alter.[12]

Snap removals are a procedural maneuver where a forum defendant circumvents the home state exception by removing a state case before service of process.[13] Snap removals provide a loophole around the forum defendant rule established by 28 U.S.C. § 1441(b)(2), enabling forum defendants to remove the case before they are served with process.[14] The practice of snap removals began with the rise in online docket management systems and electronic filing in the early 2000s.[15] While a few snap removals preceded the rise of online docket systems, technology has eased the ability to learn about new lawsuits, even before receiving service.[16] Using these systems, defendants now monitor case filings before service of process.[17]

Recently, the development of artificial intelligence (AI) has increased the use of snap removals, thereby revealing the defectiveness of the current removal statute.[18] Computer software programs using AI can monitor court filings and automate notices of removal, allowing attorneys to file the notice within minutes of a case filing,[19] thereby defeating the legislative intent of

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[8] Notice of Removal, *supra* note 1, at 9–21.

[9] *Id.* at 1; Dutton v. Ethicon, Inc., 423 F. Supp. 3d 81, 86 (D.N.J. 2019).

[10] Notice of Removal, *supra* note 1, at 2; *Dutton*, 423 F. Supp. 3d at 86.

[11] *See* Caterpillar, Inc. v. Williams, 482 U.S. 386, 390 (1987).

[12] *See* Amoche v. Guarantee Tr. Life Ins. Co., 556 F.3d 41, 50 (1st Cir. 2009) (quoting 14C WRIGHT & MILLER'S FEDERAL PRACTICE & PROCEDURE § 3725 (3d ed. 1998)).

[13] *See* discussion *infra* Part D.;While this process is denoted using a variety of names, including swift removal, pre-service removal, wrinkle removal, and jack rabbit removal, for the purposes of this Note the maneuver is hereinafter referred to as snap removal; *See* Howard M. Wasserman, *The Forum-Defendant Rule, The Mischief Rule, And Snap Removal*, 62 Wm. & Mary L. Rev. Online 51, fn. 56 (2021).

[14] *See* 28 U.S.C. § 1441(b)(2) (barring removal based solely on diversity jurisdiction when any properly joined and served defendant is a citizen of the forum state).

[15] E. Farish Percy, *It's Time for Congress to Snap to it and Amend 28 U.S.C. § 1441(1)(B)(2) to Prohibit Snap Removals That Circumvent the Forum Defendant Rule*, 73 RUTGERS L. REV. 579, 583 (2021).

[16] *See* Wensil v. E.I. Dupont de Nemours & Co., 792 F.Supp. 447, 449 (D.S.C. 1992); Recognition Commc'ns., Inc. v. Am. Auto. Ass'n, Inc., No. Civ.A. 3:97-CV-0945-P, 1998 WL 119528, at *1 (N.D. Tex. Mar. 5, 1998).

[17] *See* Wasserman, *supra* note 13 at 64.

[18] *See* discussion *infra* Part II.A.

[19] Sergio David Becerra, *The Rise of Artificial Intelligence in the Legal Field: Where We Are and Where We Are Going,* 11 J. BUS. ENTREPRENEURSHIP & L. 27, 42–48 (2018).

the forum defendant rule and creating public policy concerns about removal.[20]

In the absence of clear congressional intent on snap removals, interpreting § 1441 of 28 U.S.C. in relation to AI has produced bizarre results and promoted unfair gamesmanship, which clogs the federal courts and requires new ethical and professional rules.[21] This Note discusses the absurd results created by coupling snap removals with AI, which will reveal issues that eliminate a plaintiff's mastery of the claim, and a need for revised ethical standards as new technologies promote questionable gamesmanship.

Part I discusses the history behind federal jurisdiction, including the forum defendant rule and the practice of removal. Further, this part explores the practice of snap removal and its use, and ends with the current rules of civil procedure and model rules of conduct. Part II analyzes the use, application, and potential of AI intelligence combined with snap removals in civil litigation and examines how emerging technologies suggest new procedural and professional responsibility rules. Part III discusses currently proposed solutions to snap removals and their absurdity, including legislative action. Finally, Part IV proposes a model rule governing civil litigation to protect litigants from abusive removal mechanisms.

I. BACKGROUND

Snap removals are a complex procedural maneuver that requires knowledge of federal statutes and rules governing removal and jurisdiction. Before analyzing the practice, context is necessary. First, this section discusses federal diversity jurisdiction, removal to federal court, and the forum defendant rule. Following an explanation of federal removal, this section explores the legislative history and language of 28 U.S.C. § 1441, which is the statute used for snap removals. Further, this section, utilizing federal jurisdiction and the established statute, discusses the practice of snap removals and their problematic rise in popularity. Finally, this section concludes with a framework of current ethical and procedural rules that assist in understanding prospective regulatory action.

A. Federal Diversity Jurisdiction

It is a foundational and historic litigation principle that the plaintiff is the master of the complaint.[22] As the initiator of litigation, plaintiffs select courts by narrowly tailoring their complaints to the laws and rules of procedure

[20] *See* discussion *infra* Part II.A.2–4.
[21] *See infra* text accompanying notes 129–134.
[22] *See* Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987).

specific to the jurisdiction of choice.[23] For instance, a plaintiff intending to file in a state court may exclude available federal claims to prevent removal by a defendant to federal court, or a plaintiff may choose to bring claims in the defendant's home state to prevent complete diversity.[24]

This practice, commonly known as forum shopping,[25] constitutes expending "significant effort and resources" to select and maintain jurisdiction within a particular state court.[26] Plaintiff litigants often perceive state courts as more favorable and federal courts as more stringent due to heightened pleading and jurisdictional requirements that may not exist in state courts.[27] Thus, many plaintiffs prefer to file and litigate in state court systems. Generally, a plaintiff's choices are not subject to modification by a defendant.[28] This principle is well-established, and the court has held that subject matter jurisdiction requirements are separate from defenses and counterclaims.[29] Federal jurisdiction and the ability for a defendant to remove exist based upon the plaintiff's complaint.[30]

28 U.S.C., specifically § 1332, establishes federal diversity jurisdiction.[31] Diversity jurisdiction has existed since the Judiciary Act of 1789.[32] Congress grants federal courts the ability to hear cases between "citizens of different states" if the "matter in controversy exceeds the sum or value of $75,000."[33] Historically, diversity jurisdiction was established to address concerns regarding the possibility of bias towards an out-of-state defendant.[34] In cases of complete diversity under § 1332, state and federal courts share concurrent jurisdiction, allowing plaintiffs to file claims in either state or federal

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[23] KEVIN M. LEWIS, CONG. RSCH. SERV., LSB10380, MAKE IT SNAPPY? CONGRESS DEBATES "SNAP" REMOVALS OF LAWSUITS TO FEDERAL COURT 3 (2020).

[24] *Id.*

[25] For the purpose of this Note, forum shopping is used to refer to options lawyers have between filing in federal or state court. However, this term is used for other purposes.

[26] LEWIS, *supra* note 23, at 1.

[27] *Id.*

[28] *See* Caterpillar, Inc. v. Williams, 482 U.S. 386, 399 (1987).

[29] *Id.*

[30] Federal courts are courts of limited jurisdiction. This means that federal courts have original jurisdiction only (1) to matters identified with Article III § 2 of the United States Constitution and (2) matters authorized by Congressional legislation. *See* U.S. CONST. art. III, § 2; *see* 28 U.S.C. §§ 1330, 1334. Using its legislative power, Congress has enacted statutes granting federal jurisdiction in cases involving specific legal questions, such as election disputes and civil rights cases. *See* Badgerow v. Walters, 596 U.S. 1, 7 (2022).

[31] 28 U.S.C. § 1332.

[32] *See* Judiciary Act of 1789, ch. 20 § 11, 1 Stat. 78 ("[T]he circuit courts shall have original cognizance, concurrent with the courts of the several States. . . where the matter in dispute exceeds the sum or value of five hundred dollars. . .or the suit is between a citizen of the State where the suit is brought, and a citizen of another State."].

[33] § 1332 (a)–(b).

[34] Percy, *supra* note 15, at 582.

courts.[35] However, plaintiffs can avoid removal even when a case is diverse through the forum defendant rule codified through 28 U.S.C. § 1441 (b)(2).[36]

B. The Forum Defendant Rule

While diversity jurisdiction ordinarily allows a defendant to remove a state case to federal court, § 1441(b)(2) is a specific exception known as the forum defendant rule.[37] Also known as the home state exception, the forum defendant rule allows plaintiffs to prevent removal by suing a defendant in his or her home state.[38] This exception precludes removal and effectively destroys complete diversity if the lawsuit is filed in the home state of *any* "properly joined and served" defendant.[39] The home state exception, codified through 28 U.S.C. § 1441, posits that a defendant sued in his home state will suffer no bias.[40] As a result, plaintiffs routinely bring suits in the home state of at least one named defendant to prevent removal to federal court.[41]

C. Removal and Forum Defendant Basics

At times, even after the plaintiff has chosen to file a complaint in state court, a defendant may alter the plaintiff's choice of a state court by removing the lawsuit to a federal court.[42] Why? Defendants, as well as plaintiffs, should be able to choose a federal court for cases that fit within federal subject matter jurisdiction. One historic rationale for removal is that it avoids prejudice to an out-of-state defendant who is litigating in a state court.[43]

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[35] *See* § 1332 (a)–(b); *Tex. Brine Co. v. Am. Arb. Ass'n*, 955 F.3d 482, 486 (5th Cir. 2020) (noting that in cases of complete diversity under § 1332, state and federal courts have concurrent jurisdiction, allowing plaintiffs to file in either forum).

[36] 28 U.S.C. § 1441(b)(2) ("A civil action otherwise removable solely on the basis of the jurisdiction. . . 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.").

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] Percy, *supra* note 15, at 582.

[41] The statute prohibits removal when a defendant is "properly joined and served" and is a citizen "of the State in which such action is brought." § 1441(b)(2). The "served" requirement "refers to service of process—the method by which the plaintiff gives a defendant notice of a lawsuit by handing or delivering certain documents related to the case to the defendant or its agent." LEWIS, *supra* note 23, at 3 (noting further that although the legislative intent behind this requirement is unclear, many scholars suggest it was designed to prevent plaintiffs from destroying diversity by joining a nominal instate defendant).

[42] *See* 28 U.S.C. § 1331; *see* § 1332(a) (providing that defendants can remove because of diversity of citizenship if they satisfy the amount in controversy and citizenship requirements).

[43] Percy, *supra* note 15, at 582

Removal makes a federal court available to some defendants who have been sued in state court.[44] Removal itself, however, does not expand federal jurisdiction.[45] Instead, 28 U.S.C. § 1441(a) is an enabling provision for the types of cases that can be removed. It simply permits removal for state cases "of which the district courts of the United States have original jurisdiction."[46]

Suppose a Kentucky plaintiff sues an Indiana defendant in a Kentucky state court for more than $75,000 on a state claim ("Example #1"). When the Indiana defendant attempts to remove the case, the issue is whether the plaintiff could have initially brought the case in federal court.[47] If so, the defendant may remove the case from state to federal court. Using the facts above, the Indiana defendant may remove.

If a Kentucky plaintiff sues an Indiana defendant in an Indiana state court on a state law claim for more than $75,000 ("Example #2"), can the case be removed to federal court? No, § 1441(b)(2) disables a defendant from removing the potential diversity case to federal court when the defendant has been sued in his home state. That statute applies only to diversity cases.[48]

Assume that a Kentucky plaintiff sues an Indiana defendant in an Indiana federal court on a state law claim for more than $75,000 ("Example #3"). Is diversity of citizenship present so that the federal court may hear the case? Yes, a Kentucky plaintiff initially could have filed in a federal court against an in-state defendant.[49] Whatever prejudice to the out-of-state plaintiff may have occurred by filing in another state is avoided by initially filing the case in an Indiana federal court. Compare this example with Example #2, where the plaintiff has made the case removal-proof by suing the defendant in his home state on a state claim.[50]

Returning to Example #2, the forum defendant rule—also known as the home state exception—allows plaintiffs to avoid removal by suing in the defendant's home state, as long as the lawsuit is filed in the home state of any "properly joined and served" defendant.[51] The exception was created under the theory that state bias toward a resident defendant was absent if a case was litigated in the home state of at least one defendant.[52] Plaintiffs,

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[44] *See* § 1441(a) (flush language) (permitting "the defendant or the defendants" to remove "any civil action brought in a State court of which the district courts of the United States have original jurisdiction" to federal court).

[45] *Id.*; *see also* Debra Lyn Bassett & Rex R. Perschbacher, *The Roots of Removal*, 77 BROOK. L. REV. 1, 30 (2011) (citing Scott R. Haiber, *Removing the Bias Against Removal*, 53 CATH. U. L. REV. 609, 638 (2004)) (suggesting that removal merely allows cases involving federal jurisdiction to be heard in federal court).

[46] § 1441(a).

[47] *See id.* § 1441 (a)–(b).

[48] *See id.* § 1441 (a).

[49] *See id.* § 1332 (a).

[50] *See id.* § 1441 (b).

[51] *Id.*

[52] Percy, *supra* note 15, at 582.

therefore, routinely file lawsuits in the home state of at least one named defendant to prevent removal to federal court.[53] Recall the Kentucky plaintiff in Example #1. When she files her complaint in Kentucky state court, she runs the risk of removal to federal court by the defendant. However, by suing the Indiana defendant in Indiana state court, the possibility of removal is destroyed, per § 1441(b)(2), because Indiana is the home of the defendant. At least, that was the case until the rise of snap removal.[54]

D. The Loophole: Snap Removals

Recently, defendants have used the service requirement of 28 U.S.C. § 1441 to remove cases to federal court, even in the absence of complete diversity, by removing lawsuits before service.[55] This type of removal is most commonly known as a "snap removal," but courts have referred to this technique using a variety of names, including preservice removal, swift removal, wrinkle removal, and jack rabbit removal.[56] Using this system, defendants began to monitor complaint filings and discover adverse complaints before service.[57] Recently, courts took up the question of snap removals;[58] however, courts are divided in their opinion of the practice.[59] The practice of removal began as part of the Judiciary Act of 1789.[60] Removal is a long-standing right established to protect out-of-state litigants from local prejudice.[61] As such, the practice of removal is historical and a perceived right within our system. Yet, in 1948, Congress established the forum defendant rule, limiting the ability of removal and retaining some control for plaintiffs.[62] In 1948, Congress constructed and passed a judicial code, which included various legislation regarding judicial procedure, including the

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[53] *Id.* at 581.
[54] *See id.* at 582–83.
[55] *Id.*
[56] *See* LEWIS, *supra* note 23, at 3.
[57] *Id.*
[58] *Id.* at 4.
[59] *See infra* Part I.E.
[60] Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 73, 78 (authorizing removal of certain actions from state to federal court when they fell within the federal courts' original jurisdiction, including suits between citizens of different states or involving aliens).
[61] Percy, *supra* note 15, at 582.
[62] 28 U.S.C. § 1441(b)(2).

process of removal.[63] The new code established a uniform procedure for notice of removal and eliminated action on behalf of the state court.[64]

In 2011, Congress amended the code with the purpose of clarifying and eliminating confusion.[65] The language requiring defendants to receive proper joinder and service remained.[66] The legislative history pertaining to 28 U.S.C. § 1441 provides no guidance on congressional intent regarding the propriety of snap removals. However, they have received increasing attention over the last decade with the rise in e-filing and electronic record-keeping, causing courts and scholars to discuss the rule.[67]

In November 2019, the U.S. House Committee on the Judiciary's Subcommittee on Courts, Intellectual Property, and the Internet held hearings to discuss the practice of snap removals.[68] The committee was faced with a variety of perspectives.[69] For instance, a defense attorney who practices in mass tort and products liability testified in favor of snap removals, claiming the practice is "uncommon," constituting a small percentage of federal

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[63] While the intention of Congress is unclear, due to the mass amount of legislation codified, congressional hearings indicate changes to removal procedure including 28 U.S.C. § 1441 created a "more workable procedure and less conflicting points of view on jurisdiction. *See Revision of Titles 18 and 28 of the United States Code: Hearing on H.R. 1600 and H.R. 2055 Before Subcomm. No. 1 of the H. Comm. on the Judiciary*, 80th Cong. 29 (1947) (statement from James William Moore, Professor of Law, Yale University).

[64] *Id.*

[65] Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, 125 Stat. 758, 763 (leaving intact the "properly joined and served" language in § 1441(b)(2), especially with Congress's knowledge of snap removal, may indicate congressional approval of the practice); *see* Zach Hughes, *A New Argument Supporting Removal of Diversity Cases Prior to Service*, 79 DEF. COUNS. J. 205, 205 (2012) (arguing that textual and structural analysis of § 1441(b)(2) supports allowing removal before service). Others look to the sporadic use and lack of acceptance of the practice as an indicator of absurdity. *See In re* Roundup Prods. Liab. Litig., 358 F. Supp. 3d 956, 957 (N.D. Cal. 2019) (rejecting snap removal as contrary to the purpose of the forum defendant rule); Leech v. 3M, 278 F. Supp. 3d 933, 943 (E.D. La. 2017) (finding that snap removal is inconsistent with the statutory goal of limiting forum manipulation); Padgett v. Medtronic, Inc., 41 F. Supp. 3d 582, 587 n.6 (W.D. Ky. 2014) (describing snap removal as a tactic that frustrates congressional intent); Worthy v. Schering Corp., 607 F. Supp. 653, 657 (E.D.N.Y. 1985) (characterizing pre-service removal as contrary to legislative purpose); Allied Programs Corp. v. Puritan Ins. Co., 592 F. Supp. 1274, 1276 (S.D.N.Y. 1984) (concluding that removal prior to service undermines statutory safeguards); Sands v. Geller, 321 F. Supp. 558, 562 (S.D.N.Y. 1971) (holding that snap removal conflicts with the protective aim of the forum defendant rule).

[66] 28 U.S.C. § 1441(b)(2).

[67] Percy, *supra* note 15, at 582 (discussing how scholars generally agree that the language was included to prevent plaintiffs from joining a nominal defendant for the purposes of destroying diversity. However, the use and ethics of snap removals remain widely debate); Arthur Hellman, et al., *Neutralizing the Stratagem of "Snap Removal": A Proposed Amendment to the Judicial Code*, 9 FED. CTS. L. REV. 103, 108 (2016) (quoting Sullivan v. Novartis Pharms. Corp., 575 F. Supp. 2d 640, 645 (D.N.J. 2008)); *see also* Goodwin v. Reynolds, 757 F.3d 1216, 1221 (11th Cir. 2014) (noting the same).

[68] Alison Frankel, *House Dems Introduce Bill to Combat Defense Tactic of 'Snap Removals*', REUTERS (Feb. 13, 2020, at 14:07 ET), https://www.reuters.com/article/us-otc-snapremoval-idUSKBN2062ZW [https://perma.cc/7G4A-CXTC]; Removal Jurisdiction Clarification Act of 2020, H.R. 5801, 116th Cong. § 2 (2020).

[69] Frankel, *supra* note 68.

cases.[70] In contrast, a plaintiff attorney engaged in medical malpractice and products liability challenged the frequency of the practice, claiming an increase in pre-service removal due to mandatory electronic filing.[71] This testimony encouraged further data collection since significant technology advances have occurred since the 2012-2014 data was collected.[72]

The 2019 hearing produced the Removal Jurisdiction Clarification Act of 2020.[73] Amending 28 U.S.C. § 1447 would have required a remand to state court if a plaintiff served a forum defendant within thirty days of removal, often referred to as the "snap back" solution.[74] The act would preserve the language of §1441 while still preventing snap removals.[75] However, the bill was not enacted into law, and acceptance of snap removals was left to federal courts.[76] The following section of this Note discusses the reaction of federal circuit courts and the failure of proposed legislative action.[77] However, the failure of Congress has increased the problem of snap removals.

E. An Increasing Problem

In the wake of congressional inaction, courts have addressed the issue of snap removals. In the past decade, a sharp circuit split has greeted litigation nationwide.[78] Snap removals are based on 28 U.S.C. § 1441(b)(2), and those attempting to use snap removals point to the plain language of the statute to uphold the practice.[79] The first step for judicial decision-making is to examine the text for ambiguity.[80] If the language is unambiguous, the court will enforce the statute, using its plain language, unless there is an "extraordinary showing of contrary intention in the legislative history"[81] to justify a departure.[82] In addition, if implementing the plain language would produce absurd or bizarre results, a court can interpret the text in a way that

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[70] *Id.*
[71] *Id.*
[72] *Id.*; *see infra* note 160.
[73] Frankel, *supra* note 69; H.R. 5801 § 2.
[74] *See infra* Part III.A; H.R. 5801 § 2; LEWIS, *supra* note 23, at 4.
[75] H.R. 5801.
[76] *Id.*
[77] *See infra* Parts I.E, III.
[78] *See generally* 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); Tex. Brine Co. v. Am. Arb. Ass'n, 955 F.3d 482 (5th Cir. 2020); McCall v. Scott, 239 F.3d 808, 813 n.2 (6th Cir. 2001); M & B Oil, Inc. v. Federated Mut. Ins. Co., 66 F.4th 1106, 1107 (8th Cir. 2023); Woods v. Ross Dress for Less, Inc., 833 Fed. App'x 754 (10th Cir. 2021); Goodwin v. Reynolds, 757 F.3d 1216, 1221 (11th Cir. 2014).
[79] *Tex. Brine Co,* 955 F.3d at 484.
[80] *See* United States v. Moreno, 727 F.3d 255, 259 (3d Cir. 2013) ("In any case involving statutory interpretation, we must begin with the statutory text.").
[81] McMaster v. E. Armored Servs., 780 F.3d 167, 170 (3d Cir. 2015) (quoting Murphy v. Millennium Radio Grp. LLC, 650 F.3d 295, 302 (3d Cir. 2011)).
[82] *In re* Kaiser Aluminum Corp., 456 F.3d 328, 338 (3d Cir. 2006).

avoids that result.[83] One court has defined absurdity as a result that "defies rationality or renders the statute nonsensical and superfluous."[84]

When considering the propriety of snap removals, courts conduct a two-prong analysis: 1) whether the statute, especially subsection (b)(2), is ambiguous, and 2) whether there is an extraordinary showing that a plain interpretation produces absurd results?[85] Most courts conclude that while congressional intent was not focused on snap removal, § 1441(b)(2) is unambiguous.[86] In fact, no Circuit Court of Appeals addressing snap removals has ruled the provision to be ambiguous.[87] Significant litigation about snap removals thus addresses the second prong, resulting in a split on the issue of absurd or bizarre results, with variations in the judicial reasoning.[88]

Endorsing, or at least tolerating, snap removals. The Fifth Circuit found that absurdity is a high bar requiring evidence beyond a "mere oddity" that creates a "preposterous" result, "no reasonable person could intend."[89] It rejected the argument that snap removals constitute statutory abuse because of its clear language.[90] The court reasoned, "we do not have any doubt about the propriety of removal because, as discussed, the text is unambiguous."[91] While the Fifth Circuit recognized the possibility of abusive tactics, the court failed to create a "new exception" in favor of tolling removal on a case-by-case basis.[92] The Second Circuit upheld the snap removal practice, reasoning that more than one rational interpretation of the statute was possible, especially with unclear guidance and history from Congress.[93]

Laws regulating service of process differ state by state, which may lead to a variance in using the snap removal strategy.[94] For example, looking at local laws used in snap removal cases, the second circuit noted that Delaware law requires a delay between filing and service, Mississippi permits service upon any officer of a corporation, while Louisiana permits service only upon

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[83] *Id.* at 338.

[84] *Moreno*, 727 F.3d at 259 (3d Cir. 2013) (quoting United States v. Fontaine, 697 F.3d 221, 228 (3d Cir. 2012)).

[85] *See* Encompass Ins. Co. v. Stone Mansion Rest., Inc., 902 F.3d 147, 152 (3d Cir. 2018).

[86] *See Encompass*, 902 F.3d at 152; *Tex. Brine Co.*, 955 F.3d at 487.

[87] *Tex. Brine Co.*, 955 F.3d at 485 ("Although we have not yet had opportunity to address the "snap removal" issue, two other circuits have recently interpreted Section 1441(b)(2) as allowing snap removal.").

[88] *See infra* Part I.E.

[89] *Tex. Brine Co.*, 955 F.3d at 486 (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 237 (2012)).

[90] *Id.* at 486–87 ("The Third Circuit also found that the result was not absurd because the interpretation gives meaning to each word and abides by the plain language.").

[91] *Id.* at 487.

[92] *Id.*

[93] Gibbons v. Bristol-Myers Squibb Co., 919 F.3d 699, 705 (2d Cir. 2019) (discussing the plaintiff's argument that snap removals "will lead to non-uniform application of the removal statute depending on the provisions of state law").

[94] *Id.*

a designated agent.[95] Pennsylvania allows electronic service in lieu of formal service if the defendant provides a consent form.[96] Further, states differ on the removal period.[97] Each of these procedural rules affect both the amount of time and the difficulty of service, which affects the practice of snap removal. The Second Circuit noted that "by its text, Section 1441(b)(2) is inapplicable until a home-state defendant has been served in accordance with state law; until then, a state court lawsuit is removable under Section 1441(a) so long as a federal district court can assume jurisdiction over the action."[98] The ability to execute a snap removal heavily relies not only on when a defendant is served but also on who is served.[99] For example, in *Texas Brine*, the plaintiff successfully performed service on the out-of-state defendant but failed to perform service of process on the forum defendant.[100]

The Third Circuit took a different approach, upholding the practice as rational through a three-prong analysis.[101] The court supported their determination of rationality because the practice:

> (1) it abides by the plain meaning of the text; (2) it envisions broader right of removal only in the narrow circumstances where a defendant is aware of an action prior to service of process with sufficient time to initiate removal; and (3) it protects the statute's goal without rendering any of the language unnecessary.[102]

Thus, so long as the practice does not directly contradict the language of the statute and is limited in use, the court defines the practice as rational.[103]

Rejecting snap removals. The Tenth Circuit relied on the "time-of-filing rule," by which diversity of citizenship is based upon the parties' domicile at

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[95] *Id*.; MISS. R. CIV. P. 4(d)(4); LA. CODE CIV. P. art.1261 (1984); PA. R. CIV. P. 402 (b).

[96] PA. R. CIV. P. 402(b).

[97] *Compare* Reece v. Wal-Mart Stores, Inc., 98 F.3d 839, 841 (5th Cir. 1996) (stating the removal period begins with receipt of a copy of the initial pleading through any means, not just service of process), *and* Roe v. O'Donohue, 38 F.3d 298, 303 (7th Cir. 1994) ("Once the defendant possesses a copy of the complaint, it must decide promptly in which court it wants to proceed."), overruled in part, *with* Bowman v. Weeks Marine, Inc., 936 F. Supp. 329, 333 (D.S.C. 1996) (stating the removal period begins only upon proper service of process), *and* Baratt v. Phoenix Mut. Life Ins. Co., 787 F. Supp. 333, 336 (W.D.N.Y. 1992) (stating the proper service is a prerequisite to commencement of removal period).

[98] Tex. Brine Co., v. Am. Arb. Ass'n., 955 F.3d 482, 486 (5th Cir. 2020) (quoting *Gibbons*, 919 F.3d at 705).

[99] *See id.*

[100] *Id.* at 487.

[101] Encompass Ins. Co. v. Stone Mansion Rest., 902 F.3d 147, 152 (3d Cir. 2018).

[102] *Id.*; *cf.* McCall v. Scott, 239 F.3d 808, 813 n.2 (6th Cir. 2001) (discussing that although the Sixth Circuit has yet to uphold snap removals directly, the court indicated strong possibility of acceptance in dicta).

[103] *Encompass*, 902 F.3d at 152.

the time of filing.[104] This logical solution is borrowed from other contexts of fraudulent gamesmanship and serves to promote the plain language of the law while prohibiting snap removals.[105] The Eleventh Circuit took a less procedural approach, finding snap removals to be a mere "technicality" in which defendants lose no substantial rights by litigating in state court.[106] Taking a closer look at the legislative intent, the court used the purpose of the language in § 1441 b(2) to prevent fraudulent joinder as a broader appeal to prevent improper gamesmanship.[107] Further, the court properly characterized snap removals as exploitation and improper gamesmanship that defeats a Congressional intent that clearly frowned on gamesmanship.[108]

F. Ethical and Procedural Restraints

In addition to legislation and case law, the legal community is governed by rules of civil procedure and professional conduct adopted by the governing state.[109] While states adopt their own rules of professional conduct, all states except California, which has adopted its own rules, have adopted codes based on the American Bar Association's Model Rules of Professional Conduct.[110] These rules are designed to promote integrity and professional behavior within the field and cover misconduct, tactics designed to delay, harass, or embarrass an adverse party, tactics used to harp on economic status, and other abusive practices. The rules are periodically amended to address the advancement of technology or areas of concern in the field. For instance, Model Rule 8.4(g) was added in 2016 after persistent issues of wealth discrimination and systemic inequality within the field.[111] While this is a promising development, rule changes and additions are often slow and take years to develop.[112]

An area of ethics that is underdeveloped is technology. The rule requires lawyers to maintain competency by "keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant

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[104] Woods v. Ross Dress for Less, Inc., 833 F.App'x 754, 757 (10th Cir. 2021).

[105] *Id.*

[106] Goodwin v. Reynolds, 757 F.3d 1216, 1222 (11th Cir. 2014).

[107] *Id.* at 1221.

[108] *Id.*; *see also* M&B Oil, Inc. v. Federated Mut. Ins. Co., 66 F.4th 1106, 1110 (8th Cir. 2023) (joining the conversation, the Eighth Circuit rejected snap removal as a "fish out of water," reasoning that 28 U.S.C. § 1441(b)(2) imposes an additional limit on removal rather than eliminating a requirement).

[109] *See* MODEL CODE OF PRO. RESP. (A.B.A. 2025); MODEL RULES OF PRO. CONDUCT (A.B.A. 2025).

[110] *See* A.B.A. Ctr. for Pro. Resp., Multi-Jurisdictional Survey of Adoption of Model Rules of Professional Conduct, § 16.05[9] (2024).

[111] MODEL RULES OF PRO. CONDUCT r. 8.4 (A.B.A. 2002).

[112] *See* A.B.A. Ctr. for Pro. Resp., *supra* note 110 (showing that states are slow to adopt A.B.A. reccomendations and model rules).

technology."[113] Beyond this comment, however, the rules fail to address technology, leaving a gap in ethics with the rise of AI and other technology capable of producing legal work.[114]

Further, both state and federal courts have rules of procedure designed to promote the efficiency of the court and prevent harmful tactics. Most notably, Federal Rule of Civil Procedure 11 regulates litigation behavior, especially during the discovery phase.[115] However, these rules are insufficient to regulate snap removals. In the wake of advancing technology, a new rule must be created to regulate such abuses.

II. ANALYSIS

While courts are split on the legality of snap removals, technological advances, including AI, have increased the absurdity of snap removals and the need for further discussion.[116] Courts across the country have upheld snap removals, finding support in the "plain language" of 28 U.S.C. § 1441, which is designed to prevent fraudulent joinder and protect defendants.[117] As a result, many district courts are bound by bright-line rules created by circuit courts during the rise in popularity of snap removals.[118] While some courts admit snap removals are anomalous, most fail to find the practice absurd.[119] However, in the wake of AI, the so-called "bright-line rule," which purports to limit abuse by the plaintiff, has developed into a race to the courthouse.[120]

Snap removals present three major problems for the legal community. First, the plain language of § 1441(b)(2) produces absurd results that circumvent Congressional intent.[121] Second, the tactic has promoted a spirit of gamesmanship that is abusive and generally not tolerated by the courts.[122] Finally, the increase in removals has and will continue to infest federal courts with cases of traditional state concern.[123]

1. Artificial Intelligence and Absurdity

AI has entered the field of law. In fact, this technology is not only available to lawyers, but some jurisdictions have begun to require its ethical

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[113] MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 8 (A.B.A. 2002).
[114] *See infra* Part II.A.
[115] FED. R. CIV. P. 11; *see infra* Part IV.A.
[116] *See infra* Part II.A.
[117] *Id.*
[118] *Id.*
[119] *See supra* text accompanying notes 88–109.
[120] *See supra* Part I.D.
[121] *See supra* Part I.E.
[122] Goodwin v. Reynolds, 757 F.3d 1216, 1221 (11th Cir. 2014).
[123] Adam B. Sopko, *Swift Removal*, 13 FED. CTS. L. REV. 1, 13 (2021).

use.[124] However, this technology has increased access to snap removals and their absurd results.[125] To understand the impact of AI technology on snap removals, one must first understand AI. This section begins with an explanation of AI technology, followed by a discussion of its use to create absurd results through snap removals, its promotion of gamesmanship, and lastly, its use to clog the federal docket.

2. What is Artificial Intelligence?

AI was first coined by John McCarthy and is described as a "forest of academic and commercial work."[126] Many scholars predicted that AI would not invade the field of law because of the law's boundless use of personal reasoning and human emotion.[127] However, recent tools used to analyze and reduce the massive scale of discovery have provided a purpose for AI in the legal field.[128] The version of AI known as "soft AI" mimics humans as far as academic outcomes and predictions, but not emotional or internal processes.[129] Soft AI has led to two products relevant to the use of snap removals: court monitoring systems and document analysis or production tools.[130]

From e-discovery to online docket systems to complex case management software, the practice of law is embracing technology. In fact, many law firms are eliminating both vast in-house libraries and old technology such as landline phones.[131] Scholars theorize that not only should lawyers embrace technological advancement, but they will soon have an ethical responsibility to accept it.[132]

AI is a technological boon invading the world of law. By itself, AI cannot properly function there, but recent improvements in data processing have established advanced AI bots at the ready for tasks such as document generation.[133] AI has quickly moved beyond producing routine documents, such as contract forms or wills, to litigation-based documents, including

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[124] Natalie A. Pierce & Stephanie L. Goutos, *Why Lawyers Must Responsibly Embrace Generative AI*, 21 BERKELEY BUS. L.J. 469, 473 (2024).

[125] *Id.*

[126] Becerra, *supra* note 19, at 33 (quoting Michael Mills, *Artifical Intelligence in Law: The State of Play 2016*, THOMSON REUTERS LEGAL EXECUTIVE INSTITUTE (Mar. 24, 2016), https://legalexecutiveinstitute.com/artificial-intelligence-law-state-play-2016/[https://perma.cc/W783-6C6H]).

[127] *Id.* at 34–35.

[128] *Id.* at 30 ("Areas of the practice of law that are increasingly utilizing technology include legal research, discovery, and contract analysis.").

[129] *Id.* at 35.

[130] *Id.* at 42.

[131] *See generally* Pierce & Goutos, *supra* note 124 at 19.

[132] Pierce & Goutos, *supra* note 124.

[133] Becerra, *supra* note 19, at 42.

motions and filings.[134] Currently, AI is best at generating documents that do not require analytical or persuasive skills, such as a notice of removal.[135] "Productive logical arguments" and "analytical reasoning" may be next.[136]

For decades, lawyers have routinely produced legal documents and developed forms based on experience and tested strategies. Now, the publishing industry is developing and selling research engines that combine legal forms and AI, which are effective at taking facts and generating preliminary law documents.[137] Speedy drafting and document production are immense time savers. For example, Fenwick & West, a firm in Silicon Valley, reduced its billable hours in half for the same task by autogenerating documents for startup companies utilizing AI.[138] For a procedural technique such as a snap removal, where hours and even minutes matter to the success of your position, AI is a game-changer.

AI can assist defense counsel in knowing when to use snap removals by monitoring dockets and filings.[139] The most time-consuming aspect of a successful snap removal is monitoring the hundreds of electronic court dockets within the United States.[140] While electronic docket systems and e-filing have made this process easier,[141] finding a complaint before service without technology is a time-consuming task, especially when the plaintiff could file a lawsuit in multiple locations.[142] In fact, prior to court monitoring software, the frequency of snap removals remained relatively low, reserved for those who could afford a mass amount of billable hours.[143] AI court monitoring products facilitate an increase in snap removals and thereby overwhelm federal district courts with cases traditionally litigated in state courts.[144]

LexisNexis, a legal research tool, introduced CourtLink with Snapshot in 2024.[145] CourtLink with Snapshot is a court docket monitoring service that

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[134] *Id.* at 43.
[135] *Id.*
[136] *Id.*
[137] Becerra, *supra* note 19, at 42.
[138] *AI helps Fenwick Work Smarter and Faster,* FENWICK (JULY 11, 2018), https://www.fenwick.com/insights/our-news/ai-helps-fenwick-work-smarter-and-faster?utm_source=chatgpt.com [https://perma.cc/4VMV-P9YK].
[139] Matt Elgin, Comment, *Technology & Textualism: A Case Study on the Challenges a Rapidly Evolving World Poses to the Ascendant Theory*, 52 GOLDEN GATE U. L. REV. 97, 99 (2022).
[140] Sopko, *supra* note 123 at 7.
[141] Elgin, *supra* note 139 at 97, 98–99 (2022).
[142] *See* Sopko, *supra* note 123 at 6-7.
[143] *Id.*
[144] *See e.g.* LEXISNEXIS, https://www.lexisnexis.com/en-us [https://perma.cc/T2B6-W2B6] (last visited Aug. 30, 2025).
[145] Neil J. Squillante, *Use Generative AI to Monitor Court Dockets and Summarize Complaint Filings,* LEXISNEXIS: TECHNOLAWYER (Feb. 26, 2024), https://www.lexisnexis.com/images/courtlink/snapshot_courtlink_technolawyer_buyersguide.pdf [https://perma.cc/DC6F-NKVA].

monitors electronic dockets for selected clients or types of cases and generates auto alerts to notify lawyers with a summary of the filed complaint.[146] For a fee, firms can purchase CourtLink with Snapshot, input retained or prospective clients, and receive alerts when those clients are named in a filed complaint in any of its 1,300 state court dockets.[147] LexisNexis is a tool readily accessible to firms across the country and is frequently used.[148] These types of AI programs, offered on such a national level, make implementing a snap removal much more accessible.[149] Thus, producing absurd results at a vast rate.

3. AI: Absurdity Incoming

Document production technology with court monitoring systems has streamlined the snap removal process.[150] While AI technology that monitors court dockets has yet to be linked with AI document production, the ability to review a complaint before process of service and to generate, at the very least, a first draft of removal within minutes presents both ethical and practical problems: (1) defeating the purpose and intent of the forum defendant rule, (2) generating absurd results by increasing the pace of litigation, (3) encouraging abusive gamesmanship, and (4) causing litigation delays.

i. Defeating the Purpose of the Forum Defendant Rule

A snap removal is effective only to the extent that a case is removed before the defendant is served. As such, technology is essential for this race to the courthouse.[151] Defense attorneys rely on electronic databases to discover a complaint against their client and quickly use e-filing as a means to file a notice of removal.[152] Thus, the defendant must not only anticipate litigation but also have counsel at the ready for the snap removal to be successful. The combination of technology with the time-sensitive nature of the snap removal has produced some peculiar results.

ii. Generating Absurd Results

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[146] *Id.* at 2–3.
[147] *Id.*
[148] *See e.g.* LEXISNEXIS, https://www.lexisnexis.com/en-us [https://perma.cc/T2B6-W2B6] (last visited Aug. 30, 2025).
[149] *Id.*
[150] *See supra* Part II.A.1.
[151] Encompass Ins. Co. v. Stone Mansion Rest. Inc., 902 F.3d 147, 153 n.4 (3d Cir. 2018).
[152] *See id.*

In *Gilbert v. Ethicon, Inc. et al*, a companion case to Mr. Williams's,[153] a complaint was filed at 9:35 a.m. on November 30, 2018.[154] Less than an hour later, at 10:14 a.m., the defendants noticed the removal of the case in federal court.[155] Just one minute later, the defendants received service of process.[156] However, the state court was not notified of the removal until 11:17 a.m.[157] Therefore, the defendants received service of process while a snap removal was in progress.[158] This created a problem for the federal court because the case was removed without a full snap removal, so technically, the forum defendant rule applied.[159] Four named plaintiffs and dozens of other unnamed plaintiffs brought suit against Ethicon and Johnson and Johnson, and two plaintiffs were granted remand, while the other two were denied remand.[160] Thus, the court rewarded the defendants with their choice of forum in two of the cases, therefore denying mastery of the complaint to two of the plaintiffs and producing inconsistent and absurd results.[161]

Thus, absurd results abound. Litigants have begun to use local rules and other procedural mechanisms to prevent service of process and preserve the possibility for a snap removal. For example, in Pennsylvania, defendants may waive formal service of process in favor of receiving electronic service by signing a service acceptance form.[162] A Pennsylvania defendant used this procedure to its advantage by notifying the plaintiff of their intent to waive service and refusing to produce the acceptance form in order to create time for removal of the case.[163] The defendant's maneuver essentially assured that service would not be possible before the defendant could remove the case.[164] The Third Circuit endorsed this gamesmanship and allowed the removal to remain.[165]

iii. Other Examples of Absurd Results

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[153] Williams v. Ethicon, Inc., No. 3:19-cv-00174-FLW-DEA (D.N.J. Jan. 7, 2019), *sub nom*. Dutton v. Ethicon, Inc., 423 F. Supp. 3d 81, 86 (D.N.J. 2019).

[154] Dutton v. Ethicon, Inc., 423 F. Supp. 3d 81, 86 (D.N.J 2019).

[155] *Id.*

[156] *Id.*

[157] *Id.*

[158] *Id.* The New Jersey District Court held that when service is achieved before the state court is notified of the removal, the forum defendant rule applies. This ruling, while favorable to plaintiffs, emphasizes the importance of timing and luck to successfully "snap" a case into to federal court.

[159] *Dutton*, 423 F. Supp. 3d at 86.

[160] *Id.*

[161] *Id.* at 86, 91.

[162] PA. R. CIV. P. 402(b); *see* Encompass Ins. Co. v. Stone Mansion Rest. Inc., 902 F.3d 147, 150 (3d Cir. 2018).

[163] *Encompass*, 902 F.3d at 150.

[164] *Id.*

[165] *Id.* at 153–54 ("Thus, this result may be peculiar in that it allows Stone Mansion to use pre-service machinations to remove a case that it otherwise could not; however, the outcome is not so outlandish as to constitute an absurd or bizarre result.").

The absurdity and improper gamesmanship has not halted at snap removals. Defendants have resorted to improper tactics to implement snap removals.[166] The following list includes recent behavior by defendants that is not only abusive but absurd.

- A plaintiff provided courtesy copies of the complaint to the defendants.[167] Taking advantage of this act of kindness and the state court backlog in the service of process, the out-of-state defendant removed the case before the forum defendant could be served.[168] Further, the out-of-state defendant filed an inverse-condemnation claim to join the forum defendant to shift liability.[169]

- A defendant was accused of changing a registered agent, the person who could accept service on the corporation's behalf, without notifying the plaintiffs to execute a snap removal.[170]

- A security guard delayed a process server for nearly ninety minutes, allegedly at the direction of the corporate legal counsel, so a notice of removal could be filed.[171]

With the approval of some circuit courts and many district courts, defense counsel is encouraged to use local law and other strategic "fair play" to gain a head start on the race to federal court.[172] Federal courts accept the practice but recognize a need for legislative action.[173] Most courts are unwilling to prohibit the practice or even reprimand procedural trickery in favor of the plain language of the law.[174] These developments are at the cost of the injured parties and a long-standing procedural statute.

4. The Rise of Gamesmanship

The increased use of AI provides attorneys with new paths and opens doors to creative methods of adversarial tactics. Merriam-Webster

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[166] *See, e.g.*, Goodwin v. Reynolds, 757 F.3d 1216, 1221 (11th Cir. 2014).
[167] *Id.*
[168] *Id.*
[169] *Id.*
[170] *See* Delaughder v. Colonial Pipeline, Co., 360 F. Supp. 3d 1372, 1374–75 (N.D. Ga. 2018).
[171] *See* Jackson v. Howmedica Osteonics Corp., No. 19-cv-18667-JMV-JBC (D.N.J. June 15, 2020), adopted, 2020 WL 4188165 (D.N.J. July 20, 2020).
[172] *See supra* text accompanying notes 109-152.
[173] Encompass Ins. Co. v. Stone Mansion Rest. Co., 902 F.3d 147, 153 n.4 (3d Cir. 2018).
[174] *See* Tex. Brine Co., v. Am. Arb. Ass'n., 955 F.3d 482, 485 (5th Cir. 2020); Gibbons v. Bristol-Myers Squibb Co., 919 F.3d 699,709 (2d Cir. 2019); *Encompass*, 902 F.3d at 147.

Dictionary defines "gamesmanship" as "the use of clever underhanded actions to achieve an end."[175] Judges discourage and dislike gamesmanship, ambush, or other schemes used during litigation.[176] Taking advantage of opposing counsel, using loopholes, and continuous or repetitive motions is generally not tolerated because they delay proceedings, clog judicial dockets, increase tension, and significantly increase legal fees.[177] Not only do lawyers face reprimand or other discipline from judges, but they also face consequences from bar associations.[178]

Rule 11 of the Federal Rules of Civil Procedure allows federal courts to reprimand and sanction counsel for inappropriate behavior designed to harass, delay, or embarrass the opposing party in bad faith.[179] Similarly, the Model Rules of Professional Conduct require lawyers to avoid tactics such as delay for purposes of discovery.[180] However, neither standard appears to prevent or sanction the aforementioned tactics used for snap removals.[181]

Courts across the country are divided on the vitality of snap removals.[182] Effective snap removals require court monitoring, application of local service of process rules, and judicial acceptance. In the wake of such inconsistency, not much is clear. However, most agree that the intention of the forum defendant rule was to prohibit fraudulent joinder.[183] As the Eleventh Circuit aptly emphasized, the very provision designed to prevent oppressive gamesmanship is now widely used for that abusive purpose.[184] Snap removals have destroyed the purpose and original intent of Congress to prevent fraudulent tactics and robbed plaintiffs of their ability to select the forum as the master of their own complaint, rendering the forum defendant exception obsolete.

5. Judicial Economy

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[175] Gamesmanship, MERRIAM-WEBSTER, https://www.merriam-webster.com/thesaurus/gamesmanship [https://perma.cc/7QFN-52ME] (last visited Aug. 30, 2025).

[176] *See* Goodwin v. Reynolds, 757 F.3d 1216, 1221 (11th Cir. 2014); State v. Boyd, 202 S.W.3d 393, 395 (Tex. App. 2006); State v. Dickerson, 584 P2d 787, 790 (1978).

[177] *Id.*

[178] FED. R. CIV. P. 11(b); MODEL RULES OF PRO. CONDUCT r. 3.1–3.4 (A.B.A. 2002).

[179] FED. R. CIV. P. 11(b).

[180] MODEL RULES OF PRO. CONDUCT r. 3.1–3.4 (A.B.A. 2002).

[181] *See* FED. R. CIV. P. 11(b); MODEL RULES OF PRO. CONDUCT r. 3.1–3.4 (A.B.A. 2002).

[182] *See supra* Part II.A.

[183] *See, e.g.*, *In re* Roundup Prods. Liab. Litig., 358 F. Supp. 3d 956, 957 (N.D. Cal. 2019) (explaining that the forum defendant rule prevents plaintiffs from fraudulently joining an in-state defendant to block removal); Leech v. 3M, 278 F. Supp. 3d 933, 943 (E.D. La. 2017) (providing a similar explanation as *In re* Roundup Prods. Liab. Litig); Worthy v. Schering Corp., 607 F. Supp. 653, 657 (E.D.N.Y. 1985) (noting that Congress enacted the forum defendant rule to curb manipulative joinder tactics).

[184] Goodwin v. Reynolds, 757 F.3d 1216, 1221 (11th Cir. 2014).

Snap removals place significant burdens on plaintiffs and courts. The practice not only denies plaintiffs the ability to retain mastery over their own claim, but it also promotes unfair gamesmanship and wastes precious time and resources. Generally, it is well known that individuals with meager resources are significantly disadvantaged when bringing a claim against a corporation.[185] Snap removals exacerbate that problem. The knowledge, technological capacity, and resources to properly implement a snap removal are immense.[186] Defendants, through their counsel, must acquire expensive software programs, pay fees to court docket systems, and often hire an attorney to continuously monitor dockets.[187] Plaintiffs, who lack the resources and often cannot afford these expensive AI programs, are at a significant disadvantage to promptly serve defendants and must rely on the slow and often cumbersome process through the state.[188] In addition, some states have laws or processes that delay service.[189] For instance, in New Jersey, where Mr. Williams brought his claim, plaintiffs are not permitted to serve a defendant until the case is assigned a Track Assignment Notice, which can take up to ten days to issue.[190] That disadvantage compounds the effects of courtesy copies, waiver of service, and electronic service.

Traditionally, the court encourages litigants to work together in finding a resolution through mandatory mediation, settlement conferences, and other alternative dispute resolution methods.[191] These mechanisms often save time and money for all parties.[192] Waiving service of process relieves financial burdens on the plaintiff and provides the defendant more time with case documents, which allows for earlier resolution, thus potentially reducing legal fees.[193] However, snap removals are costly to plaintiffs who run the risk of losing their preferred forum. In *Recognition Commc'ns, Inc*., the plaintiff provided defendants with courtesy copies of the complaint before service in

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[185] *See* Alexandra D. Lahav & Peter Siegelman, *The Curious Incident of the Falling Win Rate: Individual vs System-Level Justification and the Rule of Law*, 52 U.C. DAVIS L. REV. 1371, 1398–1406 (2019) (examining empirical data to interrogate a possible relationship between litigants' resources and win rate).

[186] *See* Encompass Ins. Co. v. Stone Mansion Rest. Inc., 902 F.3d 147, 150 (3rd Cir. 2018); Elgin, *supra* note 138, at 112.

[187] *See* Squillante, *supra* note 144; *Encompass*, 902 F.3d at 153 n.4.

[188] *E.g.*, *Goodwin*, 757 F.3d at 1221 (referencing the state court's delay in service of process despite the plaintiff's diligent request).

[189] *See, e.g*., N.J. COURT RULES, R. 4:5A-2 (providing that service of the complaint in complex business litigation is delayed until after the case management conference).

[190] *Id.* (showing that in the face of rising snap removals, TANs are no longer used in Multicounty Litigation cases in New Jersey).

[191] *See* Joblove v. Barr Labs., Inc. (*In re* Tamoxifen Citrate Antitrust Litig.), 429 F.3d 370, 386 (2nd Cir. 2005); Gambale v. Deutsche Bank AG, 377 F.3d 133, 143 (2nd Cir. 2004); Schering-Plough Corp. v. F.T.C., 402 F.3d 1056, 1075 (11th Cir. 2005); Asahi Glass Co. v. Pentech Pharms., 289 F. Supp. 2d 986, 991 (N.D. Ill. 2003).

[192] *E.g*., U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship, 513 U.S. 18, 27–29 (1994).

[193] RONALD J. RESMINI MORE, 1 RHODE ISLAND CIVIL PRACTICE AND PROCEDURE § 301 (2024).

an effort to create "a quick and inexpensive resolution."[194] However, this courtesy copy gave the defendants sufficient time to snap remove the case before service of process.[195] The snap removal adversely affects the plaintiff by discouraging him or her from waiving service of process, providing courtesy copies, or communicating with opposing counsel outside court-mandated conferences, causing increased legal fees, judicial resources, and time spent per case.[196]

Collaboration is essential to the legal system. Without these efforts, the judicial system would face further delays in an already slow system. A 2021 study on snap removals found 67 cases in which the defendant removed the case only to subsequently consent to remand.[197] This tactic wastes both precious judicial resources and creates significant delay. For the economically disadvantaged plaintiff, snap removals put them in a strategic hole. The 2021 study on snap removals found that "corporate defendants removed 97% of the cases" in its dataset,[198] and suits that were most removed "between 2018 and 2019 were products liability actions."[199] These actions often present complex issues, including class actions, multiple defendants, cross claims, and multistate litigation. Further, the 2021 study found that "the typical snap removal case is when out-of-state plaintiffs file suit in a defendant's home state," refuting the claim that the practice is typically used to prevent the fraudulent "straw man" joinder.[200]

The burdens of snap removal also fall on courts.[201] Shifting from state court to federal court takes time.[202] Plaintiffs must wait for a federal court date and spend months, if not years, litigating removal before the case is voluntarily remanded to state court.[203] Regardless of whether the case remains in federal court or is remanded to state court, the delay takes weeks or even months and clogs both federal and state court dockets.[204] Returning to Mr. Williams' case, his complaint was filed in January of 2019, followed by litigation over removal that continued for more than two years.[205] This

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[194] Recognition Commc'ns, Inc. v. Am. Auto. Ass'n, No. Civ.A. 3:97-CV-0945-P, 1998 WL 119528, at *2 (N.D. Tex. Mar. 5, 1998).

[195] *Id.* at *3.

[196] *See id*.

[197] *See* Sopko, *supra* note 123, at 36 (identifying a methodological flaw in measuring snap removal success that likely skews reported success rates downward).

[198] *Id.* at 39.

[199] *Id.* at 40 (noting also that the next largest concentration of cases were personal injury claims at 6%).

[200] *Id.* at 37.

[201] *See* Valerie M. Nannery, *Closing the Snap Removal Loophole*, 86 U. CIN. L. REV. 541, 557–58 (2018).

[202] *See id.* at 557 (discussing this long process).

[203] *See id.* at 558.

[204] *See id.* at 557–58.

[205] Williams v. Ethicon, Inc., No. 3:19-cv-00174-FLW-DEA (D.N.J. Jan. 7, 2019), *sub nom*. Dutton v. Ethicon, Inc., 423 F. Supp. 3d 81, 86 (D.N.J. 2019).

delay wasted the federal docket with hearings and motions for years before the merits of the case were considered.[206] While some claim that snap removals are rare and the extra burden on federal dockets occurs infrequently,[207] research suggests that snap removals "have at least doubled since 2012-2014."[208]

A different study focusing on snap removals from 2012 to 2014 found that they were successful in less than 10% of cases;[209] by contrast, a study conducted in 2021 found that the practice was successful in 87% of cases.[210] This data suggests that large corporate defendants are likely to continue and possibly increase the use of the tactic.[211] In the wake of this evidence, Congress was faced with snap removals, and professors of law across the country began drafting proposed legislative action.[212]

III. PROPOSED LEGISLATIVE SOLUTIONS

Before electronic filing systems, snap removals were rare and much less abusive, occurring more by accident than with intent.[213] However, with the rise of technology, improper and abusive snap removals have become more common.[214] Circuit courts across the nation are split regarding the legality of snap removals,[215] encouraging defense counsel to take advantage of the uncertainty. Many scholars and commenters agree that snap removals should be prohibited.[216] While circuit courts are split on snap removals and a few circuit courts have yet to weigh in on the split, the data indicates a rise in judicial tolerance, which is likely to continue.[217] In the wake of such tolerance, defense counsel will continue to use this practice with the aid of AI. Regardless of the precedent regarding the practice, Congress could enact legislation or amend certain statutes to thwart the practice.

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[206] *Id.*

[207] *Contra* Sopko, *supra* note 123, at 33 ("[S]nap removal is not the rare or uncommon occurrence its defenders characterize it as.").

[208] *Id.*

[209] *See* Nannery, *supra* note 201, at 561.

[210] Sopko, *supra* note 123, at 35.

[211] *Id.* ("[T]he tactic is used almost exclusively (approximately 97% of cases) by corporations."); *see also id*. at 42 ("The findings show that snap removal is a tactic that enables corporations to access a federal forum in cases that would otherwise not be removable.").

[212] *See, e.g.*, Hellman et al., *supra* note 67, at 108–10.

[213] *See* Elgin, *supra* note 139, at 111; Goodwin v. Reynolds*,* 757 F.3d 1216, 1221 (11th Cir. 2014).

[214] *See* Encompass Ins. Co. v. Stone Mansion Rest., Inc., 902 F.3d 147, 177 (3d Cir. 2018); *Goodwin* , 757 F.3d at 1221.

[215] *See supra* text accompanying notes 88–109.

[216] *See* LEWIS, *supra* note 23, at 3; Elgin, *supra* note 138, at 110; Percy, *supra* note 15, at 629.

[217] *See generally* Tex. Brine Co., v. Am. Arb. Ass'n., 955 F.3d 482 (5th Cir. 2020); Gibbons v. Bristol-Myers Squibb Co., 919 F.3d 699 (2d Cir. 2019); Encompass Ins. Co. v. Stone Mansion Rest. Co., 902 F.3d 147 (3d Cir. 2018).

A. Snap Back Proposal

A "snap back" proposal was suggested by law professors for the Removal Jurisdiction and Clarification Act of 2020.[218] This proposal continues to allow pre-service removal but would allow the plaintiff to subsequently remand a forum defendant after service.[219] This practice would protect the original legislative intent of § 1441(b)(2) by preventing fraudulent joinder while allowing the plaintiff to maintain mastery of the claim.[220] The proposal would amend 28 U.S.C. § 1447 and §1448, which govern remand.[221] Some are critical of the proposal because it creates a narrow window between service and remand, requiring the plaintiff to serve and move to remand the case within 30 days of removal.[222] This not only deters waiver of service and other collaborative methods, but it could also be costly to economically disadvantaged plaintiffs, creating similar problems to the practice of snap removal itself. Regardless, this proposal did not succeed during the 116th Congress, indicating that its future is bleak.[223]

B. Prevent Removal Before Service of Process

Another proposal to prohibit snap removals is to prevent removal before service. Some have proposed an addition to 28 U.S.C. § 1446 by adding a section clarifying that removal before service is improper.[224]

Some have argued that clearly prohibiting the practice by adding language to § 1446 is the most effective method.[225] This proposal would add language to § 1446, which would only allow "a properly served defendant" to remove a case.[226] Not only would this proposal effectively abolish snap removals, but by interacting with Federal Rule of Civil Procedure 11, it aims to prevent gamesmanship similar to snap removals from the plaintiff as well by regulating abusive or improper remands.[227] Amendment to the requirements

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[218] *See, e.g.*, Hellman et al., s*upra* note 67, at 108–10 (proposing a specific statutory amendment; Professor Hellman, testified at the November 2019 hearing and referred to the proposal as the "snapback" proposal.).

[219] *Id.*

[220] *See id.*

[221] *Id*. at 108.

[222] Jeffrey W. Stempel, Thomas O. Main & David McClure, *Snap Removal: Concept; Cause; Cacophony; and Cure*, 72 BAYLOR L. REV. 423, 493–506 (2020).

[223] Philip Weiss, *De-Weaponizing Snap Removal*, 56 ST. MARY'S L.J. 381, 409 (2025) (noting the proposal was not adopted by Congress).

[224] Stempel, Main & McClure *supra* note 222 at 493.

[225] *Examining the Use of "Snap" Removals to Circumvent the Forum Defendant Rule: Hearing Before the Subcomm. on Cts., Intell. Prop., and the Internet of the H. Comm. on the Judiciary*, 116th Cong. (2019) [hereinafter *Hearing*] (statement of James E. Pfander, Owen L. Coon Professor of Law, Nw. Univ. Pritzker Sch. of Law) ("[A]n ounce of prevention is worth a pound of cure.").

[226] *Id.*

[227] *Id.* at 12.

of removal is an effective means of abolishing snap removal practices.[228] However, some argue that adding language to the section could affect multistate litigation by forcing the plaintiff's hand in regard to service.[229] For example, a plaintiff unaware of the language in the paragraph above may serve a non-forum defendant first, due to an evasive corporate forum defendant.[230] In that instance, the case could have complete diversity and be removed despite the possibility that a forum defendant may later be added.[231] A more pragmatic approach could be more effective in preventing this result.

The more pragmatic approach to amending § 1446 is to eliminate the words "or otherwise" in subsection b.[232] This subsection was designed to require removal within 30 days of either service or notice of the pleading.[233] When this section was amended in 2011, snap removals were relatively new and unpopular.[234] Without AI and court monitoring services, defendants were less likely to discover a pleading without service.[235] However, this is no longer the case. Eliminating the "or otherwise" language would (1) require defendants to wait until service of process to remove the case, and (2) reduce the race and rushed tactics currently causing abuse between filing a claim and service. Further, removal would be unaffected by the speed of state service of process systems.[236]

The redaction of the phrase "or otherwise" could reduce nontraditional means of service for an evasive or absent defendant by requiring traditional service of process.[237] Further, this elimination would disallow the plaintiff's ability to request a waiver of service, which is often a cost-saving mechanism.

C. Amend § 1441

Congress could amend § 1441(b)(2) by eliminating the language "and served" and only requiring a defendant to be properly joined for the § 1441(b)(2) forum defendant rule to apply. This solution would prevent snap removals without the inconsistent process of service. However, this solution hinges on the idea that plaintiffs would not improperly or fraudulently join a defendant merely to defeat removal. Further, this solution circumvents the

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[228] *Id.* at 11.
[229] Percy, *supra* note 15, at 635.
[230] *See* text accompanying *supra* note 112.
[231] *See* Percy, *supra* note 15, at 608.
[232] *See* 28 U.S.C. § 1446 (b)(1).
[233] *Id.*
[234] Elgin, *supra* note 139, at 112.
[235] *Id.*
[236] *Id.* at 121.
[237] *See Hearings*, *supra* note 225, at 633.

original intent of the statute in 1948 to prevent fraudulent joinder.[238] While this proposal would eliminate snap removals, it comes at the cost of legislative intent and could promote fraudulent joinder, another type of gamesmanship.[239]

D. Delaying Removal

Another proposal attempts to address snap removals not by prohibiting removal before service, but by delaying removal. This proposal would only allow removal pre-service if no forum defendant is served within 120 days of commencement of the state court action through amendment to § 1441(b)(2).[240] This proposal is targeted at reducing the burden on federal courts to prevent cases from being removed just to be remanded back to state court.[241] However, this proposal has received criticism for the potential to affect local and state laws governing service of process and rules of procedure.[242] States may have delays in service, allow service after 120 days, or give judges discretion to extend time requirements due to the needs of the community or circumstances.[243] This bright-line rule would take away state autonomy.[244]

While there are a variety of unique proposals that Congress could implement, Congress has not made the practice a top priority in the last five years, indicating legislative action is unlikely.[245] Without prohibition from Congress and some courts, the practice could continue if no other action is not taken.[246] In the wake of Congressional inaction and increased judicial tolerance of snap removals, the legal profession must act to prevent this gamesmanship and uphold the integrity of the profession. A strong resolution is necessary to discourage the legal community from utilizing such abusive tactics.

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[238] *See id.* at 590.
[239] *See* text accompanying *supra* note 82.
[240] Stempel, Main & McClure, *supra* note 222, at 52.
[241] *See id.* at 53.
[242] *See* Percy, *supra* note 15, at 637.
[243] *Id.* at 638.
[244] *Id.*
[245] *See, e.g.*, Removal Jurisdiction Clarification Act of 2020, H.R. 5801, 116th Cong. (2020) (proposing removal reforms but not addressing snap removal); *see also* Hellman et al., *supra* note 67, at 103 (proposing targeted remedial legislation).
[246] *See, e.g.*, Encompass Ins. Co. v. Stone Mansion Rest. Inc., 902 F.3d 147, 152–54 (3d Cir. 2018) (permitting removal by an unserved forum defendant under 28 U.S.C. § 1441(b)(2) and noting Congress's inaction despite awareness of snap removal); Gibbons v. Bristol-Myers Squibb Co., 919 F.3d 699, 705–07 (2d Cir. 2019) (permitting the same as in Encompass Ins. Co.); Texas Brine Co. v. Am. Arb. Ass'n, Inc., 955 F.3d 482, 486–87 (5th Cir. 2020) (endorsing snap removal as consistent with the statute's plain meaning).

IV. RESOLUTION

While legislative action or judicial intolerance could abolish snap removals, neither are likely. As such, the legal community must regulate the behavior itself through ethical and professional rules of conduct. This section proposes a model rule of professional conduct using current ABA model rules and rules of civil procedure. This section begins with the current ethical and procedural rules, followed by a proposed model rule that should be adopted by the ABA to prevent snap removals and similar future conduct.

A. Current Procedural and Ethical Rules

None of the current ethical or procedural rules clearly prohibit lawyers from snap removing a case.[247] However, a variety of rules already prohibit certain types of gamesmanship and abusive behavior. First, Federal Rule of Civil Procedure 11 requires every pleading, written motion, and other papers to be signed by an attorney or by the party if unrepresented.[248] That signature certifies that such documents were prepared and filed in good faith.[249] Rule 11 attempts to check abuses and prevent frivolous claims and arguments.[250] Rule 11(a) specifically prohibits improper purposes such as harassment, unnecessary delay, or needless increase in litigation costs as grounds for litigation.[251] Federal courts have discretion, *sua sponte*, under this rule to issue sanctions to the violating attorneys, or counsel can motion for sanctions to be imposed.[252]

Rule 11 sanctions could be used in the context of snap removals, but only in very narrow circumstances. For instance, in those cases where the defense removed the case to federal court only to consent to remand months later, the court may agree that removal caused unnecessary delay or needlessly increased the cost of litigation.

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[247] *See* Weiss, *supra* note 223, at 409 (observing that neither the FED. R. CIV. PRO. nor existing ethical rules expressly forbid snap removal); *see also* Hellman et al., *supra* note 67, at 106–07 (noting absence of procedural rules barring removal by an unserved forum defendant).

[248] *See* FED. R. CIV. P. 11(a).

[249] *Id.*; *see also* Becker v. Montgomery, 532 U.S. 757, 764 (2001) (explaining that the signature requirement is a threshold certification of the filing's propriety).

[250] *See* FED. R. CIV. P. 11(b) (requiring that claims, defenses, and other legal contentions be warranted by existing law or a nonfrivolous argument for extending, modifying, or reversing existing law, and that factual contentions have evidentiary support); *see also* Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393 (1990) (explaining that Rule 11 imposes a duty to conduct a reasonable inquiry to ensure that pleadings, motions, and other papers are well grounded in fact and law).

[251] FED. R. CIV. P. 11(a).

[252] FED. R. CIV. P. 11 (c)(1) (permitting sanctions on motion or on the court's own initiative); *see also* Chambers v. NASCO, Inc., 501 U.S. 32, 43–46 (1991) (recognizing federal courts' inherent authority to impose sanctions *sua sponte* for bad-faith conduct).

Courts also may regulate this behavior through 28 U.S.C. § 1927, which prohibits lawyers from extending the length of proceedings unreasonably.[253] In addition, courts have the power to control lawyers through the threat or use of contempt powers. However, these rules depend on judicial action and do little to alleviate the abuse suffered by plaintiffs whose cases are removed to courts that tolerate the practice.

The Model Rules of Professional Conduct also offer some guidance on the regulation of behavior associated with snap removals. Rules 3.2, 3.3, 3.4, 4.4, and 8.4 regulate improper behavior similar to the tactics of snap removals.

Rule 3.2 requires lawyers to make "reasonable efforts to expedite litigation" and requires a purpose other than delay for actions.[254] This rule is designed to prevent abusive delay, which can cause increased legal fees. In its current form, rule 3.2 may apply when defendants use snap removals to delay proceedings or delay service to allow for removal, but it is not applicable in all instances of snap removals.[255] For example, defendants who snap-removed a case just to consent to remand after months of litigation in federal court may be subject to rule 3.2.[256] However, without evidence of delay, this rule would not apply.

Rule 3.3 (Candor to the Court) requires lawyers to conduct themselves with complete honesty and correct any false statement to the court.[257] Snap removals only present questions of falsity through abusive forms of coercion, such as presenting to the court that a party is willing to waive service when that is not their intention.[258] However, not all snap removals are performed using such dishonesty, and this rule fails to cover honest abuse of removal.[259]

Rule 3.4, fairness to opposing counsel, prohibits a variety of activities of unfair litigation, including obstructing evidence, falsifying evidence, knowingly disobeying evidence, making frivolous discovery requests, failing to make diligent efforts to comply with discovery, and requesting witnesses withhold information.[260] While this rule covers an expansive array of abusive

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[253] *See* 28 U.S.C. § 1927; *see also* Hall v. Liberty Life Assurance Co., 595 F.3d 270, 275–76 (6th Cir. 2010) (explaining that § 1927 aims to deter dilatory litigation practices).

[254] MODEL RULES OF PRO. CONDUCT r. 3.2 (A.B.A. 2002).

[255] *Id.* at cmt. 1.

[256] *See* Sopko, *supra* note 123, at 32 (compiling empirical data and finding no reason for defendants to consent to remand when they initiated removal other than providing delay sufficient for them to forum shop).

[257] *See* MODEL RULES OF PRO. CONDUCT r. 3.3 (A.B.A. 2002).

[258] *See* Encompass Ins. Co. v. Stone Mansion Rest., Inc., 902 F.3d 147, 154 (3d Cir. 2018).

[259] *See* MODEL RULES OF PRO. CONDUCT r. 3.3. (a)(1); *see also* CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 12.3.3, at 654–55 (1986) (explaining that Rule 3.3 does not reach abuse accomplished without misrepresentation).

[260] MODEL RULES OF PRO. CONDUCT r. 3.4 (A.B.A. 2002).

litigation, it fails to cover even the most absurd tactics surrounding snap removals.[261]

Rule 4.4 covers respect for the rights of third persons. This rule, similar to rule 11, requires lawyers to refrain from means with no substantial purpose other than to "embarrass, delay, or burden a third person."[262] Snap removals could be governed by this rule, and many of the abusive tactics could be regulated under this rule. However, rule 4.4 fails to cover technological developments and their use in the field.

Rule 8.4 governs misconduct generally and prohibits rule violations, criminal acts of dishonesty, other acts of deceit, assisting others in rule violations, conduct prejudicial to justice, and discrimination.[263] This rule is relatively new and the result of systemic discrimination prevalent in the practice of law. This rule could cover some abuses, especially if the governing body found continuous use of snap removals by a corporation to economically disadvantage individuals.[264] However, due to its infancy, the application of this rule is unknown and likely to be insufficient, unless systemic violation is shown.

These rules center on honesty, requiring lawyers to present true statements and evidence, prohibiting the alteration or obstruction of evidence, including access for opposing counsel, and improper contact with witnesses. Consequently, these rules apply to some instances of snap removals. For example, the Pennsylvania defendant who held the waiver of service form hostage may be sanctioned for dishonesty or obstructing opposing counsel's information.

While these rules offer guidance and even regulate some of the abusive tactics, they are insufficient to regulate snap removals, and a new rule must be created.

B. Proposed Rule 3.10

New rules of professional responsibility and civil procedure, especially regarding AI, must deter attorneys from abusing loopholes.[265] Laws and statutes are infallible because they are man-made. Even if Congress or the Courts were to prohibit snap removals, technology such as AI could still be used in abusive ways in the future. As such, a model rule prohibiting gamesmanship and technology abuse would discourage counsel from engaging in such tactics.

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[261] *See id.*
[262] MODEL RULES OF PRO. CONDUCT r. 4.4 (A.B.A. 2002).
[263] MODEL RULES OF PRO. CONDUCT r. 8.4 (A.B.A. 2002).
[264] *See* Sopko, *supra* note 123 at 429.
[265] *See* text accompanying *supra* note 109.

A Proposed Model Rule of Professional Conduct:

Rule 3.10 Gamesmanship and Technology

Advocate

A lawyer shall not:

(a) Knowingly file or threaten to file a document or advocate orally in a manner that is prejudicial to the administration of justice or to improperly gain a strategic advantage over an adverse party;

(b) Knowingly use artificial intelligence or other technology to circumvent or abuse a valid judicial process, including but not limited to service of process, subpoenas, judicial notice, etc.

Comment

1. This rule intends to promote fairness, efficiency, and integrity in legal proceedings by prohibiting conduct that undermines the administration of justice and lawyers' professional responsibilities.

2. Improper gamesmanship includes actions designed to obstruct, delay, or frustrate the fair and efficient administration of justice.

3. Sanctions: Violations of this rule may result in disciplinary action, including disbarment, suspension, reprimand, or other appropriate sanctions as determined by the relevant disciplinary authority or court. These rules are intended to supplement or facilitate local rules of civil procedure and other discretionary discipline available to the court.

Definitions

(A) Gamesmanship is defined as the use of underhanded and abusive actions to achieve an end not within the bounds of proper advocacy.

(B) Improper is defined as not in accordance with the accepted rules or standards of morality or honesty integral to the legal profession.

(C) Strategic is defined as discretionary choices available to achieve the proper goals of litigation or law practice.

(D) Advantage is defined as a condition or circumstance that puts a party in a superior or unfair position by unethical, improper, or illegal means.

This model rule is designed to deter attorneys from engaging in abusive and absurd conduct, such as snap removals. With the rise in technology, future abuses are likely, and the current model rules do not adequately address technological abuses. This rule would not only regulate attorneys engaging in the most abhorrent behavior, such as holding a waiver of service form hostage, but also prevent service, delay tactics, and even the most "innocent" snap removals. Incentivizing lawyers away from these absurd tactics is a substantial step in properly integrating technology into the field while still maintaining ethical boundaries.

V. CONCLUSION

Snap removals, especially with the rise of technology, threaten to preempt plaintiffs' historic control. As technology becomes more accessible and snap removals become increasingly feasible, courts will continue to face issues surrounding the practice, especially when some courts already tolerate it.

A defective medical product harmed John Williams. Instead of litigating the merits of his case, he and his lawyers were forced to spend countless hours and dollars litigating a procedural nuisance, which he tried to avoid by filing his case in the defendant's home state across the country. Allowing snap removals to continue promotes unfair and absurd results, encourages lawyers to game the system, and aggravates the economic and strategic disparities already under threat. In the face of inaction, the legal community must act to protect the integrity of the field.