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WLF Urges Advisory Committee on Civil Rules to Adopt Meaningful MDL Reforms

(In re Multi-District Litigation Reform)

“Without meaningful reform, MDLs will continue to erode public confidence in the value and fairness of MDL proceedings.”

—Cory Andrews, WLF Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) earlier today submitted comments to the Advisory Committee on Civil Rules in response to the Committee’s review of the procedures used in multi-district litigation proceedings (MDLs).

Created by Congress in 1968 to promote efficiency and conserve finite judicial resources, MDLs have not always lived up to their initial promise. By adopting ad hoc procedures calculated to avoid a trial on the merits, MDLs exert tremendous pressure—especially on defendants—for global settlement. MDLs thus encourage the filing of baseless claims. Nonetheless, a majority of all civil cases in federal court eventually end up in MDLs. As the share of cases consolidated into MDLs has risen markedly in recent years, MDLs’ many shortcomings have come into sharper focus. To address these deficiencies, WLF commends three concrete proposals to improve the efficiency and fairness of MDLs.

First, to curtail the filing of baseless claims in MDLs, WLF urges a rule mandating early evidentiary disclosures by plaintiffs bringing consolidated cases. Such a rule would not only ensure that MDL judges won’t waste valuable time on meritless claims, but it will create a strong disincentive for plaintiffs to bring such claims in the first place. Second, because access to interlocutory appellate review is asymmetrical, WLF proposes a rule that gives any party the right to immediately appeal from the denial of broadly applicable dispositive motions under Rules 12(b)(1), 12(b)(2), 12(b)(6), or Rule 56. Third, to increase transparency of third-party litigation-financing arrangements, WLF asks the Committee to adopt a mandatory disclosure rule. Such a rule, which could be inserted into Rule 26, would require disclosure of any agreement under which any person has a contractual right to receive money that is contingent on, or sourced from, any proceeds of the lawsuit—by settlement, judgment, or otherwise.

Celebrating its 42nd year as America’s premier public-interest law firm and policy center, WLF’s mission is to preserve and defend America’s free-enterprise system by litigating, educating, and advocating for free-market principles, a limited and accountable government, individual and business civil liberties, and the rule of law.

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