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FORM B-6.1

SUMMARY PROCEDURE FOR REMOVAL TO STATE COURT

The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty (30) days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.¹

If removability can be determined from the face of the petition, the 30-day removal period runs from the date defendant receives the complaint "by service or otherwise."² The 30-day removal period commences for all defendants from the date the first of them is served, and if that defendant fails to remove the action within thirty (30) days, later-served defendants cannot remove.³ A named defendant's time to remove is triggered by simultaneous service of the summons and complaint, or receipt of the petition, "through service or otherwise," after and apart from service of the summons, but not by mere receipt of the complaint unattended by any formal service.⁴ "If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty (30) days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, . . ."⁵ However, removal is

¹ 28 U.S.C. § 1446(b).

² 28 U.S.C. § 1446(b).

³ *Brown v. Demco, Inc.*, 792 F.2d 478, 481-482 (5th Cir. 1986).

⁴ *Murphy Brothers, Inc. v. Michetti Pipestringing, Inc.*, 119 S. Ct. 1322 (1999).

⁵ 28 U.S.C. § 1446(b).

only appropriate when the change that makes the action removable occurs as a result of a voluntary act by the plaintiff.⁶

To remove a case from state court, the defendant must file in the federal court for the district and division in which the state action is pending, with a notice of removal signed pursuant to Rule 11.⁷ See Form B-6.2. When a federal district has a division, the notice of removal should be filed in the division that embraces the county where the state court action was pending. For Federal Question cases, the notice must state that removal is based on a claim "arising under" federal law, and identify the statutory basis for the claim. A copy of all pleadings, process, and orders served on the removing defendant in the state action must be filed with the removal notice.⁸ **Local rules may require the removing party to file and procure with the clerk of court a copy of all records and proceedings held in the state court.** If applicable, defendant should also file other defendants' joinder of action. See Form B-6.5.

After the filing of such notice of removal of a civil action, the defendant or the defendants shall promptly give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal. . . ."⁹ Section 1446(d) requires separate written notice to all adverse parties. See Forms B-6.3 and B-6.6. The defendant is also required to file a copy of the notice of removal with the clerk of the state court "which shall effect the removal and the state court shall proceed no further unless and until the case is remanded."¹⁰ See Form B-6.4. No order by the federal court is necessary to complete removal.¹¹ The removal is effected automatically by defendants filing a notice of removal in the federal court, filing a copy of the notice in the state court, and giving notice to all adverse parties.¹² The federal court takes the action as it stood in the state court when removed. All existing orders, including rulings on discovery and extensions of time to plead, remain

⁶ Yurnevich v. Brink's, Inc., 102 F.3d 753, 754 (4th Cir. 1996); S.W.S. Erectors, Inc. v. Infax, Inc., 72 F.3d 489, 494 (5th Cir. 1996); Poulos v. Naus Foods, Inc., 959 F.2d 69 (7th Cir. 1992). See also DeBry v. TransAmerica Corp., 601 F.2d 480 (10th Cir. 1979).

⁷ 28 U.S.C. § 1446(a).

⁸ 28 U.S.C. § 1446(a).

⁹ 28 U.S.C. § 1446(d).

¹⁰ 28 U.S.C. § 1447(d).

¹¹ Libhart v. Santa Monica Dairy Co., 592 F.2d 1062 (9th Cir. 1979).

¹² 28 U.S.C. § 1446(e). See also 14C Wright, Miller and Cooper, *Federal Practice and Procedure: Jurisdiction* 3d § 3737 (1998).

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in effect until modified by the federal court.¹³ Upon removal, a case becomes subject to the Federal Rules of Civil Procedure: "These rules apply to civil actions removed . . . from state courts and govern procedure after removal . . ."¹⁴ Repleading of the state court pleadings according to federal form and content may not be mandated.¹⁵ After removal from state court, defendants who have not yet been served with process must be served in the manner required in cases originally filed in federal court.¹⁶

¹³ *Jenkins v. Commonwealth Land Title Ins. Co.*, 95 F.3d 791, 795 (9th Cir. 1996).

¹⁴ F. R. Civ. P. 81(c). *See also Willy v. Coastal Corp.*, 503 U.S. 131, 135-36, 112 S. Ct. 1076, 1079, 117 L. Ed. 2d 280, 287-88 (1992).

¹⁵ 14C Wright, Miller and Cooper, *Federal Practice and Procedure: Jurisdiction* 3d § 3738 (1998).

¹⁶ F. R. Civ. P. 4.