

Proposed Rule Provides Guidance for Initial Case Management in MDLs

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Multidistrict litigation (MDL) is a special federal legal procedure designed to efficiently process multiple civil cases involving one or more common questions of fact. These cases typically involve hundreds to thousands of plaintiffs in different district courts throughout the country. The U.S. Judicial Panel on Multidistrict Litigation may transfer these actions to any single district for coordinated or consolidated pretrial proceedings. In recent years, these actions have accounted for a substantial portion of the federal civil docket, with around 400,000 lawsuits currently part of MDL proceedings.

On March 28, 2023, the Advisory Committee on Civil Rules voted to publish for comment a new rule on initial case management in MDL actions, which could assist the transferee court (the court to which the case has been transferred) in addressing a variety of matters that often prove important in MDL proceedings.

Once an MDL action is transferred, proposed Rule 16.1 encourages the transferee court to schedule an initial MDL management conference to develop a management plan for orderly pretrial activity. While this initial management conference is not mandatory under proposed Rule 16.1(a), early attention to the matters identified in the rule may be of great value to the transferee judge and the parties. The draft rule further recommends that the transferee court designate coordinating counsel to ensure effective and coordinated discussion during a Rule 16.1(c) conference and provide an informative report for the court to use during an initial management conference under Rule 16.1(a). Under subsection (c) of the rule, the transferee court should order the parties to meet and confer to prepare and submit a report to the court before any initial management conference. The rule outlines a non-exhaustive list of 12 topics for the parties to bring to the court's attention, such as whether consolidated pleadings should be prepared to account for multiple actions, a proposed plan

for discovery, any likely pretrial motions, and whether the court should consider measures to facilitate settlement by the parties of some or all actions before the court.

Ultimately, the proposed rule has prompted many concerns from both plaintiffs' and defendants' attorneys, as the rule does not set any mandatory requirements. However, codifying these topics would potentially emphasize the need for parties to address key issues at the early stage of MDL proceedings. We will continue to monitor the progress of proposed Rule 16.1.

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