



Update from AAJ Linda A. Lipsen

CEO, AMERICAN ASSOCIATION FOR JUSTICE

Journal of Consumer Attorneys Associations for Southern California
ADVOCATE

March 2020

With so many issues in play right now, AAJ is working overtime

THE FIGHT TO KEEP YOUR CASES IN STATE COURTS

WASHINGTON UPDATE

State cases: AAJ fights to keep them in state courts

AAJ knows that keeping state cases in state courts is very important to you and your clients. Therefore, we are working on legislation to solve the problem of snap removal, the quick removal by a resident corporate defendant to a federal court before being served with the complaint, thus denying proper jurisdiction over the case to the defendant's forum state court. We will keep you informed as this continues to move along.

Negotiations continue on driverless car legislation and on a bill to regulate the cosmetics industry. We remain vigilant and focused on ensuring that your clients still have access to state courts and are not forced into arbitration.

In other news, while the Senate has not yet taken action on the FAIR Act, AAJ is working on other bills to end the rigged, grossly unfair practice of forcing consumers, workers, and others into arbitration to resolve disputes. Watch this space for more information.

Thank you for your commitment to civil justice. Below, you'll find some recent highlights of AAJ's advocacy on behalf of you and your clients:

Keep state cases in state courts

AAJ recognizes that a big threat to justice for your clients and their cases is the untimely removal of state cases to federal court. Defense attorneys, corporate counsel and their lobbyists have been advocating for minimal diversity and other changes to the traditional jurisdiction rules to force more cases into federal court. It is the highest priority of AAJ to push back on their efforts.

Snap removal is the latest attempt by corporate defendants to undermine traditional diversity jurisdiction rules and move state cases to federal court. The House Judiciary Subcommittee held a hearing in November to review legislative solutions. The hearing video

and witness statements are available at <https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=2279>. The hearing shed light on snap removal and got a conversation started with members of Congress about crafting legislation. Afterward, AAJ worked with interested stakeholders to draft a legislation solution.

In February, Rep. Johnson (D-GA) and Rep. Nadler (D-NY) introduced the Removal Jurisdiction Clarification Act of 2020, to close the snap removal legal loophole by allowing for the remand of cases where the defendant has been properly served within 30 days of the initial notice of removal and the motion to remand is properly made. Plaintiffs who complete service of process following filing as required will not be forced into federal court by a corporate defendant's snap removal.

Guidance on third-party access to health records under HIPAA

Since January 2018, AAJ has been monitoring *Ciox Health LLC v. Azar* pending in the D.C. district court in which Ciox Health, LLC challenged a U.S. Department of Health and Human Services (HHS) rule and guidance limiting the fees that medical-records companies can charge to third parties for collecting health information.

Last week, a memorandum order issued by the DC district court regarding HHS's guidance under the HI-TECH Act restricts access to third parties.

AAJ knows that it's essential for patients and their lawyers to have access to their electronic medical records and the metadata accompanying the record. Since patients can still access their records, it may be advisable for lawyers to help their clients make the request for records directly.

Once the court decision is finalized, and we know what further action(s) HHS will take, AAJ will decide what next step to take. Please read HHS's notice on the matter at <https://www.hhs.gov/hipaa/court-order-right-of-access/index.html>.

Federal rules update

Even if you don't practice in federal court, it's important to be concerned as most state courts eventually adopt the federal rules.

Standing Committee meeting

The Committee on Rules of Practice and Procedure, referred to as the Standing Committee, met on January 28 in Phoenix. At this meeting, each Advisory Committee, including the Advisory Committee on Civil Rules and the Advisory Committee on Evidence, sought advice about which proposed rules changes to move forward at their spring meetings.

The Standing Committee recommended that the Advisory Committee move forward with proposed Social Security rules. AAJ is concerned that specific Social Security rules will lead to niche rules for other plaintiff area practices.

The Advisory Committee on Evidence is deciding whether to move forward with a proposed amendment to FRE 702 to curtail expert witnesses overstating their scientific findings. The draft proposal requires that the expert not state findings unsupported by the results of the expert's methods and principles. AAJ is concerned that this proposed rule would create another hurdle of debate and delay over whether the plaintiff's expert was "overstating" his or her findings. The Standing Committee is comfortable with the rule moving forward.

We expect more information about these and other rules issues to be debated during the spring meetings of the Advisory Committees and will keep you informed.

Fighting for you and your clients

AAJ continues to fight all attempts to deny access to justice. We look forward to keeping you in the loop on important developments. We welcome your input. You can reach me at advocacy@justice.org.