

BUSINESS LITIGATION

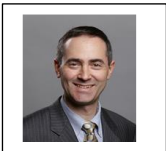
JANUARY 2023

IN THIS ISSUE

Steve Shapiro shares a valuable practice pointer on how the new disclosure requirements in Fed. R. Civ. P. 7.1 will create a publicly available resource for determining the citizenship of limited liability companies and other noncorporate entities who are parties in federal court.

New Disclosure Requirement in Federal Rule 7.1 May Make it Easier to Quickly Determine if a Case is Removable

ABOUT THE AUTHOR



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ABOUT THE COMMITTEE

The Business Litigation Committee consists of members involved in business and commercial litigation including business torts, contract and other commercial disputes, e-commerce, antitrust issues, trade secrets and intellectual property, unfair competition and business defamation and disparagement. The Business Litigation Committee helps connect members involved in these areas around the world through networking and referral opportunities; developing and keeping current in the substantive, strategic and procedural aspects of business litigation; and affords members an international forum for sharing current developments and strategies with colleagues. Among the committee's planned activities are newsletters, publications, sponsorship of internal CLEs, and Webinars. Learn more about the Committee at www.iadclaw.org.



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A recent amendment to Federal Rule of Civil Procedure 7.1 may help litigators determine more quickly whether they can remove to federal court a lawsuit involving noncorporate entities such as limited liability companies and partnerships. Indeed, the new disclosure requirements in the amended rule will create a publicly available compendium of the citizenship of every noncorporate entity that is a party in federal court. To understand how the rule change could make removal practice more efficient, consider the following scenario, which many commercial litigators likely will find familiar:

A client sends you a complaint, filed in state court, and asks you to defend. One of the first things you do is analyze whether a federal court has subject matter jurisdiction over the lawsuit. If so, and if federal court would be a more favorable venue for your client, you can then consider removing the case from state court to federal court (28 U.S.C. § 1441).

A federal court, of course, has subject matter jurisdiction if (1) the case involves a federal question – that is, it arises under the Constitution, laws, or treaties of the United States (known as federal question jurisdiction; 28 U.S.C. § 1331), or (2) the amount in controversy exceeds \$75,000 and the parties are “diverse” – that is, where no defendant is a citizen of the same state as any plaintiff (known as diversity jurisdiction; 28 U.S.C. § 1332).

You quickly determine that the case does not involve a federal question and, therefore, turn to a diversity analysis. If the parties to the lawsuit are individuals, determining their citizenship usually requires little effort, as the complaint often includes the parties’ addresses. If any of the parties are corporations, determining their citizenship also is often a simple task. Corporations are citizens of the state(s) in which they have incorporated and located their principal place of business, and both of those locations usually are easy to find through public records.

But what if one or more of the parties is a limited liability company (or another form of noncorporate entity like a partnership, joint venture, or trust)? An LLC will have one or more members and the LLC takes on the citizenship of its members. So, for instance, if an LLC has three members, one a citizen of Pennsylvania, one a citizen of New Jersey, and one a citizen of California, then the LLC is a citizen of Pennsylvania, New Jersey, and California for purposes of analyzing whether the parties are diverse.

The citizenship of an LLC usually is not apparent from the face of the complaint, and publicly available state corporate filings rarely identify the members of LLCs. You can ask counsel for the LLC to identify its members and their citizenship or, if your client has a contract with the LLC, the contract may identify the members of the LLC. You also can search court dockets to see if the LLC identified its members in some

previous litigation. These efforts, however, are not always successful and can be impractical when time is of the essence, such as when you are running up against the 30 day deadline to remove (28 U.S.C. § 1446(b)) or where you are attempting to effectuate a pre-service removal in a case where a defendant is a citizen of the state in which the plaintiff sued it (also known as a “snap removal”; 28 U.S.C. § 1441(b)(2)).

Although not directly intended for this purpose, the amendment to Federal Rule of Civil Procedure 7.1 that went into effect on December 1, 2022, may provide counsel with an additional tool when attempting to quickly determine the citizenship of an LLC or other noncorporate entity. The previous version of Rule 7.1 only applied to corporate parties and required them to identify any parent corporation or any publicly-held corporation that owned more than ten percent of their stock. The amended Rule 7.1 preserves that disclosure requirement for corporate parties but imposes additional disclosure requirements in diversity cases.

First, every party in a diversity case – not just corporations – must file a disclosure statement. *See* Fed. R. Civ. P. 7.1(a)(2) (“In an action in which jurisdiction is based on diversity under 28 U.S.C. § 1332(a) [diversity], a party or intervenor must, unless the court orders otherwise, file a disclosure statement.”). Second, “[t]he statement must name—and identify the citizenship of—every individual or entity whose citizenship is attributed to that party or intervenor.” *Id.*

Therefore, as of December 1, 2022, every LLC (or other noncorporate entity) that is a party in a federal action arising under the court’s diversity jurisdiction must identify in a publicly available court filing its members and the citizenship of those members. As the Committee Notes to the 2022 amendment explain, the purpose of the rule change was “to facilitate an early and accurate determination of jurisdiction. . . . to ensure that diversity jurisdiction exists and to protect against the waste that may occur upon belated discovery of a diversity-destroying citizenship.” But the new disclosure requirement also will create a continuously growing, informal database identifying the citizenship of every noncorporate entity that is a party to a federal court diversity action.

Now, when you are investigating the citizenship of an LLC or other noncorporate entity to determine whether you can remove a case, a search in PACER (or any other database of federal court filings) may quickly provide you with the information you seek. If the entity was a party to a federal court diversity action filed on or after December 1, 2022, the entity’s publicly available Rule 7.1 disclosure statement will reveal its citizenship.

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