

WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Avenue, N.W.
Washington, D.C. 20036

March 19, 2020

Rebecca A. Womeldorf, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544

Re: Amendments to Adapt FRCP to MDL Proceedings

Dear Ms. Womeldorf:

Washington Legal Foundation (WLF) writes to share with you a WLF WORKING PAPER that is relevant to your consideration of requested amendments to the Federal Rules of Civil Procedure for multidistrict litigation (MDL) proceedings.

This publication's lead authors have extensive experience with MDL proceedings. Christopher Gramling, Assistant General Counsel of Eli Lilly, has managed numerous MDLs during his time in-house. Matthew Hamilton, an outside counsel at Pepper Hamilton LLP, has represented business defendants in MDLs and has been active with Lawyers for Civil Justice, the organization that submitted a request for a rulemaking with the Committee to adapt the FRCP to MDLs in 2017.

The WORKING PAPER notes the noble purpose of the multidistrict litigation device to promote "the just and efficient conduct" of civil actions but argues that the device has regrettably not achieved its promising goal. Instead, the device has imposed an "MDL tax" of sorts on defendants.

The authors conclude that the filing of meritless claims, and courts' inability to separate them from legitimate claims, has escalated this MDL tax. They evaluate two tools that courts have used to address meritless claims, plaintiff fact sheets and *Lone Pine* orders, and argue that those tools have been inconsistently used and enforced.

The paper then goes on to assess short- and long-term solutions that would allow courts to more effectively vet MDL cases early in the process. In the short term, the authors urge courts to utilize case management orders to weed out meritless claims. In the longer term, the authors encourage the Committee on Rules of Practice and Procedure to adopt formal rules along the lines of what Lawyers for Civil Justice proposed in 2017 (and which WLF formally supported in its September 23, 2019 comments to the Committee; see <https://www.wlf.org/case/in-re-multi-district-litigation-reform/>).

Washington Legal Foundation greatly appreciates the Committee on Rules of Practice and Procedure's consideration of new rules that can help return the multidistrict litigation process to its original purposes. We trust that this WORKING PAPER will provide useful information and arguments in favor of needed long-term solutions.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn G. Lammi". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Glenn G. Lammi

Chief Counsel, Legal Studies Division

Attachment