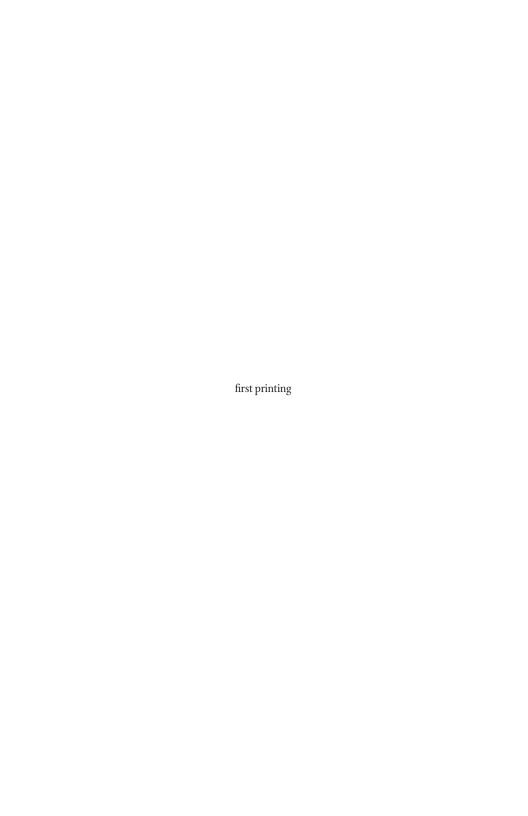# Ten Steps to Better Case Management

A Guide for Multidistrict Litigation Transferee Court Clerks

Second Edition

United States Judicial Panel on Multidistrict Litigation
&
Federal Judicial Center

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Contents

Preface

The United States Judicial Panel on Multidistrict Litigation and the Federal Judicial Center hope that this booklet will help you manage your multidistrict litigation (MDL) successfully.

Congress created the Panel under 28 U.S.C. § 1407 and gave it the responsibility to transfer "civil actions involving one or more common questions of fact" to any single district for coordinated pretrial proceedings. District courts from which cases are transferred are known as transferor courts. A district court to which an MDL is transferred is referred to as the transferee court.

Good organization and aggressive case management are fundamental to the successful administration of an MDL. MDLs are different from other cases. They typically have multiple plaintiffs and defendants. They tend to generate voluminous amounts of discovery. The attorneys often are located outside the transferee jurisdiction. Finally, the ultimate size of an MDL almost always is unknown at its inception. An MDL that at first appears to involve a few cases may grow rapidly into one involving hundreds, or more.

A transferee court clerk's office faces two major challenges at the beginning of any MDL. First, the office must implement a system of case management that maximizes efficiency and minimizes error. Second, the office must decipher the rules and procedures specific to multidistrict litigation to ensure that the case is set up properly.

The Case Management/Electronic Case Filing System (CM/ECF), which is now utilized by all federal district courts and the Panel, has streamlined the administration of these types of cases. We have offered some suggestions for implementing CM/ECF to improve MDL case management.

Thank you and thanks to your district for taking on the responsibility for your new MDL. We hope this booklet will help you. We are indebted to Sarah Jael Dion, law clerk to Judge Barbara Jacobs Rothstein, for her hard work in the preparation of this booklet.

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Introduction

Your court may learn of an impending MDL when a Panel member contacts a potential transferee judge in your district to obtain his or her agreement to take an assignment. If the answer is affirmative, the Panel sends the chief judge of the transferee district an email seeking his or her consent to the assignment. Within a week of receiving the consent of the chief judge, the Panel (via CM/ECF) sends the transferee court clerk an order transferring a designated group of cases to the transferee judge pursuant to 28 U.S.C. § 1407(c).

The Panel recommends that the clerk of the transferee court, in consultation with the transferee judge, take the following steps to organize and manage the new MDL at the earliest possible time.

I. Designate One Person to Manage Your MDL

Assign an experienced docket clerk (hereinafter, the MDL docket clerk) to take responsibility for all aspects of MDL case management. The MDL docket clerk must become proficient with the statutes and rules that govern multidistrict litigation. The most relevant statutes and rules are listed in Appendix A. The MDL docket clerk should serve as the main contact person for counsel, the Panel, chambers, and other court employees on matters relating to the clerk's office's handling of the multidistrict litigation.

a. Assign other employees to assist the MDL docket clerk
The MDL docket clerk must ask for assistance as soon as it is needed, and should maintain frequent contact with their clerk of court to assess independently the need for additional support. Insufficient staffing can turn a well-managed case into one plagued by delay, disorganization, and error.

b. Assign a CM/ECF programmer or administrator to the MDL
The clerk of court should select a CM/ECF programmer/administrator to become familiar with the applicable rules and particular demands of MDL case management and to employ the technological resources of the court to address those demands.

II. Make a Certified Copy of the Transfer Order

Section 1407(c) requires the clerk of the transferee court to transmit a certified copy of the Panel's transfer order to the clerk of each transferor court. The best way to do this is to upload a PDF file of the transfer order from the electronic notification or NEF received from the Panel. Apply a file stamp, the transferee judge's name stamp, and the required certification to the document.

III. Create a Master Docket Sheet for the MDL

Every MDL must have a master docket sheet to represent activity in the centralized action, which is referred to as the master, lead, coordinated, or main case.

a. Assign the lead case the same case number given by the Panel

Assign the lead action the same case number assigned by the Panel, using the case type md, for multidistrict litigation. The correct format is: year + md + multidistrict litigation case number. For example, if the Panel assigns a multidistrict litigation the case number "MDL No. 1800" and the current year is 2014, the transferee court's master docket case number should be 14-md-1800. This number will appear on all pleadings filed in both the main and individual actions.

b. Assign the coordinated action the same name given by the Panel

Use the same short case title that the Panel has assigned. For example: *IN RE: Phenylpropanolamine (PPA) Products Liability Litigation.*

c. File the Panel's initial transfer order in the master docket sheet

You must file a copy of the initial transfer order in the new MDL master docket. This causes the transfer to become effective under Section 1407(c).

d. Notation in master docket

Make a notation on the master docket sheet that reference must be made to individual docket sheets for entries relating only to individual actions. The individual member cases will be associated in CM/ECF with the lead case. This system association allows CM/ECF users to identify easily cases that are part of the MDL by checking "List of member cases" when pulling up the docket sheet for the main case.

IV. Send the Required Notifications

The MDL docket clerk must make the following notifications throughout the life of the MDL.

a. Notify the Panel of the following important events

Send notification of the posting of the initial transfer order to the Panel at the following address: PANELMDL@jpml.uscourts.gov. Additionally, you must notify the Panel of the following case events: 1) master document number; 2) transferee numbers assigned to civil actions; 3) appointment of liaison counsel; 4) individual case closings; 5) suggestions of remand; 6) severance orders; and 7) related civil actions filed directly in your court. You can configure CM/ECF to prompt Panel email notification of an order falling within these parameters.

b. Notify the attorneys

Send notification of the opening of the master docket to all attorneys involved in the MDL. Appendix B contains a sample docket entry notifying attorneys of the opening of a new MDL. Once liaison counsel have been appointed, note on the master docket sheet the attorneys who are functioning in that capacity. Liaison counsel usually assume the obligation of service for all documents posted on the master docket sheet.

V. Request Transfer of Cases Via the CM/ECF Case Transfer Utility

The initial transfer order, as well as all subsequent conditional transfer orders, will list the cases to be transferred, their transferor districts, and their original case numbers. The MDL docket clerk in the transferee district should email the clerk of court in each transferor district to request electronic transfer of case files. Appendix C contains a sample transfer request.

CM/ECF contains an interdistrict case transfer utility that streamlines the transfer of cases in MDLs. This is the fastest and most efficient method of transferring cases. Use the Extract Civil Case utility to extract all relevant data on the case to be transferred. Once this process is complete, the system sends a URL to the MDL docket clerk in the transferee district. The MDL docket clerk inserts the URL into the CM/ECF Prepare Transferred Case program, which creates a docket sheet for the action in the transferee court.

The result is a docket sheet that is accurate and easy to read. For detailed instructions on using these features, refer to the most recent CM/ECF Application Administrator's Guide, Transferring Civil Cases between Districts.

Note that using the CM/ECF case transfer utility obviates requesting a certified copy of the transferor court docket sheet.

Be aware that a few district courts have not yet adopted the case transfer utility. To transfer a case from such a transferor court, open a new case and upload a PDF of each document on the transferor court docket sheet.

VI. Open Individual Cases

Using the CM/ECF case transfer utility, create a separate docket sheet for each individual case transferred to the MDL. This allows the MDL docket clerk to select entries to be transferred from the transferor district, including counsel contact information, case flags, and PDFs of all case documents. The CM/ECF case transfer utility also performs certain tasks automatically. For example, the utility automatically includes a reference to the transferor court and transferor court case number on the docket sheet of the transferee court action. It also automatically creates an entry following all transferred documents, specifying which entries were transferred.

a. Assign a case number and caption for each transferred action

Although the master docket's case type is multidistrict litigation (md), the individual cases generally should be classified as civil (cv). Assign a new case number as you would any newly filed civil action, according to district practice, and retain the original case caption from the transferor court case.

b. Associate the action with the lead case

Each individual action in the MDL must be associated in CM/ECF with the lead case. When opening an action using the CM/ECF case transfer utility, the system inquires whether the case is related to any other actions. Indicate that the case originated as the result of a transfer order from the Panel, enter the lead case number, and the case will be properly associated.

c. Reassign local cases to the MDL

Cases filed in the transferee district that properly are part of an MDL (the Panel refers to these actions as *xyz* cases) should be reassigned to the transferee judge, if necessary, and associated with the master docket. This reassignment is made locally, without action on the part of the Panel.

Once the MDL is under way, the transferee judge likely will order counsel to identify newly filed local cases with the MDL case number. In the meantime, intake clerks should be made aware of the existence of the MDL, and should attempt to spot related cases as they are filed in the transferee district, so that these cases may be assigned directly to the transferee judge.

d. Send all required notifications

Send notification of individual case openings to the Panel, to the attorneys on the master list, and to the attorneys in the individual action being transferred.

VII. Create and Maintain a Webpage for the MDL

In many cases it can be very helpful to create a webpage for your MDL. A webpage can streamline MDL case management and conserve government resources. You can do this on the court's public access website. The initial investment of time will save clerk's office and chambers employees many hours of interaction. Once a CM/ECF employee has created the webpage, even non-CM/ECF employees can perform regular maintenance (posting new orders online, updating contact information), according to district preference. It may prove most efficient to provide chambers staff direct editing access to the webpage. See Appendix D for suggested webpage content.

VIII. Customize Your CM/ECF System for the MDL

CM/ECF can help optimize MDL case management in the following ways:

a. Create multidistrict litigation-specific filing events

Create filing events specific to the MDL context, such as case management order, conditional transfer order, conditional remand order, and order appointing liaison counsel. Having specific filing events at the ready makes posting orders more efficient and increases the clarity of docket sheets. Use of these events also makes running docket activity reports easier and assists those performing quality control review.

b. Utilize the spread text and spread effects functionality

CM/ECF has a spread text function, which can be used internally or externally. Internally, this function allows a docket clerk to create one docket entry that can be posted simultaneously in multiple actions. For example, if the transferee judge signs a single order that dismisses multiple cases, the MDL docket clerk can use the function to post the order to all affected cases at once. Externally, the spread text feature allows attorneys to file a document relating to more than one action in all affected cases without having to file it multiple times.

For quality control reasons, some courts restrict the spread text function to internal use. In that case, when an attorney files a motion relating to more than one action in the master docket, the MDL docket clerk should utilize

the internal spread text functionality to copy that motion, or post a docket entry referencing that motion, into all affected actions.

Similarly, CM/ECF has a spread effects function. This function allows modifications or additions to case status to be spread to multiple actions. For example, a docket clerk can use the spread effects function to place a case flag in multiple cases simultaneously or to update an attorney's contact information in all cases in which he or she appears.

c. Set up automatic notifications

CM/ECF also can increase efficiency by sending automatic email notifications to attorneys or to the Panel. You can configure CM/ECF to prompt email notification of orders falling within assigned parameters.

d. Create multidistrict litigation-specific ECF forms and form-based filing events

CM/ECF programmers or administrators can prepare forms to streamline the creation of frequently issued orders. ECF forms are similar to the templates that can be created in word-processing programs, but because ECF forms draw data from the case management system itself, they are faster and more accurate. Examples of such forms include scheduling orders and orders to show cause.

IX. Follow Clear Rules for Posting and Filing Documents

Every MDL has a master docket sheet, which represents action in the centralized case, as well as a docket sheet for each individual action transferred to the litigation. All MDL documents fall into one of the following three categories: documents relating to all actions; documents relating to two or more, but not all, individual actions; and documents relating to a single individual action. There are differing views on how to post different types of documents.

The Panel recommends that clerk's offices follow the three rules set forth below:

    a. File documents relating to all actions on the master docket sheet and on the docket sheet of each individual action.

    b. File documents relating to two or more, but not all, individual actions on the master docket sheet and on the docket sheet of each affected individual action.

    c. Post documents affecting a single individual action on the docket sheet of that action and on the master docket sheet.

Please note that a motion filed in more than one case will appear multiple times on the transferee judge's motion report. Accordingly, when the court

issues an order resolving a motion filed in more than one action, the MDL docket clerk must terminate that motion in each case in which it was filed.

X. Help Your Judge Follow *Ten Steps to Better Case Management: A Guide for Multidistrict Litigation Transferee Judges*

The purpose of centralizing cases under § 1407 is to eliminate delay and inconvenience. This goal is met most readily when clerk's office staff and chambers work together to manage an MDL. Adopting the suggestions in this guide will prove ineffectual if the transferee judge and his or her team do not move equally quickly to organize the new MDL. For this reason, the clerk's office staff should help the transferee judge with such pressing matters as organizing an initial meeting of parties, establishing a master discovery schedule, and prioritizing pending motions. Clerk's office staff also should ensure that chambers employees who post documents on CM/ECF are familiar with the rules for filing and posting of documents. In general, the clerk's office should help the transferee judge follow the steps outlined in *Ten Steps to Better Case Management: A Guide for Multidistrict Litigation Transferee Judges.*

Again, thank you for undertaking the challenge and public service of handling your MDL assignment.

Appendix A: Relevant Statutes and Rules

Multidistrict litigation is subject to all of the usual rules for civil cases, such as the Federal Rules of Civil Procedure and the transferee district's local rules, but there also are statutes and rules specific to this context. In addition, transferee court judges typically use case management orders to govern certain aspects of case management. The MDL docket clerk, and all other employees assisting with the multidistrict litigation, must be familiar with the following:

a. 28 U.S.C. § 1407, Multidistrict Litigation

Section 1407 of the U.S. Code provides for the existence of the Panel and is the source of the Panel's authority to transfer related actions to a single district court judge for coordinated or consolidated pretrial proceedings.

b. Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation, 277 F.R.D. 480 (J.P.M.L. 2011)

The Panel's Rules of Procedure can be found at the Panel's website: http://www.jpml.uscourts.gov. These rules govern, among other things, the transfer of files from transferor to transferee courts and the termination and remand of actions.

c. District Court Clerk's Manual, Chapter 7, Civil Cases in District Courts: § 7.03(c) and (d) Venue, Multidistrict Litigation

This subsection on venue acknowledges the burden that multidistrict litigation can place on a clerk's office and suggests certain organizational techniques to assist with clerical work.

d. District Court Clerk's Manual, Chapter 11, Multidistrict Litigation: § 11.08 Transferee District Court Clerks

This section contains most of the direction previously available for clerks of court managing multidistrict litigation. It contains instructions (many of which are repeated herein) for opening actions, maintaining the master docket sheet, and many other administrative tasks central to MDL case management. Some of the information in this section is in the process of being updated.

e. Case Management Orders

The MDL docket clerk and all employees assisting with the multidistrict litigation should be familiar with whatever case management orders are signed by the transferee judge. These orders often contain very specific instructions that, as a practical matter, supersede the usual procedural rules.

f. *Ten Steps to Better Case Management: A Guide for Multidistrict Litigation Transferee Judges*

This joint Panel/FJC publication contains MDL case management guidance for transferee judges and chambers staff.

Appendix B: Sample Notification to Counsel Regarding the Opening of an MDL

Post a docket entry as follows, and send it to all counsel involved in the MDL:

NOTICE TO ALL COUNSEL: MDL No. __-md-_____ has been opened and assigned to Judge _____. See Docket for further entries.

As the case proceeds, counsel may be alerted to updated case listings, or Case Management Orders in a similar fashion. However, once Liaison Counsel are appointed and shoulder the responsibility of service for documents posted in the lead case, such docket entries will no longer be necessary.

Appendix C: Sample Email Requesting Transfer of Case Via the CM/ECF Case Transfer Utility

MDL No. 1407, IN RE: Phenylpropanolamine (PPA) Products Liability Litigation.

Conditional Transfer Order No. 2

Dear Clerk of Court:

Attached is a certified copy of CTO 2 from the United States Judicial Panel on Multidistrict Litigation ordering the transfer of a case currently pending in your district: *John Doe, et al. v. Pharmaceutical Company A, et al.,* S.D. Mississippi Case No. 02-222. Pursuant to this order, *John Doe, et al. v. Pharmaceutical Company A, et al.,* S.D. Mississippi Case No. 02-222 must be transferred to the Western District of Washington.

Please file the attached, certified copy of the CTO in the affected case, and close the case.

Please transmit the record of this case to the Western District of Washington using the CM/ECF Case Transfer utility.

If you have any questions, feel free to contact me by email [insert MDL docket clerk's direct email address] or by telephone at [insert direct telephone number].

[Insert email signature]

Attachment: Certified Copy of CTO No. 2

cc: United States Judicial Panel on Multidistrict Litigation

Appendix D: Information to Include on a Webpage for an MDL

The following information should be included on a multidistrict litigation webpage:

- Case name and master docket sheet case number
- Brief description of the subject of the case
- Name of the judge presiding over the case
- List of court staff, along with their contact information
- Names of liaison counsel, along with their contact information

In addition, it is useful to include the following types of orders in PDF:

- Case management orders
- Transfer orders from the Panel
- Orders applicable to more than one case
- Individual case orders affecting one case, but potentially pertinent to others
- Suggestion of remand orders

Appendix E: Other Resources

United States Judicial Panel on Multidistrict Litigation

United States Judicial Panel on Multidistrict Litigation
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Room G-255, North Lobby
Washington, DC 20002-8004
Telephone: (202) 502-2800
FAX: (202) 502-2888
CM/ECF Helpdesk: (202) 502-2822
http://jpml.ao.dcn (internal)
http://www.jpml.uscourts.gov (external)

The Panel's website includes links to the full texts of statutes and rules governing multidistrict litigation, as well as information about the Panel itself, and all pending MDLs.

U.S. Courts Website

The J-Net and the U.S. courts' website, http://www.uscourts.gov, contain links to the websites of all federal courts, statistical reports, and other information that may be useful to transferee court clerks.

Manual for Complex Litigation

For detailed information on many aspects of MDL case administration, refer to the *Manual for Complex Litigation, Fourth* (2004), which is produced by the Federal Judicial Center. It and other resources can be obtained on FJC Online (http://fjconline.fjc.dcn), the Center's website on the courts' intranet.