

AMENDMENTS TO THE FEDERAL RULES  
OF CIVIL PROCEDURE

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COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT  
OF THE UNITED STATES

TRANSMITTING

AMENDMENTS AND AN ADDITION TO THE FEDERAL RULES OF  
CIVIL PROCEDURE THAT HAVE BEEN ADOPTED BY THE SU-  
PREME COURT, PURSUANT TO 28 U.S.C. 2072.



APRIL 24, 2025.—Referred to the Committee on the Judiciary and ordered  
to be printed

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U.S. GOVERNMENT PUBLISHING OFFICE

★ 59-011

WASHINGTON : 2025



SUPREME COURT OF THE UNITED STATES,  
*Washington, DC, April 23, 2025.*

HON. MIKE JOHNSON,  
*Speaker, United States House of Representatives,*  
*Washington, DC.*

DEAR MR. SPEAKER: I have the honor to submit to the Congress amendments and an addition to the Federal Rules of Civil Procedure that has been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying the amended and additional rules are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated October 17, 2024; a blackline version of the rule with committee note; an excerpt from the September 2024 report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the May 2024 report of the Advisory Committee on Civil Rules.

Sincerely,

JOHN G. ROBERTS, Jr.,  
*Chief Justice.*

April 23, 2025

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. The Federal Rules of Civil Procedure are amended to include amendments to Rules 16 and 26, and new Rule 16.1.

[*See infra* pp. \_\_ \_\_ \_\_.]

2. The foregoing amendments and addition to the Federal Rules of Civil Procedure shall take effect on December 1, 2025, and shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. THE CHIEF JUSTICE is authorized to transmit to the Congress the foregoing amendment to the Federal Rules of Civil Procedure in accordance with the provisions of Section 2074 of Title 28, United States Code.

**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF CIVIL PROCEDURE**

**Rule 16.      Pretrial      Conferences;      Scheduling;  
                         Management**

\* \* \* \* \*

**(b)      Scheduling and Management.**

\* \* \* \* \*

**(3)      *Contents of the Order.***

\* \* \* \* \*

**(B)      *Permitted Contents.***

\* \* \* \* \*

- (iv)      include the timing and method  
                         for      complying      with  
                         Rule 26(b)(5)(A)      and      any  
                         agreements the parties reach  
                         for      asserting      claims      of  
                         privilege or of protection as  
                         trial-preparation material after

2 FEDERAL RULES OF CIVIL PROCEDURE

information is produced,  
including agreements reached  
under Federal Rule of  
Evidence 502;

\* \* \* \* \*

**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF CIVIL PROCEDURE**

**Rule 16.1. Multidistrict Litigation**

- (a) **Initial Management Conference.** After the Judicial Panel on Multidistrict Litigation transfers actions, the transferee court should schedule an initial management conference to develop an initial plan for orderly pretrial activity in the MDL proceedings.
- (b) **Report for the Conference.**
- (1) ***Submitting a Report.*** The transferee court should order the parties to meet and to submit a report to the court before the conference.
- (2) ***Required Content: the Parties' Views on Leadership Counsel and Other Matters.*** The report must address any matter the court designates—which may include any matter in Rule 16—and, unless the court orders otherwise, the parties' views on:

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- (A) whether leadership counsel should be appointed and, if so:
  - (i) the timing of the appointments;
  - (ii) the structure of leadership counsel;
  - (iii) the procedure for selecting leadership and whether the appointments should be reviewed periodically;
  - (iv) their responsibilities and authority in conducting pretrial activities and any role in facilitating resolution of the MDL proceedings;
  - (v) the proposed methods for regularly communicating with



- and reporting to the court and  
nonleadership counsel;
- (vi) any limits on activity by  
nonleadership counsel; and
- (vii) whether and when to establish  
a means for compensating  
leadership counsel;
- (B) any previously entered scheduling or  
other orders that should be vacated or  
modified;
- (C) a schedule for additional management  
conferences with the court;
- (D) how to manage the direct filing of  
new actions in the MDL proceedings;  
and
- (E) whether related actions have been—  
or are expected to be—filed in other

## 4 FEDERAL RULES OF CIVIL PROCEDURE

courts, and whether to adopt methods  
for coordinating with them.

(3) ***Additional Required Content: the Parties' Initial Views on Various Matters.*** Unless the court orders otherwise, the report also must address the parties' initial views on:

- (A) whether consolidated pleadings should be prepared;
- (B) how and when the parties will exchange information about the factual bases for their claims and defenses;
- (C) discovery, including any difficult issues that may arise;
- (D) any likely pretrial motions;
- (E) whether the court should consider any measures to facilitate resolving some or all actions before the court;

- (F) whether any matters should be referred to a magistrate judge or a master; and
  - (G) the principal factual and legal issues likely to be presented.
- (4) **Permitted Content.** The report may include any other matter that the parties wish to bring to the court's attention.
- (c) **Initial Management Order.** After the conference, the court should enter an initial management order addressing the matters in Rule 16.1(b) and, in the court's discretion, any other matters. This order controls the course of the proceedings unless the court modifies it.

**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF CIVIL PROCEDURE**

**Rule 26. Duty to Disclose; General Provisions  
Governing Discovery**

\* \* \* \* \*

**(f) Conference of the Parties; Planning for  
Discovery.**

\* \* \* \* \*

- (3) *Discovery Plan.*** A discovery plan must state  
the parties' views and proposals on:

\* \* \* \* \*

- (D)** any issues about claims of privilege  
or of protection as trial-preparation  
materials, including the timing and  
method for complying with  
Rule 26(b)(5)(A) and—if the parties  
agree on a procedure to assert these  
claims after production—whether to

ask the court to include their  
agreement in an order under Federal  
Rule of Evidence 502;

\* \* \* \* \*





THE CHIEF JUSTICE  
OF THE UNITED STATES  
*Presiding*

## JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

HONORABLE ROBERT J. CONRAD, JR.  
*Secretary*

October 17, 2024

### MEMORANDUM

To: Chief Justice of the United States  
Associate Justices of the Supreme Court

From: Judge Robert J. Conrad, Jr. *Robert J. Conrad, Jr.*  
Secretary

RE: TRANSMITTAL OF PROPOSED AMENDMENTS TO THE FEDERAL RULES OF  
CIVIL PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit for the Court's consideration proposed amendments to Rules 16 and 26 of the Federal Rules of Civil Procedure and new Rule 16.1, which have been approved by the Judicial Conference. The Judicial Conference recommends that the amended rules and new rule be adopted by the Court and transmitted to Congress pursuant to law.

For your assistance in considering the proposed amendments and new rule, I am transmitting (i) clean and blackline copies of the rules and new rule along with committee notes; (ii) an excerpt from the September 2024 report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iii) an excerpt from the May 2024 report of the Advisory Committee on Civil Rules.

Attachments

00116

**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF CIVIL PROCEDURE<sup>1</sup>**

1   **Rule 16.**       **Pretrial    Conferences;    Scheduling;**  
2                   **Management**

3                                   \* \* \* \* \*

4   **(b)    Scheduling and Management.**

5                                   \* \* \* \* \*

6                   **(3)    *Contents of the Order.***

7                                   \* \* \* \* \*

8                               **(B)    *Permitted Contents.***

9                                   \* \* \* \* \*

10                               **(iv)   include the timing and method**  
11                                       for    complying    with  
12                                       Rule 26(b)(5)(A) and any  
13                                       agreements the parties reach  
14                                       for asserting claims of

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<sup>1</sup> New material is underlined; matter to be omitted is lined through.



15 privilege or of protection as  
16 trial-preparation material after  
17 information is produced,  
18 including agreements reached  
19 under Federal Rule of  
20 Evidence 502;

21 \* \* \* \* \*

22 **Committee Note**

23 Rule 16(b) is amended in tandem with an amendment  
24 to Rule 26(f)(3)(D). In addition, two words—“and  
25 management”—are added to the title of this rule in  
26 recognition that it contemplates that the court will in many  
27 instances do more than establish a schedule in its Rule 16(b)  
28 order; the focus of this amendment is an illustration of such  
29 activity.

30 The amendment to Rule 26(f)(3)(D) directs the  
31 parties to discuss and include in their discovery plan a  
32 method for complying with the requirements in  
33 Rule 26(b)(5)(A). It also directs that the discovery plan  
34 address the timing for compliance with this requirement, in  
35 order to avoid problems that can arise if issues about  
36 compliance emerge only at the end of the discovery period.

37 Early attention to the particulars on this subject can  
38 avoid problems later in the litigation by establishing case-  
39 specific procedures up front. It may be desirable for the  
40 Rule 16(b) order to provide for “rolling” production that

41 may identify possible disputes about whether certain  
42 withheld materials are indeed protected. If the parties are  
43 unable to resolve those disputes, it is often desirable to have  
44 them resolved at an early stage by the court, in part so that  
45 the parties can apply the court's resolution of the issues in  
46 further discovery in the case.

47 Because the specific method of complying with  
48 Rule 26(b)(5)(A) depends greatly on the specifics of a given  
49 case there is no overarching standard for all cases. In the first  
50 instance, the parties themselves should discuss these  
51 specifics during their Rule 26(f) conference; these  
52 amendments to Rule 16(b) recognize that the court can  
53 provide direction early in the case. Though the court  
54 ordinarily will give much weight to the parties' preferences,  
55 the court's order prescribing the method for complying with  
56 Rule 26(b)(5)(A) does not depend on party agreement. But  
57 the parties may report that it is too early to settle on a specific  
58 method, and the court should be open to modifying its order  
59 should modification be warranted by evolving  
60 circumstances in the case.

PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF CIVIL PROCEDURE<sup>1</sup>

1 **Rule 16.1. Multidistrict Litigation**

2 (a) **Initial Management Conference.** After the Judicial  
3 Panel on Multidistrict Litigation transfers actions,  
4 the transferee court should schedule an initial  
5 management conference to develop an initial plan for  
6 orderly pretrial activity in the MDL proceedings.

7 (b) **Report for the Conference.**

8 (1) **Submitting a Report.** The transferee court  
9 should order the parties to meet and to submit  
10 a report to the court before the conference.

11 (2) **Required Content: the Parties' Views on**  
12 **Leadership Counsel and Other Matters.** The  
13 report must address any matter the court  
14 designates—which may include any matter in

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<sup>1</sup> New material is underlined.

15           Rule 16—and, unless the court orders  
16           otherwise, the parties' views on:  
17           (A) whether leadership counsel should be  
18                 appointed and, if so:  
19                 (i) the timing of the  
20                     appointments;  
21                 (ii) the structure of leadership  
22                     counsel;  
23                 (iii) the procedure for selecting  
24                     leadership and whether the  
25                     appointments should be  
26                     reviewed periodically;  
27                 (iv) their responsibilities and  
28                     authority in conducting  
29                     pretrial activities and any role  
30                     in facilitating resolution of the  
31                     MDL proceedings;

- 32                   (v) the proposed methods for  
33                   regularly communicating with  
34                   and reporting to the court and  
35                   nonleadership counsel;
- 36                   (vi) any limits on activity by  
37                   nonleadership counsel; and
- 38                   (vii) whether and when to establish  
39                   a means for compensating  
40                   leadership counsel;
- 41                   **(B)** any previously entered scheduling or  
42                   other orders that should be vacated or  
43                   modified;
- 44                   **(C)** a schedule for additional management  
45                   conferences with the court;
- 46                   **(D)** how to manage the direct filing of  
47                   new actions in the MDL proceedings;  
48                   and

- 49           (E) whether related actions have been—  
50                     or are expected to be—filed in other  
51                     courts, and whether to adopt methods  
52                     for coordinating with them.
- 53           (3) *Additional Required Content: the Parties'*  
54                     *Initial Views on Various Matters.* Unless the  
55                     court orders otherwise, the report also must  
56                     address the parties' initial views on:
- 57           (A) whether consolidated pleadings  
58                     should be prepared;
- 59           (B) how and when the parties will  
60                     exchange information about the  
61                     factual bases for their claims and  
62                     defenses;
- 63           (C) discovery, including any difficult  
64                     issues that may arise;
- 65           (D) any likely pretrial motions;

- 66            (E) whether the court should consider any  
67            measures to facilitate resolving some  
68            or all actions before the court;
- 69            (F) whether any matters should be  
70            referred to a magistrate judge or a  
71            master; and
- 72            (G) the principal factual and legal issues  
73            likely to be presented.
- 74            (4) *Permitted Content.* The report may include  
75            any other matter that the parties wish to bring  
76            to the court's attention.
- 77            (c) **Initial Management Order.** After the conference,  
78            the court should enter an initial management order  
79            addressing the matters in Rule 16.1(b) and, in the  
80            court's discretion, any other matters. This order  
81            controls the course of the proceedings unless the  
82            court modifies it.

83 **Committee Note**

84 The Multidistrict Litigation Act, 28 U.S.C. § 1407,  
85 was adopted in 1968. It empowers the Judicial Panel on  
86 Multidistrict Litigation to transfer one or more actions for  
87 coordinated or consolidated pretrial proceedings to promote  
88 the just and efficient conduct of such actions. The number of  
89 civil actions subject to transfer orders from the Panel has  
90 increased since the statute was enacted but has leveled off in  
91 recent years. These actions have accounted for a substantial  
92 portion of the federal civil docket. There has been no  
93 reference to multidistrict litigation (MDL proceedings) in  
94 the Civil Rules. The addition of Rule 16.1 is designed to  
95 provide a framework for the initial management of MDL  
96 proceedings.

97 Not all MDL proceedings present the management  
98 challenges this rule addresses, and, thus, it is important to  
99 maintain flexibility in managing MDL proceedings. Of  
100 course, other multiparty litigation that did not result from a  
101 Judicial Panel transfer order may present similar  
102 management challenges. For example, multiple actions in a  
103 single district (sometimes called related cases and assigned  
104 by local rule to a single judge) may exhibit characteristics  
105 similar to MDL proceedings. In such situations, courts may  
106 find it useful to employ procedures similar to those Rule 16.1  
107 identifies in handling those multiparty proceedings. In both  
108 MDL proceedings and other multiparty litigation, the  
109 Manual for Complex Litigation also may be a source of  
110 guidance.

111 **Rule 16.1(a).** Rule 16.1(a) recognizes that the  
112 transferee judge regularly schedules an initial management  
113 conference soon after the Judicial Panel transfer occurs. One  
114 purpose of the initial management conference is to begin to  
115 develop an initial management plan for the MDL



116 proceedings and, thus, this initial conference may only  
117 address some of the matters referenced in Rule 16.1(b)(2)-  
118 (3). That initial MDL management conference ordinarily  
119 would not be the only management conference held during  
120 the MDL proceedings. Although holding an initial  
121 management conference in MDL proceedings is not  
122 mandatory under Rule 16.1(a), early attention to the matters  
123 identified in Rule 16.1(b)(2)-(3) should be of great value to  
124 the transferee judge and the parties.

125 **Rule 16.1(b)(1).** The court ordinarily should order  
126 the parties to meet to submit a report to the court about the  
127 matters designated in Rule 16.1(b)(2)-(3) prior to the initial  
128 management conference. This should be a single report, but  
129 it may reflect the parties' divergent views on these matters.

130 **Rule 16.1(b)(2).** Unless the court orders otherwise,  
131 the report must address all of the matters identified in  
132 Rule 16.1(b)(2) (as well as all those in 16.1(b)(3)). The court  
133 also may direct the parties to address any other matter,  
134 whether or not listed in Rule 16.1(b) or in Rule 16.  
135 Rules 16.1(b) and 16 provide a series of prompts for the  
136 court and do not constitute a mandatory checklist for the  
137 transferee judge to follow.

138 The rule distinguishes between the matters identified  
139 in Rule 16.1(b)(2)(B)-(E) and in Rule 16.1(b)(3) because  
140 court action on a matter identified in Rule 16.1(b)(3) may be  
141 premature before leadership counsel is appointed, if that is  
142 to occur. For this reason, 16.1(b)(2) calls for the parties'  
143 views on the matters designated in (b)(2) whereas 16.1(b)(3)  
144 requires only the parties' initial views on those matters listed  
145 in (b)(3).

146 Rule 16.1(b)(2)(C) directs the parties to suggest a  
147 schedule for additional management conferences during

148 which the same or other matters may be addressed, and the  
149 Rule 16.1(c) initial management order controls only until it  
150 is modified. The goal of the initial management conference  
151 is to begin to develop an initial management plan, not  
152 necessarily to adopt a final plan for the entirety of the MDL  
153 proceeding. Experience has shown, however, that the  
154 matters identified in Rule 16.1(b)(2)(B)-(E) and  
155 Rule 16.1(b)(3) are often important to the management of  
156 MDL proceedings.

157 **Rule 16.1(b)(2)(A).** Appointment of leadership  
158 counsel is not universally needed in MDL proceedings, and  
159 the timing of appointments may vary. But, to manage the  
160 MDL proceedings, the court may decide to appoint  
161 leadership counsel and many times this will be one of the  
162 early orders the transferee judge enters. Rule 16.1(b)(2)(A)  
163 calls attention to several topics the court should consider if  
164 appointment of leadership counsel seems warranted.

165 The first topic is the timing of appointment of  
166 leadership. Ordinarily, transferee judges enter orders  
167 appointing leadership counsel separately from orders  
168 addressing the matters in Rule 16.1(b)(2)(B)-(E) and  
169 16.1(b)(3).

170 In some MDL proceedings it may be important that  
171 leadership counsel be organized into committees with  
172 specific duties and responsibilities. Rule 16.1(b)(2)(A)(ii)  
173 therefore prompts counsel to provide the court with specific  
174 suggestions on the leadership structure that should be  
175 employed.

176 The procedure for selecting leadership counsel is  
177 addressed in item (iii). There is no single method that is best  
178 for all MDL proceedings. The transferee judge is responsible  
179 to ensure that the lawyers appointed to leadership positions

180 are able to do the work and will responsibly and fairly  
181 discharge their leadership obligations. In undertaking this  
182 process, a transferee judge should consider the benefits of  
183 geographical distribution as well as differing experiences,  
184 skills, knowledge, and backgrounds. Courts have considered  
185 the nature of the actions and parties, the needs of the  
186 litigation, and each lawyer's qualifications, expertise, and  
187 access to resources. They have also taken into account how  
188 the lawyers will complement one another and work  
189 collectively.

190 MDL proceedings do not have the same  
191 commonality requirements as class actions, so substantially  
192 different categories of claims or parties may be included in  
193 the same MDL proceeding and leadership may be comprised  
194 of attorneys who represent parties asserting a range of claims  
195 in the MDL proceeding. For example, in some MDL  
196 proceedings there may be claims by individuals who  
197 suffered injuries and also claims by third-party payors who  
198 paid for medical treatment. The court may need to take these  
199 differences into account in making leadership appointments.

200 Courts have selected leadership counsel through  
201 combinations of formal applications, interviews, and  
202 recommendations from other counsel and judges who have  
203 experience with MDL proceedings.

204 The rule also calls for advising the court whether  
205 appointment to leadership should be reviewed periodically.  
206 Transferee courts have found that appointment for a term is  
207 useful as a management tool for the court to monitor  
208 progress in the MDL proceedings.

209 Item (iv) recognizes that another important role for  
210 leadership counsel in some MDL proceedings is to facilitate  
211 resolution of claims. Resolution may be achieved by such

212 means as early exchange of information, expedited  
213 discovery, pretrial motions, bellwether trials, and settlement  
214 negotiations.

215 An additional task of leadership counsel is to  
216 communicate with the court and with nonleadership counsel  
217 as proceedings unfold. Item (v) directs the parties to report  
218 how leadership counsel will communicate with the court and  
219 nonleadership counsel. In some instances, the court or  
220 leadership counsel have created websites that permit  
221 nonleadership counsel to monitor the MDL proceedings, and  
222 sometimes online access to court hearings provides a method  
223 for monitoring the proceedings.

224 Another responsibility of leadership counsel is to  
225 organize the MDL proceedings in accordance with the  
226 court's initial management order under Rule 16.1(c). In  
227 some MDL proceedings, there may be tension between the  
228 approach that leadership counsel takes in handling pretrial  
229 matters and the preferences of individual parties and  
230 nonleadership counsel. As item (vi) recognizes, it may be  
231 necessary for the court to give priority to leadership  
232 counsel's pretrial plans when they conflict with initiatives  
233 sought by nonleadership counsel. The court should,  
234 however, ensure that nonleadership counsel have suitable  
235 opportunities to express their views to the court, and take  
236 care not to interfere with the responsibilities nonleadership  
237 counsel owe their clients.

238 Finally, item (vii) addresses whether and when to  
239 establish a means to compensate leadership counsel for their  
240 added responsibilities. Courts have entered orders pursuant  
241 to the common benefit doctrine establishing specific  
242 protocols for the management of case staffing, timekeeping,  
243 cost reimbursement, and related common benefit issues. But  
244 it may be best to defer entering a specific order relating to a

245 common benefit fee and expenses until well into the  
246 proceedings, when the court is more familiar with the effects  
247 of such an order and the activities of leadership counsel.

248 If proposed class actions are included within the  
249 MDL proceeding, Rule 23(g) applies to appointment of class  
250 counsel should the court eventually certify one or more  
251 classes, and the court may also choose to appoint interim  
252 class counsel before resolving the certification question. In  
253 such MDL proceedings, the court must be alert to the relative  
254 responsibilities of leadership counsel under Rule 16.1 and  
255 class counsel under Rule 23(g). Rule 16.1 does not displace  
256 Rule 23.

257 **Rule 16.1(b)(2)(B)-(E) and (3).** Rule 16.1(b)(2) and  
258 (3) identify a number of matters that often are important in  
259 the management of MDL proceedings. The matters  
260 identified in Rule 16.1(b)(2)(B)-(E) frequently call for early  
261 action by the court. The matters identified by Rule 16.1(b)(3)  
262 are in a separate paragraph of the rule because, in the absence  
263 of appointment of leadership counsel should appointment be  
264 warranted, the parties may be able to provide only their  
265 initial views on these matters at the conference.

266 **Rule 16.1(b)(2)(B).** When multiple actions are  
267 transferred to a single district pursuant to 28 U.S.C. § 1407,  
268 those actions may have reached different procedural stages  
269 in the district courts from which they were transferred. In  
270 some, Rule 26(f) conferences may have occurred and  
271 Rule 16(b) scheduling orders may have been entered. Those  
272 scheduling orders are likely to vary. Managing the  
273 centralized MDL proceedings in a consistent manner may  
274 warrant vacating or modifying scheduling orders or other  
275 orders entered in the transferor district courts, as well as any  
276 scheduling orders previously entered by the transferee judge.

277       **Rule 16.1(b)(2)(C).** The Rule 16.1(a) conference is  
278 the initial management conference. Although there is no  
279 requirement that there be further management conferences,  
280 courts generally conduct management conferences  
281 throughout the duration of the MDL proceeding to  
282 effectively manage the litigation and promote clear, orderly,  
283 and open channels of communication between the parties  
284 and the court on a regular basis.

285       **Rule 16.1(b)(2)(D).** When large numbers of  
286 tagalong actions (actions that are filed in or removed to  
287 federal court after the Judicial Panel has created the MDL  
288 proceeding) are anticipated, some parties have stipulated to  
289 “direct filing” orders entered by the court to provide a  
290 method to avoid the transferee judge receiving numerous  
291 cases through transfer rather than direct filing. If a direct  
292 filing order is entered, it is important to address other matters  
293 that can arise, such as properly handling any jurisdictional or  
294 venue issues that might be presented, identifying the  
295 appropriate district court for remand at the end of the pretrial  
296 phase, how time limits such as statutes of limitations should  
297 be handled, and how choice of law issues should be  
298 addressed. Sometimes liaison counsel may be appointed  
299 specifically to report on developments in related litigation  
300 (e.g., state courts and bankruptcy courts) at the case  
301 management conferences.

302       **Rule 16.1(b)(2)(E).** On occasion there are actions in  
303 other courts that are related to the MDL proceeding. Indeed,  
304 a number of state court systems have mechanisms like  
305 § 1407 to aggregate separate actions in their courts. In  
306 addition, it may happen that a party to an MDL proceeding  
307 is a party to another action that presents issues related to or  
308 bearing on issues in the MDL proceeding.

309           The existence of such actions can have important  
310 consequences for the management of the MDL proceeding.  
311 For example, the coordination of overlapping discovery is  
312 often important. If the court is considering adopting a  
313 common benefit fund order, consideration of the relative  
314 importance of the various proceedings may be important to  
315 ensure a fair arrangement. It is important that the MDL  
316 transferee judge be aware of whether such actions in other  
317 courts have been filed or are anticipated.

318           **Rule 16.1(b)(3).** As compared to the matters listed in  
319 Rule 16.1(b)(2)(B)-(E), Rule 16.1(b)(3) identifies matters  
320 that may be more fully addressed once leadership is  
321 appointed, should leadership be recommended, and thus, in  
322 their report the parties may only be able to provide their  
323 initial views on these matters.

324           **Rule 16.1(b)(3)(A).** For case management purposes,  
325 some courts have required consolidated pleadings, such as  
326 master complaints and answers, in addition to short form  
327 complaints. Such consolidated pleadings may be useful for  
328 determining the scope of discovery and may also be  
329 employed in connection with pretrial motions, such as  
330 motions under Rule 12 or Rule 56. The Rules of Civil  
331 Procedure, including the pleading rules, continue to apply in  
332 all MDL proceedings. The relationship between the  
333 consolidated pleadings and individual pleadings filed in or  
334 transferred to the MDL proceedings depends on the purpose  
335 of the consolidated pleadings in the MDL proceeding.  
336 Decisions regarding whether to use master pleadings can  
337 have significant implications in MDL proceedings, as the  
338 Supreme Court noted in *Gelboim v. Bank of America Corp.*,  
339 574 U.S. 405, 413 n.3 (2015).

340           **Rule 16.1(b)(3)(B).** In some MDL proceedings,  
341 concerns have been raised on both the plaintiff side and the

342 defense side that some claims and defenses have been  
343 asserted without the inquiry called for by Rule 11(b).  
344 Experience has shown that in many cases an early exchange  
345 of information about the factual bases for claims and  
346 defenses can facilitate efficient management. Some courts  
347 have utilized “fact sheets” or a “census” as methods to take  
348 a survey of the claims and defenses presented, largely as a  
349 management method for planning and organizing the  
350 proceedings. Such methods can be used early on when  
351 information is being exchanged between the parties or  
352 during the discovery process addressed in  
353 Rule 16.1(b)(3)(C).

354         The level of detail called for by such methods should  
355 be carefully considered to meet the purpose to be served and  
356 avoid undue burdens. Early exchanges may depend on a  
357 number of factors, including the types of cases before the  
358 court. And the timing of these exchanges may depend on  
359 other factors, such as motions to dismiss or other early  
360 matters and their impact on the early exchange of  
361 information. Other factors might include whether there are  
362 issues that should be addressed early in the proceeding (e.g.,  
363 jurisdiction, general causation, or preemption) and the  
364 number of plaintiffs in the MDL proceeding.

365         This court-ordered exchange of information may be  
366 ordered independently from the discovery rules, which are  
367 addressed in Rule 16.1(b)(3)(C). Alternatively, in some  
368 cases, transferee judges have ordered that such exchanges of  
369 information be made under Rule 33 or 34. Under some  
370 circumstances—after taking account of whether the party  
371 whose claim or defense is involved has reasonable access to  
372 needed information—the court may find it appropriate to  
373 employ expedited methods to resolve claims or defenses not  
374 supported after the required information exchange.



375       **Rule 16.1(b)(3)(C).** A major task for the MDL  
376 transferee judge is to supervise discovery in an efficient  
377 manner. The principal issues in the MDL proceeding may  
378 help guide the discovery plan and avoid inefficiencies and  
379 unnecessary duplication.

380       **Rule 16.1(b)(3)(D).** Early attention to likely pretrial  
381 motions can be important to facilitate progress and  
382 efficiently manage the MDL proceedings. The manner and  
383 timing in which certain legal and factual issues are to be  
384 addressed by the court can be important in determining the  
385 most efficient method for discovery.

386       **Rule 16.1(b)(3)(E).** The court may consider  
387 measures to facilitate the resolution of some or all actions  
388 before the court. In MDL proceedings, in addition to  
389 mediation and other dispute resolution alternatives, focused  
390 discovery orders, timely adjudication of principal legal  
391 issues, selection of representative bellwether trials, and  
392 coordination with state courts may facilitate resolution.  
393 Ultimately, the question of whether parties reach a  
394 settlement is just that—a decision to be made by the parties.

395       **Rule 16.1(b)(3)(F).** MDL transferee judges may  
396 refer matters to a magistrate judge or a master to expedite the  
397 pretrial process or to play a part in facilitating  
398 communication between the parties, including but not  
399 limited to settlement negotiations. It can be valuable for the  
400 court to know the parties' positions about the possible  
401 appointment of a master before considering whether such an  
402 appointment should be made. Rule 53 prescribes procedures  
403 for appointment of a master.

404       **Rule 16.1(b)(3)(G).** Orderly and efficient pretrial  
405 activity in MDL proceedings can be facilitated by early  
406 identification of the principal factual and legal issues likely

407 to be presented. Depending on the issues presented, the court  
408 may conclude that certain factual issues should be pursued  
409 through early discovery, and certain legal issues should be  
410 addressed through early motion practice.

411 **Rule 16.1(b)(4).** In addition to the matters the court  
412 has directed counsel to address, the parties may choose to  
413 discuss and report about other matters that they believe the  
414 transferee judge should address at the initial management  
415 conference.

416 **Rule 16.1(c).** Effective and efficient management of  
417 MDL proceedings benefits from a comprehensive  
418 management order. An initial management order need not  
419 address all matters designated under Rule 16.1(b) if the court  
420 determines the matters are not significant to the MDL  
421 proceeding or would better be addressed in a subsequent  
422 order. There is no requirement under Rule 16.1 that the court  
423 set specific time limits or other scheduling provisions as in  
424 ordinary litigation under Rule 16(b)(3)(A). Because active  
425 judicial management of MDL proceedings must be flexible,  
426 the court should be open to modifying its initial management  
427 order in light of developments in the MDL proceedings.  
428 Such modification may be particularly appropriate if  
429 leadership counsel is appointed after the initial management  
430 conference under Rule 16.1(a).

**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF CIVIL PROCEDURE<sup>1</sup>**

1   **Rule 26.     Duty to Disclose; General Provisions**  
2                   **Governing Discovery**

3                                   \* \* \* \* \*

4   **(f)     Conference of the Parties; Planning for**  
5           **Discovery.**

6                                   \* \* \* \* \*

7           **(3)     Discovery Plan.** A discovery plan must state  
8                   the parties' views and proposals on:

9                                   \* \* \* \* \*

10                   **(D)**   any issues about claims of privilege  
11                                   or of protection as trial-preparation  
12                                   materials, including the timing and  
13                                   method for complying with  
14                                   Rule 26(b)(5)(A) and—if the parties

---

<sup>1</sup> New material is underlined; matter to be omitted is lined through.

15 agree on a procedure to assert these  
16 claims after production—whether to  
17 ask the court to include their  
18 agreement in an order under Federal  
19 Rule of Evidence 502;

20 \* \* \* \* \*

21 **Committee Note**

22 Rule 26(f)(3)(D) is amended to address concerns  
23 about application of the requirement in Rule 26(b)(5)(A),  
24 which requires that producing parties describe materials  
25 withheld on grounds of privilege or as trial-preparation  
26 materials in a manner that “will enable other parties to assess  
27 the claim.” Compliance with Rule 26(b)(5)(A) can involve  
28 very large burdens for all parties.

29 Rule 26(b)(5)(A) was adopted in 1993, and from the  
30 outset was intended to recognize the need for flexibility. This  
31 amendment directs the parties to address the question of how  
32 they will comply with Rule 26(b)(5)(A) in their discovery  
33 plan, and report to the court about this topic. A companion  
34 amendment to Rule 16(b)(3)(B)(iv) seeks to prompt the  
35 court to include provisions about complying with  
36 Rule 26(b)(5)(A) in scheduling or case management orders.

37 This amendment also seeks to provide the parties  
38 maximum flexibility in designing an appropriate method for  
39 identifying the grounds for withholding materials.  
40 Depending on the nature of the litigation, the nature of the  
41 materials sought through discovery, and the nature of the

42 privilege or protection involved, what is needed in one case  
43 may not be necessary in another. No one-size-fits-all  
44 approach would actually be suitable in all cases.

45         Requiring that discussion of this topic begin at the  
46 outset of the litigation and that the court be advised of the  
47 parties' plans or disagreements in this regard is a key  
48 purpose of this amendment, and should minimize problems  
49 later on, particularly if objections to a party's compliance  
50 with Rule 26(b)(5)(A) might otherwise emerge only at the  
51 end of the discovery period. Production of a privilege log  
52 near the close of the discovery period can create serious  
53 problems. Often it will be valuable to provide for "rolling"  
54 production of materials and an appropriate description of the  
55 nature of the withheld material. In that way, areas of  
56 potential dispute may be identified and, if the parties cannot  
57 resolve them, presented to the court for resolution.

Excerpt from the September 2024 Report of the Committee on Rules of Practice and Procedure

Agenda E-19  
Rules  
September 2024

**REPORT OF THE JUDICIAL CONFERENCE**

**COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES:**

The Committee on Rules of Practice and Procedure (Standing Committee or Committee)  
met on June 4, 2024. All members participated.

\* \* \* \* \*

**FEDERAL RULES OF CIVIL PROCEDURE**

***Rules Recommended for Approval and Transmission***

The Advisory Committee on Civil Rules recommended for final approval proposed  
amendments to Civil Rules 16 and 26, and new Rule 16.1. The Standing Committee  
unanimously approved the Advisory Committee's recommendations, with minor changes to the  
proposed amendments to new Rule 16.1.

**Rule 16 (Pretrial Conferences; Scheduling; Management) and Rule 26 (Duty to Disclose;  
General Provisions Governing Discovery)**

The proposed amendments would call for early identification of a method to comply with  
Rule 26(b)(5)(A)'s requirement that producing parties describe materials withheld on grounds of  
privilege or as trial-preparation materials. Specifically, the proposed amendment to  
Rule 26(f)(3)(D) would require the parties to address in their discovery plan the timing and  
method for complying with Rule 26(b)(5)(A). The proposed amendment to Rule 16(b) would

**NOTICE**

NO RECOMMENDATIONS PRESENTED HEREIN REPRESENT THE POLICY OF THE JUDICIAL CONFERENCE  
UNLESS APPROVED BY THE CONFERENCE ITSELF.

**Excerpt from the September 2024 Report of the Committee on Rules of Practice and Procedure**

provide that the court may address the timing and method of such compliance in its scheduling order.

After public comment, the Advisory Committee recommended final approval of the proposed amendments as published with minor changes to the committee notes.

**New Rule 16.1 (Multidistrict Litigation)**

Proposed new Rule 16.1 is designed to provide a framework for the initial management of multidistrict litigation (MDL) proceedings. After several years of work by its MDL subcommittee, extensive discussions with interested bar groups, consideration of multiple drafts, three public hearings on the published draft, and subsequent revisions based on public comment, the Advisory Committee unanimously recommended final approval of new Rule 16.1.

Rule 16.1(a) encourages the transferee court to schedule an initial MDL management conference soon after transfer, recognizing that this is currently regular practice among transferee judges. An initial management conference allows for early attention to matters identified in Rule 16.1(b), which may be of great value to the transferee judge and the parties. Because it is important to maintain flexibility in managing MDL proceedings, proposed new Rule 16.1(a) says that the transferee court “should” (not “must”) schedule such a conference.

Rule 16.1(b)—a revised version of what was published as subdivision (c)—encourages the court to order the parties to submit a report prior to the initial management conference. The report must address any topic the court designates—including any matter under Rule 16—and unless the court orders otherwise, the report must also address the topics listed in Rules 16.1(b)(2)-(3). Rule 16.1(b)(2) directs the parties to provide their views on appointment of leadership counsel; previously entered scheduling or other orders; additional management conferences; new actions in the MDL proceeding; and related actions in other courts.

Rule 16.1(b)(3) calls for the parties’ “initial views” on consolidated pleadings; principal factual and legal issues; exchange of information about factual bases for claims and defenses; a

**Excerpt from the September 2024 Report of the Committee on Rules of Practice and Procedure**

discovery plan; pretrial motions; measures to facilitate resolving some or all actions before the court; and referral of matters to a magistrate judge or master. Because court action on some matters identified in paragraph (b)(3) may be premature before leadership counsel is appointed, those topics are categorized separately from those in paragraph (b)(2). Rule 16.1(b)(4) permits the parties to address other matters that they wish to bring to the court's attention.

Rule 16.1(c) prompts courts to enter an initial MDL management order after the initial MDL management conference. The order should address the matters listed in Rule 16.1(b) and may address other matters in the court's discretion. This order controls the MDL proceedings unless and until modified.

Following public comment, the Advisory Committee made some minor changes to the proposed new rule as published. In response to extensive public input, it removed a provision inviting courts to consider appointing "coordinating counsel." For the reasons noted above, it restructured the list of matters to be included in the parties' report into the "views" called for by Rule 16.1(b)(2) and the "initial views" called for by Rule 16.1(b)(3), and it revised those provisions to direct parties to address the listed topics unless the court orders otherwise (rather than obligating the court to affirmatively set out minimum topics to be addressed). It also made stylistic changes based on input from the Standing Committee's style consultants.

At its meeting, the Standing Committee made minor changes to the rule and committee note to improve style and promote consistency. In the committee note, language was refined to clarify measures to facilitate resolution of MDL proceedings.

**Recommendation:** That the Judicial Conference approve the proposed amendments to Civil Rules 16 and 26, and new Rule 16.1, as set forth in Appendix C, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

\* \* \* \* \*



**Excerpt from the September 2024 Report of the Committee on Rules of Practice and Procedure**

Respectfully submitted,



John D. Bates, Chair

Paul Barbadoro	Lisa O. Monaco
Elizabeth J. Cabraser	Andrew J. Pincus
Louis A. Chaiten	D. Brooks Smith
William J. Kayatta, Jr.	Kosta Stojilkovic
Edward M. Mansfield	Jennifer G. Zipps
Troy A. McKenzie	
Patricia Ann Millett	

\* \* \* \* \*

**Excerpt from the May 10, 2024 Report of the Advisory Committee on Civil Rules**

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544

JOHN D. BATES  
CHAIR  
  
H. THOMAS BYRON III  
SECRETARY

**CHAIRS OF ADVISORY COMMITTEES**

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BANKRUPTCY RULES  
  
ROBIN L. ROSENBERG  
CIVIL RULES  
  
JAMES C. DEVER III  
CRIMINAL RULES  
  
PATRICK J. SCHILTZ  
EVIDENCE RULES

**MEMORANDUM**

**TO:** Hon. John D. Bates, Chair  
Committee on Rules of Practice and Procedure  
  
**FROM:** Hon. Robin L. Rosenberg, Chair  
Advisory Committee on Civil Rules  
  
**RE:** Report of the Advisory Committee on Civil Rules<sup>\*</sup>  
  
**DATE:** May 10, 2024

---

*Introduction*

The Civil Rules Advisory Committee met in Denver, Colorado, on April 9, 2024. Members of the public attended in person, and public on-line attendance was also provided. \* \* \*

In August 2023 proposed amendments to Rule 16(b)(3)(B)(iv) and 26(f)(3)(D) dealing with privilege log issues, and a new proposed Rule 16.1 on MDL proceedings, were published for public comment. The first hearing on the proposed amendments and rule was held in Washington, D.C. on Oct. 16, 2023. 24 witnesses signed up to speak at that in-person hearing.

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<sup>\*</sup> A copy of the full committee report can be found in the June 2024 Standing Committee agenda book publicly available on [www.uscourts.gov](http://www.uscourts.gov).

**Excerpt from the May 10, 2024 Report of the Advisory Committee on Civil Rules**

Additional public hearings were held by remote means on Jan. 16 and Feb. 6, 2024, and presented the views of more than 60 additional witnesses. The public comment period ended on Feb. 14, 2024. At its April 9 meeting, the Advisory Committee unanimously voted to forward the “privilege log” amendments to Rules 16(b)(3)(B)(iv) and 26(f)(3)(D) to the Standing Committee for adoption. It also unanimously voted to forward Rule 16.1, as revised after the public comment period, to the Standing Committee for adoption.

Part I of this report presents these two action items. \* \* \* The “privilege log” rule amendments remained exactly the same, but the Committee Note was shortened. The proposal of a new Rule 16.1 for MDL proceedings was revised by removal of the coordinating counsel provision and reorganized to focus on sequencing of management activities. As detailed in the notes of the MDL Subcommittee’s two online meetings considering the public comment, careful thought was given to these changes. After that subcommittee effort was completed, further style revisions were adopted on recommendation of the Standing Committee’s Style Consultants. Accordingly, the revised rule proposal \* \* \* reflects the style consultants’ contributions as well as the Subcommittee’s revisions.

\* \* \* \* \*

**I. ACTION ITEMS**

**A. Privilege log amendments proposed for adoption**

In August 2023, amendments to Rules 26(f)(3)(D) and 16(b)(3)(B)(iv) were published for public comment. There was much comment, from both “producer” and “requester” viewpoints. \* \* \*

After the public comment period, the Discovery Subcommittee met to discuss the comments. \* \* \* There was no consideration of changing the rule amendments themselves, but considerable attention was given to the Committee Note to the Rule 26(f) amendment. The Standing Committee recommended during its January 2023 meeting that this Note be shortened, and the Subcommittee decided after the public comment period to shorten it further.

Though various proposals were made during the public comment period for Note language or rule language to prescribe what should be in a log, the Subcommittee’s view was that “no one size fits all.” Largely for this reason, it seemed that observations in the Note about burdens and methods of ameliorating those burdens are not likely to be particularly useful in individual cases. Nevertheless, there was extensive commentary about the Note. Some urged that it overly favored producing parties. Others urged that it be strengthened to support positions often adopted by producing parties.

The Subcommittee’s consensus was to avoid Note language that seems to favor one “side” or the other. Thus, although the burdens on the producing party of preparing a detailed log can be large, the burdens on the requesting party to make use (perhaps even make sense) of a privilege log are often very heavy as well. Much depends on the circumstances of a given case.

Another challenging aspect going forward is the potential role of technology. Whether or not the term “metadata log” has meaning, it seems clear that many say the term means different

**Excerpt from the May 10, 2024 Report of the Advisory Committee on Civil Rules**

things to different people. And though some witnesses contended that pretty soon technological advances will supplant existing methods of dealing with logging and simplify (and speed up) the process, it is not possible to be confident about what technology will bring, or when.

Altogether, these thoughts pointed toward pruning controversial statements from the Note. Accordingly, the revised Note below sets the scene for early consideration of privilege log issues while avoiding taking positions on many of the issues raised by participants in the public comment process.

Rule 26(b)(5)(A) cross-reference amendment: There have been proposals that a cross-reference be added to Rule 26(b)(5)(A) itself. But the Subcommittee did not favor taking this additional step. Because it was proposed by several who testified at hearings or submitted written comments, some explanation may be helpful.

In the first place, though adding this change to the existing amendment package should not require republication, it really seems not to add anything. The published amendment directs the parties to address compliance with this rule in their 26(f) meeting. That being the case, it seems odd to add something to this rule to remind people that Rule 26(f) applies. Anyone interested in what must be done at a 26(f) meeting presumably should begin by consulting 26(f); checking 26(b)(5)(A) as well seems an odd effort.

It somewhat seems that proponents of an amendment to 26(b)(5)(A) (from the “producer” perspective) were hoping that the revision there would either disapprove judicial decisions calling for a document-by-document log and/or promote categorical logs. The Subcommittee does not favor taking these steps; the “chaste” draft discussed on Feb. 7 avoided taking such positions.

And there is a more general rulemaking point here: Making cross-references might well be avoided unless necessary. To take a tendentious example, one might think that a cross-reference to Rule 11 might be included in Rule 8(a)(2). Surely Rule 11(b) bears on what attorneys should do as they devise their allegations to satisfy Rule 8(a)(2). The cross-reference idea might lead to a slippery slope toward multiple additions to rules that do not do more than call attention to other rules.

In sum, the Subcommittee recommended adoption of the published rule amendments with a shortened Note, but no change to Rule 26(b)(5)(A) itself.

Rule 45 amendment possibility: During the public comment period, some urged that Rule 45 also be amended to address compliance with Rule 26(b)(5)(A) by nonparties subject to subpoenas. The Subcommittee discussed this possibility during its Feb. 7 meeting and decided it did not warrant action.

Putting aside the possibility that this change could call for republication, a major concern was that the current amendment package is keyed to the Rule 26(f) meeting, which does not involve nonparties who receive subpoenas. Moreover, though there have been many reports about the burdens on parties caused by privilege log requirements, there has not been a comparable level of comment about such problems resulting from subpoenas. In addition, Rule 45(d) already specifically commands those serving subpoenas to “take reasonable steps to avoid

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imposing undue burden or expense” on the person served with the subpoena, and also says that the court “must enforce this duty and impose an appropriate sanction \* \* \* on a party or attorney who fails to comply.”

\* \* \* \* \*

**B. New Rule 16.1 for adoption**

The Rule 16.1 proposal received a great deal of commentary during the public comment period. \* \* \* The MDL Subcommittee met twice after the public comment period to consider changes to the rule proposal and to the Committee Note. The first meeting was on Feb. 23, 2024, and the second on March 5, 2024. \* \* \*

\* \* \* \* \*

Here is a quick roadmap of the revised rule proposal \* \* \*:

(1) Eliminating the “coordinating counsel” position: Proposed Rule 16.1(b) invited the court to consider appointing an attorney to act as “coordinating counsel.” After the public comment period was completed, on Feb. 23 the Subcommittee considered whether this position might be retained as “liaison counsel,” with invocation of the Manual for Complex Litigation (4th) use of the term in § 10.221 (referring to “liaison counsel” who would deal with “essentially administrative matters”). But discussion led the Subcommittee to conclude that the strong reaction against creation of this new position provided a reason for removing it from the rule entirely. It no longer appears in the rule.

(2) Providing that unless the court orders otherwise, the parties must address all the topics listed in the rule: The published draft made the parties’ obligation to address certain matters depend on the court taking the initiative to order them to address those specific matters. But requiring affirmative action by the court to get a report on the listed matters seems unnecessary, particularly since the parties can tell the court that it’s premature to address certain items. That is implicit in the breakout of certain matters listed in Rule 16.1(b)(3), on which the parties are directed only to provide their “initial views.” And the rule continues to say the parties may raise whatever matters they wish to raise whether or not the court ordered them to do so. This shift in no way limits the court’s discretion, but it may sometimes reduce the burden on the court and also perhaps suggest to the parties that they might suggest that the court excuse a report on certain topics. The goal is to prepare the court to make the most effective use of the initial management conference.

(3) Subdividing the topics listed in published Rule 16.1(c) into two categories, one directing the parties to provide their views on certain topics and the other calling for the parties’ “initial views”: These two categories of reporting responsibilities would be divided between Rule 16.1(b)(2) and Rule 16.1(b)(3). These groupings are:

Group 1, in Rule 16.1(b)(2) provides that the parties must provide their views on the following:

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- (A) Whether leadership counsel should be appointed, and if so address a number of matters bearing on the appointment of leadership counsel.
- (B) Previously entered scheduling or other orders that should be vacated or modified;
- (C) A schedule for additional management conferences;
- (D) How to manage the filing of new actions in the MDL proceedings;
- (E) Whether related actions have been filed or are expected to be filed, and whether to consider possible methods of coordinating with those actions.

Group 2 in Rule 16.1(b)(3) provides that the parties must provide the court with their “initial views” on the following unless the court orders otherwise:

- (A) Whether consolidated pleadings should be prepared to account for the multiple actions in the MDL proceedings.
- (B) Principal legal and factual issues likely to be presented;
- (C) How and when the parties will exchange information about the facial bases for their claims and defenses. The revised Note makes clear that this is not discovery, and mentions that the court may employ expedited procedures to resolve some claims or defenses based on this information exchange. It also provides that the court should take care to ensure that the parties have adequate access to needed information.
- (D) Anticipated discovery;
- (E) Likely pretrial motions;
- (F) Whether the court should consider measures to facilitate resolution; and
- (G) Whether matters should be referred to a magistrate judge or a master.

- (4) Initial management order: The court should enter an initial management order regarding how leadership counsel would be appointed if that is to occur and adopting an initial management plan that controls the MDL proceedings until the court modifies it.

\* \* \* \* \*

## **ERRATA**

**April 2025:** Before this package was sent to Congress, footnote 2 in Bankruptcy Rules 3002.1 and 8006 indicating that changes were made to the restyled versions of rules not yet in effect was removed. Corrections were also made to correct the following scrivener's errors:

- Appellate Rule 6 (blackline version) at line 217 a comma, shown as struck out, was added after "~~to appeal~~";
- Bankruptcy Rule 3002.1 (blackline version) at line 179 the underlining from the period after (g)(3) was removed; and
- Bankruptcy Rule 3002.1(a) (clean version) at page 62 the "s" in "payments" was removed.

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