

Notice of Removal Filings

U. S. District Court
for the District of Colorado
January 2011



Presentation Objectives

- Review 28 U.S.C. § 1446(a)
- Review Local Rule 81.1
- Review ECF Procedure on Notices of Removals (5.4.E)
- ECF Appendix B
- Supplemental Civil Cover Sheet
- Review FAQs
- Test Case Review
- Questions



28 U.S.C. § 1446(a)

- (a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.



Local Rule 81.1

- A. A notice of removal shall comply with 28 U.S.C. § 1446(a).
- B. Within 14 days of the filing of the notice of removal, the removing party shall file a current docket sheet (register of actions) and shall separately file each pending motion, petition, and related response, reply, and brief.
- C. If a hearing in the state court has been set before a case is removed, counsel or the pro se party removing the case shall notify the state judge forthwith of the removal and shall notify the federal judge to whom the case is assigned of the nature, time, and place of the state court setting.



ECF Procedure 5.4.E

- Pursuant to 28 U.S.C. § 1446(a), a notice of removal shall be filed along with service of process, pleadings, and orders served upon the defendant from the state filing.
- Procedurally, each of the documents should be a **separate PDF document** and be named to easily identify the document. For example, the state complaint might be named state-complaint.pdf, the answer might be named state-answer.pdf, etc. (See ECF Appendix B for a **suggested procedural guideline.**)
- After filing the notice of removal and required state documents, the removing party shall file, within 14 days, a current register of actions (docket sheet) and shall **separately** file each pending motion, related response, reply, and brief.



ECF Appendix B – Suggested procedural filing guideline for filing a notice of removal and state court documents

The information provided below is only a suggested procedural guideline and is not all inclusive due to the status of the state case, the documents that may or may not have been filed in district court or the different policies in each district which may affect what documents are available to be filed in the United States District Court, for the District of Colorado. It is the responsibility of the attorney or pro se party removing the case to interpret and follow Local Rule D.C.COLO.LCivR 81.1 - PROCEDURE FOR REMOVAL and 28 U.S.C. § 1446(a).

Initiating documents:

1. Notices of Removal filings are e-mailed to the court for processing.

A. Initial filing is E-mailed to newcases@cod.uscourts.gov.

B. Review 28 U.S.C. § 1446(a) to ensure compliance. As a suggested procedural guideline, each of the following documents should be separate PDF documents and each PDF cannot exceed 5.0 MB in size.

1. Notice of Removal document
 2. Civil Cover Sheet
 3. Supplemental Civil Cover Sheet (NOTE: Any pending motions and pending hearings shall be noted on the Supplemental Cover Sheet)
 4. Complaint/Cross Claim/Counter Claim/3rd Party Complaint or other initiating document
 5. Answers to complaints or initiating petitions.
 6. Affidavit of Service/Returns of Service of the complaint and summons
 7. Any orders served upon the defendant
- (NOTE: Documents for items 4 through 7 are from the state court case.)

Within 14 Days of filing of the Notice of Removal:

2. Within fourteen (14) days of the filing of the Notice of Removal, the removing party shall file in CM/ECF, the following types of documents:

NOTE: Each of the following documents should be separate PDF documents and each PDF cannot exceed 5.0 MB in size.

- A. Current state docket sheet (register of actions.) (Use the Notice - Other event under the Other filings - Notices category.)
- B. Each pending motion from state court (Use the appropriate federal motion event under the Motions and Related filings - Motions category.)
- C. All related responses, replies, and briefs. (Use response to motion, reply to motion, brief in support of motion, or brief in opposition of motion event under the Motions and Related filings - Supporting documents, Responses and Replies category.)

NOTE: Each response, reply, or brief shall be filed using the appropriate response, reply, or brief event and linked to the motion they relate to.

- D. State petitions. (Use the petition event under the Other Filings - Other Documents category.)

Pending State Court Hearings:

3. If a hearing in the state court has been set before a case is removed, counsel or the pro se party removing the case shall notify the state court judge forthwith of the removal.

Use the Notice - Other event to file a copy.

4. The removing party shall notify the federal judge to whom the case is assigned of the nature, time, and place of the state court setting.

This may be accomplished by completing Section D of the Supplemental Civil Cover Sheet.

View Supplemental Civil Cover Sheet



**SUPPLEMENTAL CIVIL COVER SHEET FOR
NOTICES OF REMOVAL**

Appendix B

The removing party shall complete the SUPPLEMENTAL CIVIL COVER SHEET FOR NOTICES OF REMOVAL and follow D.C.COLO.LCivR 81.1.

Section A - Plaintiffs

Plaintiffs remaining in action at the time of filing the notice of removal.

1.	
2.	
3.	
4.	
5.	
6.	

Section B - Defendants

Defendants remaining in action at the time of filing the notice of removal.

1.	
2.	
3.	
4.	
5.	
6.	

**Section C - Pending Motions
As of Date of Removal**

	Title of Motion	Date Motion Filed
1.		
2.		
3.		
4.		
5.		
6.		
7.		

**Section D - Scheduled Hearings
As of Date of Removal**

	Title of Scheduled Hearing	Date of Hearing	Assigned Judge
1.			
2.			
3.			
4.			

Signature of Attorney for Removing Party

Telephone Number:

Date:

State Court Case Number:

FAQs



Notice of Removal FAQs -1

- Why did the local rules change for the filing of notice of removal?
- Feedback from chambers and court operations indicated a desire for a better process to receive, enter, and access documents in a notice of removal.



Notice of Removal FAQs - 2

- Can I submit **one** PDF document containing all of the state court records and the notice of removal?
 - A. Section 5.4.E of the ECF Procedures, Version 4.0 (Civil Filings) indicates separate PDF documents are required in the filing submission and each PDF document shall be clearly identified. For example, the notice of removal filing would be named notice-of-removal.pdf, the state court complaint might be named state-complaint.pdf, an answer might be named state-answer.pdf, etc. Each PDF document cannot exceed 5MB (or 5,000 KB).
 - B. If a single PDF of the state court record is submitted with the notice of removal, **the single PDF is entered as an attachment to the notice of removal.** The submission is not in compliance with the ECF Procedures or **28 U.S.C. § 1446(a)**. The Clerk's office will not separate out pleadings from the single PDF document of state court records submitted. The removing party will be responsible for e-filing the state court documents required by **28 U.S.C. § 1446(a)** as soon as possible. Additionally, they are responsible for e-filing the documents identified by Local Rule D.C.COLO.LCivR 81.1.B within 14 days of the notice of removal filing.



Notice of Removal FAQs - 3

- Can I submit the entire state court record if they are all separate PDF documents with the notice of removal?
 - A. Pursuant to the local rule, the removing party does not need to send the complete state record file when submitting the notice of removal. The initial filing shall include pleadings as identified by **28 U.S.C. § 1446(a)**. The Clerk's office will docket separate entries into CM/ECF with the PDF attachments submitted that are identified by **28 U.S.C. § 1446(a)**. All other submitted PDF documents will be attachments to the notice of removal entry.
 - B. Even if all the documents from the state court case record are submitted, the removing party is responsible for e-filing the documents identified by Local Rule D.C.COLO.LCivR 81.1.B within 14 days of the notice of removal filing.



Notice of Removal FAQs - 4

- Can I file the initial notice of removal and then submit the state court documents at a later date?
- Pursuant to **Local Rule D.C.COLO.LCivR 81.1.A** and **28 U.S.C. § 1446(a)**, certain state court documents shall be submitted with the notice of removal. See **Appendix B** of the ECF Procedures, Version 4.0 (Civil) for additional information. If the state court documents are not submitted as identified by **28 U.S.C. § 1446(a)**, the filing is deficient and these documents will need to be e-filed by the removing party. Since they are required with the submission of the notice of removal, they should be e-filed as soon as possible.



Notice of Removal FAQs - 5

- I submitted a notice of removal and realized, after I submitted the e-mail, that I did not submit any of the state court documents identified by **28 U.S.C. § 1446(a)**. What can I do?
- Since case processing time is variable, the best option is to receive the Notice of Electronic Filing (NEF) when the notice of removal is entered. After receiving the NEF, the removing party will need to e-file the state court documents not submitted. Since they are required with the submission of the notice of removal, they should be e-filed as soon as possible.



Notice of Removal FAQs - 6

- Can I submit more documents than what is identified by **28 U.S.C. § 1446(a)** or suggested in ECF Appendix B with the submission of the notice of removal?
- **28 U.S.C. § 1446(a)** defines what shall be submitted with the notice of removal and documents not defined in **28 U.S.C. § 1446(a)** are not required in the initial submission. Appendix B of the ECF Procedures Version 4 (Civil) is a suggested procedural guideline and may be helpful. It is up to the removing party to submit the pleadings specified in Local Rule D.C.COLO.LCivR 81.1.A and **28 U.S.C. § 1446(a)**.



Notice of Removal FAQs – 6

(continued)

- A. If documents other than those required to be submitted with the notice of removal from state court case are submitted, the PDF filename should be clear as to what the document is. The additional PDF documents will be attachments to the notice of removal entry.
- B. If documents are required to be filed by Local Rule D.C.COLO.LCivR 81.1.B are submitted, they will be attached to the notice of removal entry, but the removing party is still responsible for e-filing documents identified by Local Rule D.C.COLO.LCivR 81.1.B within 14 days of the filing of the notice of removal.
- C. If documents are submitted that were not filed in the state court case but are ready to be filed in federal court (i.e. answer, corporate disclosure, or entry of appearance) and are drafted for the U. S. District Court, they should be clearly named. The Clerk's office will docket these entries into CM/ECF.



Notice of Removal FAQs - 7

- What if I label the state court documents required to be filed by **28 U.S.C. § 1446(a)** as exhibits in my submission?
 - A. There is no requirement that state court documents be referenced in the notice of removal pleading.
 - B. If the notice of removal submitted references the state court documents as exhibits, the Clerk's office will attach each of the documents the notice of removal references to the notice of removal entry. The Clerk's office will also separately attach the documents identified by **28 U.S.C. § 1446(a)** to separate entries in CM/ECF (i.e. complaints, summons, etc.)



Notice of Removal FAQs - 8

- Why do I need to submit separate PDF documents?
- Where applicable, the separate PDF documents will be attached to specific entries in the CM/ECF application. For example, the complaint will be attached to the complaint entry made into CM/ECF. This allows court staff and customers to easily view documents.



Notice of Removal FAQs - 9

- Can I submit sealed documents from the state case?
- Any sealed document submitted with the initial filing **shall** be clearly marked as “**SEALED.**” If a sealed document is to be filed after the case is opened, the filing party shall follow current ECF procedures for filing a sealed document.



Notice of Removal FAQs - 10

- How do I file a pending motion from the state court case?
- Pursuant to Local Rule D.C.COLO.LCivR 81.1.B, the removing party shall file, within 14 days, each **pending motion, related response, and reply**. This is accomplished by using the federal set of motions, responses, and replies accessible by attorneys in CM/ECF.

(Note: When a pending motion is filed, make sure the correct filing party is selected as the filer. Since the removing party is responsible for filing pending motions in the removed case, the removing party may need to select the opposing party as the filer.)



Notice of Removal FAQs - 11

- How do I meet the requirements of Local Rule D.C.COLO.LCivR 81.1.C?
- Local Rule D.C.COLO.LCivR 81.1.C is not specific as to how the information is to be submitted to the court. It is up to the removing party to ensure the rule is met. Appendix B of the ECF Procedures is **only** a suggested guideline as to how the rule could be met.



Notice of Removal FAQs - 12

- Do I need to re-draft state court pleadings to meet federal court rules?
- State court pleadings should remain in the form they were filed in state court.



Notice of Removal FAQs - 13

- When can I begin filing in the notice of removal case?
- As soon as the notice of removal event has been filed and the NEF is sent, a party may access the case and file. However, if a party files immediately after receiving the NEF for the filing of the notice of removal, all other documents may not have been entered and will not be available to link to, etc.



Questions ?

