

STATE OF MISSISSIPPI



12-CV-C

JIM HOOD
ATTORNEY GENERAL

August 10, 2012

Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
of the Judicial Conference of the United States
Washington, D.C. 20544

Dear Secretary McCabe:

I am writing to propose amendments to the Federal Rules of Civil Procedure ("Rules") to address an issue of significant concern to the states: the use of removal to federal court as a dilatory defense tactic. Specifically, I urge the Committee on Rules of Practice and Procedure to take action to (1) establish a deadline for federal courts to rule on motions to remand in cases brought by states and (2) impose costs and fees on those who file improper notices of removal.

Our office, as is the case with many attorneys general across the country, has a duty to protect citizens from corporate wrongdoing. Often, this need for protection is immediate. Examples in Mississippi include our fight with insurers following Hurricane Katrina, as well as our more recent lawsuit against Entergy, a regional power company that our office believes has vastly overcharged its customers for years. In these cases and similar ones across the country each year, the timing of the relief is just as important as the nature of the remedy sought.

In the Entergy litigation, our office filed suit in December 2008. Defendants removed the case to federal court later that month, and the State filed a motion to remand in January 2009. By June 2009, all remand related briefing was complete, and the Court had heard oral arguments twice. In September 2011, the Court had yet to issue a remand ruling but did grant the State's request for a status conference. At that status conference, the Court stated that a remand decision was forthcoming. Despite the State's repeated efforts to obtain a ruling, the Court did not act on the State's motion to remand for more than three years following the completion of briefing, and the State was forced to file a petition for mandamus. Just today, the Fifth Circuit granted that petition, which requires the district judge to rule on remand within 15 days. Similarly, in our cases against insurers following Hurricane Katrina, it took fifteen months to get a final ruling on the defendants' motions to remand.

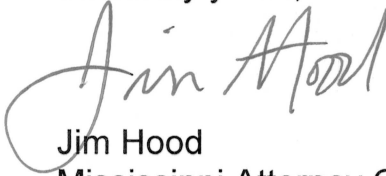
Citizens in our state cannot afford this delay in justice.

To address situations such as the examples above and deter stalling tactics by defendants, I would recommend adding language to the Rules requiring the automatic remand of cases in which the district court takes no action on a motion to remand within 30 days. As an additional deterrent, the Rules should be amended to provide that in all cases remanded, the removing party or parties must pay the just costs and any actual expenses, including attorney fees, incurred as a result of removal and remand.

I ask this Committee to consider the amendments described above at its next scheduled meeting in November, 2012. If the Committee needs more information or would like for me to attend the next meeting, please contact Special Assistant Attorney General Meredith Aldridge at (601) 359-4204 or at maldr@ago.state.ms.us.

Having experienced lengthy delays in critical state litigation, I believe this Committee has an opportunity to foster justice through these amendments. Together, we can make the changes needed to deter companies from abusing the federal court system to delay or deny remedies to injured parties.

Sincerely yours,

A handwritten signature in cursive script that reads "Jim Hood". The signature is written in black ink and is positioned above the printed name.

Jim Hood
Mississippi Attorney General