

**JUDICIAL CODE
SUPPLEMENT**

**TITLE 28
AND
RELATED STATUTES**

2016 Edition

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TITLE 28 AND RELATED STATUTES

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INTRODUCTION TO THE 2016 EDITION

The Judicial Code — Title 28 of the United States Code — contains the primary statutes relating the power and organization of the federal judiciary. It accordingly provides the framework for any study of Federal Courts. But the Judicial Code is not a static compilation; in almost every session, Congress makes one or more changes to its provisions. Some of the changes are minor, like realigning the judicial districts within a state or conforming a statutory provision to a change in the Federal Rules of Civil Procedure. But other amendments establish new ground rules for litigation or raise constitutional questions that are of interest from a Federal Courts perspective. For example, in 2011, Congress made significant revisions to the Code sections that govern removal of cases from state to federal court under the general removal statute. A year later, Congress amended the federal officer removal statute in a way that arguably goes beyond the scope of Article III.

This edition of the Judicial Code Supplement incorporates the amendments to Title 28 signed into law through May 2016. Footnotes and (for important revisions) textual notes flag substantive changes in the Code since the book's initial appearance in 2005. This feature, unique to our Code Supplement, enables teachers as well as students to trace the evolution of the Code over a period of years.

The first edition of this Code Supplement was published in 2005, along with the first edition of our casebook, *Federal Courts: Cases and Materials on Judicial Federalism and the Lawyering Process*. The second edition of the casebook was published in 2009, and the third edition was published in 2013. Like its predecessors, this compilation can of course be used with any Federal Courts casebook.

As the title suggests, the bulk of the Supplement is devoted to the Judicial Code. We believe that it is valuable for students to see the various provisions of the Code in context. For example, in studying removal, it is useful to examine the entirety of Chapter 89, just as it is enlightening to see how key provisions such as 28 U.S.C. § 2254(d)(1) fit into the overall habeas corpus scheme established by Chapter 153.

We have omitted sections and chapters of the Judicial Code when we are confident that no Federal Courts teacher is likely to refer to them in connection with any of the topics addressed in any widely used casebook.

Another unique feature of this Supplement is found in Part Two, “Other Titles of the United States Code: Selected Provisions.” As would be expected, the compilation includes procedural provisions like the Administrative Procedure Act (Title 5, Chapter 7) and the Federal Arbitration Act (Title 9). But federal laws that bear on the issues addressed in the casebook are not limited to procedural laws. For example, students encounter the civil RICO statute in Chapter 4 (dealing with the jurisdiction of state courts), in Chapter 7 (on finding a limitations period when Congress does not provide for one), and again in Chapter 8 (in the discussion of frivolous federal claims). We have therefore included the provisions of Title 18 defining the civil RICO cause of action. Other cause of action statutes included in the Supplement are ERISA;

FELA; the Clayton Act; 42 U.S.C. § 1983; two provisions of the Detainee Treatment Act of 2005 (referred to in 28 U.S.C. § 2241(e)) that were codified in Title 10; and 18 U.S.C. § 1836, which Congress amended in 2016 to provide a private cause of action to protect trade secrets. We believe that having the text of these and other substantive statutes will substantially enrich the possibilities for class discussion of the jurisdictional and other Federal Courts issues that they generate.

Part Three of the Supplement contains the Federal Rules of Civil Procedure. The text reflects the complete stylistic revision that took effect on December 1, 2007 as well as more recent substantive amendments, including the 2015 revisions of Rule 26 and Rule 34. Students will note some textual differences between the current version of the Rules and the versions quoted in some cases in the Casebook. An Appendix contains a red-lined version of the changes in the Federal Rules that are expected to take effect on December 1, 2016.

Part Four of the Supplement provides the text of the Judiciary Act of 1789, the foundation of much that is in the Judicial Code today.

The 2016 edition includes the important changes adopted by the 112th Congress in 2011 and 2012. These changes were the product of four separate enactments: the “Holmes Group fix” that was part of the Leahy-Smith America Invents Act; the Removal Clarification Act of 2011; a removal provision enacted as part of a defense authorization act; and, most important, the Federal Courts Jurisdiction and Venue Clarification Act of 2011 (JVCA).

- The “Holmes Group fix” added a new removal provision (§ 1454) to Chapter 89 and revised §§ 1338 and 1295(a).
- The Removal Clarification Act dealt solely with removals under 28 U.S.C. § 1442, the federal officer removal statute.
- A little-noticed provision of the National Defense Authorization Act for Fiscal Year 2013 further amended § 1442. This is the provision that arguably goes beyond Article III. See Chapter 2 of the 2016 Supplement to our Casebook.
- The JVCA effected the most far-reaching package of revisions to the Judicial Code since the Judicial Improvements Act of 1990. It made substantial changes to the procedures governing removal based on diversity, and it entirely rewrote the provisions of Chapter 87 dealing with venue. It also revised the provisions of Title 28 that deal with alienage jurisdiction and the removal of “separate and independent” claims.

For the JVCA and other important changes to Title 28, we have provided editorial notes containing brief summaries of the revisions as well as the pre-2011 text of the Code sections affected.

Also included in the 2016 edition are other revisions to Title 28 made since the start of the 109th Congress in 2005. Among the more noteworthy are the changes resulting from the Class Action Fairness Act (creating new bases for original and removal jurisdiction) and the Military Commissions Act of 2006 (limiting jurisdiction over actions for habeas corpus “filed by or on behalf

of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination”). In addition, Congress substantially revised the provisions on exceptions to the jurisdictional immunity of foreign states (now §§ 1605 and 1605A), and it added a new section (§ 1260) to Chapter 81 on the jurisdiction of the Supreme Court.

Two laws passed by Congress in 2010 and 2011 are of interest from a Federal Courts perspective. The SPEECH Act adds a new chapter (Chapter 181) to Title 28. Aimed at the problem of “libel tourism,” Chapter 181 limits enforcement of foreign defamation judgments by American courts. Among other provisions, it creates a new federal defense to specified enforcement actions, whether brought in federal or state court; establishes a new basis for removal; and provides for a new kind of declaratory judgment action in federal court. Separately, Congress created a pilot program in certain United States district courts to encourage enhancement of expertise in patent cases among district judges. The law is set forth in the Appendix to Part One.

Also of interest from a Federal Court’s perspective is another provision added by the America Invents Act of 2011 — a provision on joinder in patent cases that effectively repeals, for patent cases, the rules on joinder and consolidation in the Federal Rules of Civil Procedure. The new statute is included in Part II of this Supplement.

The 2016 edition also includes in an appendix the proposed Fraudulent Joinder Prevention Act, which passed the House on February 25, 2016; as of May 1, 2016, the bill was pending in the Senate. The purpose of the Act, as explained by its sponsor, is to establish “a uniform standard for determining whether a [local] defendant has been fraudulently joined to a lawsuit, in order to defeat federal diversity jurisdiction.” The Act would codify “a somewhat more robust version of the fraudulent joinder doctrine” than the one generally applied by the courts today.

The authors welcome suggestions for additional statutory or Rule material that might be included.

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