



February 16, 2024

VIA EMAIL

RulesCommittee_Secretary@ao.uscourts.gov
Advisory Committee on Civil Rules
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, DC 20544

Re: Draft Federal Rule of Procedure 16.1

Dear Members of the Committee on Rules of Practice and Procedure:

Thank you for the opportunity to comment on the Committee's proposed new Rule 16.1 regarding multidistrict litigation. I am submitting this comment on behalf of the Committee to Support the Antitrust Laws (COSAL), an organization of plaintiffs' antitrust law firms across the country that prosecute antitrust class actions.

COSAL requests an amendment to the Committee Note to address the issues relating to the treatment of class actions in proposed Rule 16.1 that were raised in the submissions and testimony of Jeannine Kenney (dated January 2, 2024) and Kellie Lerner (submitted January 23, 2024), among others. Our proposed amendment recognizes that class actions do not implicate the same management and coordination issues as other types of MDLs.

In submitting this proposed amendment, COSAL is not taking a position on the new Rule as it relates to MDLs that are not class actions.

Proposed amendment to Rule 16.1's Committee Note:

Many different types of civil actions are coordinated or consolidated for pretrial proceedings pursuant to Section 1407 – Multidistrict Litigation. Among them are class actions, which are governed by Federal Rule of Civil Procedure 23 (Class Actions), caselaw and various statutes, such as the Class Action Fairness Act and the Private Securities Litigation Reform Act. Rule 16.1 is not intended to supplant or alter FRCP 23, the body of statutes and caselaw governing class actions, or

long-standing best practices used by courts in organizing and managing class action MDLs, including the appointment of interim class counsel and consolidating and coordinating actions, both of which should occur at the outset of the litigation.

Thank you for considering our views. If you have any questions about this submission, please contact Pamela Gilbert, pamelag@cuneolaw.com, (202) 253-3561.

Sincerely,

A handwritten signature in black ink that reads "Pamela Gilbert". The signature is written in a cursive, flowing style.

Pamela Gilbert

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