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## TABLE OF CONTENTS

<b>Proposed Rule 16.1: A Defense Perspective on Managing Multidistrict Litigation (MDL)</b> .....	261
<b>Officials in California, Florida look at crackdown on undocumented immigrants through vastly different lenses</b> ..	264
<b>Voluntary Confession Standard—Pennsylvania</b> .....	267
<b>CARES Act</b> .....	270
<b>Warrantless Search of a Home—Georgia</b> .....	273
<b>In Brief</b> .....	276
<b>Updates</b>	
Antitrust Law .....	280
Employment Law .....	295
Environmental Law .....	314
Intellectual Property Law.....	322
International Law .....	344



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## Proposed Rule 16.1: A Defense Perspective on Managing Multidistrict Litigation (MDL)

*Michael S. Cryan and Nardeen Billan*

Complex litigation cases, such as those involving airplane crashes, defective products, and dangerous drugs, often result in Multidistrict Litigation (MDL) to efficiently consolidate claims in one court. As of January 2, 2025, some of the largest pending MDLs include those for 3M combat arms earplugs, J&J talcum powder, and Davol/C.R. Bard Hernia mesh.<sup>1</sup> The impetus for proposed Rule 16.1, released for public comment by the Judicial Conference Advisory Committee on Civil Rules in August 2023, arises from the fact that over 60% of federal civil cases are MDLs, with 90% of these being products liability actions.<sup>2</sup>

While Rule 16 addresses pretrial conferences, scheduling, and case management in standard civil lawsuits, proposed Rule 16.1 is designed specifically for MDLs.<sup>3</sup> This marks the first time the Federal Rules have introduced provisions focused solely on MDLs acknowledging the unique considerations these cases present and the necessity for a customized approach from the outset. Proposed Rule 16.1 aims to tackle the initial case management phase of MDLs by requiring courts to schedule a case management conference, order the

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<sup>1</sup>J.P.M.L., *MDL Statistics Report—Distribution of Pending MDL Dockets by Actions Pending*, [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_Actions\\_Pending-January-2-2025.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions_Pending-January-2-2025.pdf) (last updated Jan. 2, 2025).

<sup>2</sup>Bloomberg Law, *2023 Statistics Series: Multidistrict Litigation*, <https://assets.bbbhub.io/bna/sites/7/2023/10/2023-Multidistrict-Litigation-Report>.

<sup>3</sup>Fed. R. Civ. P. 16 (establishing “a structured framework for the early and ongoing involvement of the court in managing the progression of cases, with the ultimate goals of reducing waste of time and resources, preventing unnecessary delays, and improving the quality of justice delivered”).

parties to file a case management statement, and enter an initial management order.<sup>4</sup>

### General Implications for MDL Defendants

MDL cases are frequently characterized by a high number of meritless claims, which can overwhelm the court systems and parties. Unfortunately, the current draft of Proposed Rule 16.1, with its permissive rather than mandatory language, does not adequately resolve the uncertainties surrounding MDL processes for defendants involved in extensive product liability and mass tort litigation. The rule emphasizes early settlement, presuming all claims are meritorious and defendants are liable, rather than focusing on the analysis of dispositive motions early in the proceedings. This focus can be detrimental to defendants, as it overlooks the importance of evaluating the legal merits of claims before pursuing settlements.

### Prioritizing Dispositive Motions

For MDL defendants, prioritizing dispositive motions in the early stages would serve a dual purpose: reducing meritless filings and providing crucial legal guidance for settlement negotiations. This approach would shift the court's focus from being a settlement overseer to a judicial body that thoroughly evaluates claims, ensuring that only meritorious cases proceed.

### Conclusion

Anticipated to take effect on December 1, 2025, Proposed Rule 16.1 would be the first rule specifically governing the critical initial case management phase of MDLs. It aims to offer guidance to transferee courts and parties on early case management procedures, including appointing leadership, facilitating early information exchange, and handling other case management duties. However, for the rule to truly benefit MDL defendants, it must prioritize the evaluation of dispositive motions. The proposed rule still requires approval from the Committee on Rules of Practice and Procedure, the Judicial Conference, the Supreme Court, and Congress. As

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<sup>4</sup>Law360, *Committee Note*, LexisNexis, <https://www.law360.com/articles/1823407/attachments/2> (last visited Mar. 11, 2025).

#### PROPOSED RULE 16.1: A DEFENSE MANAGING MDL

such, defense counsel should remain vigilant and actively participate in the rule-making process to advocate for a more balanced approach that protects defendants' interests in MDLs.

The period for public comment on the proposed Rule 16.1 ended on February 16, 2024, and the comments are accessible [here](#). Although the final rule is anticipated to take effect in late 2025, ArentFox Schiff LLP will keep a close watch on any developments and provide updates as needed.

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