

Rule 13. Judicial Panel on Multidistrict Litigation

[Note: bracketed italicized portions are suggestions that were not recommended by Subcommittee]

13.1 Definitions.

(a) *MDL panel* means the judicial panel on multidistrict litigation designated pursuant to section 74.161 of the Texas Government Code, including any temporary members designated by the Chief Justice in his discretion when regular members are unable to sit for any reason.

(b) *MDL panel clerk* means the Clerk of the Texas Supreme Court or such other clerk as ordered by the MDL panel.

(c) *Trial court* means the court in which a case is filed.

(d) *Pretrial court* means the district court to which related cases are transferred for consolidated or coordinated pretrial proceedings under this rule.

(e) *Related case(s)* means any one or more of multiple cases involving one or more common questions of fact.

(f) *Tag-along case(s)* means any one or more cases that would fall within the definition of related cases in an MDL transfer order under these rules but that has not previously been the subject of an MDL motion or order.

13.2 Procedure for Requesting Transfer.

(a) *Motion and response.* Any party in related cases may file a motion for transfer to a pretrial court for consolidated or coordinated pretrial proceedings pursuant to this rule. Within twenty [*thirty*] days of service of such a motion, any party in any related case [*or the trial court*] may file a response. Within ten days of service of a response, any party supporting transfer may file a reply.

(b) *Contents.* The motion must state

(1) the cause number, style, and trial court of related cases for which transfer is sought;

(2) all parties in those cases;

(3) the common question(s) of fact involved;

(4) the reasons why transfer would be for the convenience of the parties and witnesses and promote the just and efficient conduct of the actions [cases]; and

(5) that the filing party conferred, or made a reasonable attempt to confer, with all other parties about the merits of the motion and whether they agree or oppose it.

[*and (6) the court to which transfer is sought.*]

Any motion, request, or response must be in the form of a brief conforming to the form requirements of Texas Rule of Appellate Procedure 9.4 and the page limits of Texas Rule of Appellate Procedure 53.6 [15/15/8] [*Texas Rule of Appellate Procedure 38.4 (50/50/25)*]. The MDL panel may request additional briefing. [*No party may contact any member of the MDL panel with respect to the motion except in writing with service on all parties.*]

(c) *Filing and service.* A copy of any motion, response, or reply must be filed with the MDL clerk and served on all parties in related cases [*and on each trial court*]. Notice of the filing must be given to each trial court referenced in the motion; copies of a motion, response, or reply need not be filed with the trial court.

(d) *Hearing*. The MDL panel may decide any matter on written submission, or may in its discretion conduct an oral hearing before one or more members of the panel at a time and place of its choosing. The MDL panel may order one or more parties to give notice of the time, place, and nature of any oral hearing to all parties in all related cases.

(e) *Evidence*. The MDL panel may in its discretion order the parties to submit evidence by affidavit or deposition, and may order them to file documents, discovery, or stipulations from related cases.

(f) *Decision*. The MDL panel may grant the motion if three panel members concur in a written order finding that related cases involve one or more common questions of fact, and that transfer to a specified district court will

(1) be for the convenience of the parties and witnesses and

(2) promote the just and efficient conduct of the related cases. [see attachment]

(g) *Retransfer*. On its own motion or motion by a party, the MDL panel may in its discretion order transfer from one pretrial court to another pretrial court upon the death, resignation, replacement at an election, or request of the judge of the pretrial court, or in other circumstances when retransfer is necessary for the convenience of the parties and witnesses and to promote the just and efficient conduct of the actions.

[(h) Transfer by judges or MDL panel. The trial court, a local administrative judge, regional presiding judge, or the MDL panel sua sponte may request a transfer of related cases to a pretrial court for consolidated or coordinated pretrial proceedings pursuant to this rule. The MDL panel may employ such procedures, including show cause orders and the procedures in subparts (f)-(h) as may be necessary for its decision.].

[Possible Additions regarding Factors for inclusion in 13.2(f)]

[In deciding whether consolidation or coordination of cases may promote the just and efficient conduct of the related cases, the panel shall consider whether:

(a) numerous pretrial motions are likely to raise difficult or novel issues that will be time consuming to resolve; [Arizona & California]

(b) the cases involve management of a large number of witnesses or a substantial amount of documentary evidence; [Arizona & California]

(c) there are a large number of separately represented parties; [Arizona & California]

(d) there is a need for coordination with related actions pending in other courts in other states or countries, or in a federal court; [Arizona & California]

(e) the cases would benefit from permanent assignment to a judge who would have acquired a substantial body of law in a specific area of the law; [Arizona]

(f) the cases involve inherently complex legal issues; [Arizona]

(g) other factors justify the consolidated resolution of otherwise complex disputes; [Arizona]

(h) any other factor which in the interest of justice warrant consideration; [Arizona]

(i) the common questions of fact or law in the cases are predominating and significant to the litigation; [Colorado & California]

(j) the convenience of the parties, witnesses, and counsel; [Colorado]

(k) the relative development of the actions and work product of counsel; [Colorado]

(l) the efficient utilization of judicial facilities and manpower; [Colorado]

(m) the calendar of the courts in which the actions are pending; [Colorado]

(n) the disadvantages of duplicative and inconsistent rulings, orders, or judgments; [Colorado]

(o) the likelihood of settlement of the actions without further litigation should transfer be denied. [Colorado]

[Jamail Committee]

It is presumed that consolidation or coordination of the following types of cases is appropriate:

- (1) mass tort litigation, including products liabilities cases, securities cases, toxic exposure cases, and toxic environmental damage cases; and*
- (2) mass disaster cases, including two or more cases involving common carrier disasters, explosions, plant emissions, edifice collapses, flooding, products liability cases, toxic exposure cases, and toxic environmental damage cases.*

But an action is not presumed to be appropriate if the court in which the cases has significant experience in resolving like claims involving similar facts and the management of those claims has become routine.

[California]

It is presumed that consolidation or coordination of the following types of cases is appropriate:

- (1) Antitrust or trade regulation claims;*
- (2) Construction defect claims involving many parties or structures;*
- (3) Securities claims or investment losses involving many parties;*
- (4) Environmental or toxic tort claims involving many parties;*
- (5) Claims involving mass torts;*
- (6) Claims involving class actions; or*
- (7) Insurance coverage claims arising out of any of the claims listed in subdivisions (1) through (6).*

But an action is not presumed to be appropriate if the court in which the cases are pending has significant experience in resolving like claims involving similar facts and the management of those claims has become routine.

[Possible Comment]

The Panel may consider a number of factors in determining if consolidation or coordination of a case is both for the convenience of the parties and the witnesses and would promote the just and efficient conduct of related cases. The panel may consider any factors which in the interest of justice warrant consideration, including the complexity or novelty of the claims, the number of parties and witnesses, the projected pretrial proceedings, the efficient operation of the judicial system. The Panel may also consider the effect of not consolidating or coordinating the action on the parties and the judicial system.]

13.3 Effect of Filing a Motion for Transfer on the Trial Court

(a) *No stay.* The filing of a motion under this rule does not limit the jurisdiction or suspend proceedings or orders in the trial court. [*Automatic Stay. A motion for transfer filed within thirty days after a party's appearance date automatically stays all proceedings except for extraordinary relief in the trial court until a ruling by the MDL panel. A notice of automatic stay must be filed with each trial court affected.*]

(b) *Order of Stay.* [*If a motion is filed after the deadline in subsection (a),*] Upon motion and order the trial court or the MDL panel may stay all or part of any trial court proceedings until a ruling by the MDL panel.

13.4 Transfer to Pretrial Court.

(a) *Transferred upon notice.* Related cases are deemed transferred from the trial court to the pretrial court when a notice of transfer with a copy of the MDL transfer order attached is filed with the trial court.

(b) *No further action in trial court.* After notice of transfer is filed in the trial court, the trial court may take no more action in the case except for good cause stated in the order in which further action is taken and after conferring with the pretrial court. Service may be completed on any process issued by the trial court, but all answers, appearances, or issues relating to process must be addressed to the pretrial court.

(c) *Transfer of trial court files.* If the trial court and pretrial court are in the same county, files must be transferred pursuant to that county's local rules. In all other cases, unless the MDL panel otherwise assesses costs, the party moving for transfer must request and all parties agreeing to the transfer must pay the cost of opening new files in the pretrial court (including filing fees and other reasonable costs), and of obtaining certified copies of the live pleadings and docket sheet from each trial court for filing in the pretrial court. The pretrial court may require any party to file certified copies of additional documents from any trial court, and may enter orders directing the manner in which pretrial documents are filed, including electronic filing. The clerk of the pretrial court, after consultation with the judge of the pretrial court, may establish a master file and as many individual files as needed to administer the cases.

[(d) *Information to be Provided to Pretrial Court. Not later than the 15th day after the date of an MDL transfer order, the parties shall submit to the pretrial court a joint report that includes lists all parties and counsel, copies of all live pleadings in the related cases; and summaries regarding the status of the parties and pleadings.*]

(e) *Transfer of tag-along cases.* Tag-along cases are deemed transferred to the pretrial court when a notice of transfer is filed in both the trial court and the pretrial court with a copy of the original MDL transfer order attached. Any party objecting that a tag-along case does not fall within the terms of an MDL transfer order must move to remand within 30 days after service of the notice. If remand is granted, the case must be returned to the trial court, and costs including attorney's fees may be assessed by the pretrial court in its remand order. A pretrial court's order [*remanding a case to the trial court*] under this subsection is not reviewable by appeal or original proceeding, but a party in a remanded case may file a new motion for transfer with the MDL panel.

[(e) Entry of conditional orders. Upon being advised of the pendency of a tag-along case, the MDL panel may enter a conditional order transferring the case to the pretrial court to which related cases previously were transferred on the basis of prior briefing and hearings and for the reasons expressed in previous written orders of the panel pursuant to rule 11.2(j). The MDL clerk promptly shall serve each party to the tag-along case with the conditional transfer order but, to afford all parties the opportunity to oppose the transfer, shall not send the order to the clerks of the trial or pretrial courts for 15 days from the date that it was signed.]

(f) *Notice of opposition.* Any party opposing the transfer shall file with the MDL clerk a notice of opposition within 15 days from the date of the order. If a notice of opposition is timely filed, the MDL clerk will defer transmission of the transfer order to the clerks of the trial and pretrial courts pending further order of the panel.

(g) *Motion to vacate.* Within 15 days of the filing of its notice of opposition, any party opposing transfer shall file a motion to vacate the conditional transfer order with a supporting brief. The panel shall consider the motion and any response upon written submission or, in its discretion, at an oral hearing and promptly advise all parties to the tag-along case of its decision.

(h) *Notice of transfer.* If a motion to vacate is denied, or if no notice of opposition to the conditional transfer is received within 15 days of the date of the initial conditional

transfer order, the MDL clerk shall provide the clerks of the trial courts with a notice of transfer, with copies of the conditional transfer order attached, and the clerk of the trial court shall forward certified copies of all live pleadings and the docket sheet to the clerk of the pretrial court. Parties to an action subject to a conditional transfer order shall notify the MDL clerk within 15 days of the date of the order if the case is no longer pending in the trial court.]

13.5 Proceedings in Pretrial Court.

(a) *Judges who may preside in pretrial court.* The MDL panel may assign as judge of the pretrial court any district judge or any retired or senior district judge other than a defeated judge. Assignments made under this rule are not *[are]* subject to objection under chapter 74 of the Government Code *[except that each side may exercise a single objection]*. Upon assignment and transfer, the judge assigned as judge of the pretrial court has exclusive jurisdiction over related cases transferred pursuant to this rule (unless retransferred by the MDL panel) until disposed or remanded to the trial court for trial.¹

¹ Tex. Govt. Code § 74.164, as added by HB 4, provides that “[n]otwithstanding any other law to the contrary, a judge who is qualified and authorized by law to preside in the [district] court to which an action is transferred under this [MDL] subchapter may preside over the transferred action as if the transferred action were originally filed in the transferor court.” This authorization is reflected in the first sentence of this rule. There are a wide range of judges who are “qualified and authorized by law” under statutes and existing rules to preside in a district court:

- The active judge of the court.
- Other district judges in the county, who may exchange benches or districts with the active judge of the court and/or hear matters pending in that court. Tex. R. Civ. P. 330(e); *see* Tex. Const. art. V, § 11 (“And the District Judges may exchange districts, or hold courts for each other when they may deem it expedient, and shall do so when required by law.”); Tex. Govt. Code § 24.303 (similar statutory authorization). Similar provisions exist under various local administrative rules, *see, e.g., In re Houston Lighting & Power Co.*, 976 S.W.2d 671, 672-73 (Tex. 1998) (orig. proceeding) (noting that Harris County district judges could exchange benches and transfer cases under Rule 330(e) and local rules), and throughout Chapter 24 of the Government Code with regard to particular district courts. *See, e.g.,* Tex. Govt. Code §§ 24.106(d), 24.108, 24.124, 24.126, 24.129, 24.153; *see also* Tex. Govt. Code § 74.121(b)(2) (specifically authorizing Midland County statutory county court judges and district judges to exchange benches in matters of concurrent jurisdiction).
- Other district judges and statutory county judges in the county, who, under Section 74.094(a), Government Code, may hear and determine a matter pending in a district court in that county. “The judgment, order, or action is valid and binding as if the case were pending in the court of the judge who acts in the matter.” Tex. Govt. Code § 74.094(a). This authority extends to an active, former, or retired judge assigned to a court under Subchapter C, Chapter 74 (*see below*).
- District judges assigned to the court under various local assignment provisions of Chapter 75, Government Code. *See* Tex. Govt. Code §§ 75.015 (El Paso), 75.102 & .110 (authoring appointment of senior district judges in First Administrative Judicial Region).
- Active, retired, or former judges assigned to the court under Chapter 74, Subchapter C, Texas Government Code. A wide range of judges can be assigned to the court under these provisions, including:
 - A regular district judge or statutory county judge, although the latter may not sit outside of his or her county of residence.
 - A senior district or appellate judge who has certified his or her willingness to be assigned and is on the list of judges eligible for assignment in the region.
 - A former district or appellate judge, retired or former statutory county judge, or a retired or former statutory probate judge who has certified his or her willingness to be assigned and is on the list of judges eligible for assignment in the region.
 - A retiree or a former judge whose last judicial office before retirement was justice or judge of the supreme court, the court of criminal appeals, or a court of appeals and who has been assigned by the chief justice to the administrative judicial region in which the retiree or former judge resides for reassignment by the presiding judge of that region to a district or statutory county court in the region.

-
- An active judge or justice of the supreme court, the court of criminal appeals, or a court of appeals who has had trial court experience.

See Tex. Govt. Code §§ 74.054, 74.056, 74.057. Under Section 74.059, “[a] judge assigned under the provisions of this chapter has all the powers of the judge of the court to which he is assigned.”

But there are certain legal limitations on the ability of judges assigned under Chapter 74, Subchapter C to preside in a case. Section 74.060 forbids the assignment of an active judge, without the judge's consent, outside of the judge's district or county for more than 10 calendar days in a year. Additionally, an active judge or justice of the supreme court, the court of criminal appeals, or a court of appeals may not be assigned if the judge or justice has served 14 or more days as a visiting judge under this chapter in the year in which the assignment is to be made, but this provision applies only to an initial assignment to a case and does not affect a judge's or justice's continuing to sit in a particular case.

More notably, Section 74.053 provides that each party to a civil case may assert one objection to an assigned judge, in which instance “the judge shall not hear the case.” Tex. Govt. Code § 74.053(b). As of September 1, 2003, this section will specify that parties may not object to an active judge; thus, parties will be able to object only to a retired judge or former judge. H.B. 3306, § 10. In addition, parties have unlimited objections to an assigned judge who was defeated in the judge's last judicial election for which he or she was a candidate for their judicial office. If such a judge draws an objection, the judge “may not sit in the case.” *Id.*; Tex. Govt. Code § 74.053(d). However, parties have no right under Section 74.053 to object to judges assigned under provisions other than Chapter 74, or who exchange benches or sit for one another under independent authorizations. See *In re Houston Lighting & Power*, 976 S.W.2d at 672-73 & n.3 (Section 74.053 objections applied only to assignments made under Chapter 74 and not to “assignments by some power other than Chapter 74,” and noting cases holding that such objections didn't apply to Chapter 75 assignments, assignments by county administrative judge, and assignment by presiding judge of probate court.).

Judges who are authorized to preside in the pretrial court pursuant to an authorization independent of Section 74.053 would clearly be “qualified and authorized by law” under the meaning of new Section 74.164. What is less clear is whether a judge assigned under Chapter 74 who is subject to objection could preside in the face on an objection. On one hand, a judge assigned under Chapter 74 is clearly “qualified and authorized by law” to preside unless and until an objection is made, yet it is equally clear that once an objection is made, the judge is not so authorized. Section 74.053's objection provisions are phrased in terms of a mandatory disqualification – the judge “shall not hear the case” and “may not sit in the case.”

The Legislature did provide in new Section 74.164 that a judge otherwise “qualified and authorized” in the pretrial court may do so “[n]otwithstanding any other law.” We have been unable to locate any documented legislative history or even anecdotal accounts concerning the intended meaning of this phrase, and it appears likely that the Legislature never specifically considered its implications for visiting judges. One might argue that “notwithstanding any other law” trumps Section 74.053, but that seems a stretch in light of the structure of Chapter 74. Section 74.053's right of objection is an integral part of Chapter 74's assignment mechanism. Under Chapter 74, the categories of judges listed above are “subject to assignment” under Section 74.054, and “may be assigned” under Section 74.052, but “shall not hear the case” or “may not sit in the case” if objection is made under Section 74.053. In other words, the safer reading of new Section 74.164 appears to be that Section 74.053 objections would go to the “qualification and authorization” of the assigned judge to preside in the pretrial court rather than comprise an independent limitation that would be trumped by “notwithstanding other law.”

This literal reading does tend to undermine what would seem to be policy goals of the MDL statute. It would, as a practical matter, foreclose altogether the use of otherwise “qualified and authorized” assigned judges (other than active judges) in MDL pretrial courts, as each of numerous parties aligned on the plaintiffs' or defendants' side could use their single strike against any retired judge and objections to former judges would be unlimited. It is doubtful that the Legislature considered multi-party litigation, much less the new species of consolidated multi-party cases, when authorizing objections under Section 74.053. In subsection (d), for example, the Legislature provided a former judge may not sit “*if either party* objects.” Moreover, the legislative history of Section 74.053 indicates that it was driven by a policy interest in ensuring that parties have the right to have their cases heard by a local elected judge – a concept that is abandoned altogether in the MDL provisions of HB 4. See *Mitchell Energy Corp. v. Ashworth*, 943 S.W.2d 436, 439-41 (Tex. 1997).

Nothing in the statutory framework prevents the Court from crafting its MDL rule to prevent or limit objections to judges assigned to pretrial courts by creating an assignment mechanism independent of Chapter 74. Indeed, it did this in Rule of Judicial Administration 11. Tex. R. Jud. Admin. 11.3(e). If the Court determined that the use of

(b) *Authority of pretrial court.* The pretrial court will preside over all pretrial proceedings in transferred cases in place of the trial court, and may set aside any pretrial ruling made by the trial court before transfer. The pretrial court may enter orders regarding jurisdiction (such as special appearances and joinder), venue, discovery (such as discovery control plans and disputes), preparation for trial (such as motions to strike expert witnesses, preadmission of exhibits, and motions in limine), mediation, and disposition by means other than conventional trial on the merits (such as default judgment, summary judgment, and settlement).

(c) *Trial settings.* The pretrial court may set related cases for trial at such times and on such dates as will promote the convenience of the parties and witnesses and the just and efficient disposition of all related proceedings. The pretrial court may confer, or order the parties to confer, with the trial court regarding potential trial settings or other matters regarding remand. [*When pretrial proceedings are completed, the pretrial court must remand related cases to the trial courts for trial settings and trial.*]

assigned retired or former judges would be advisable to make the MDL system workable, a rule that would make the use of such judges feasible would be within its mandate to make the Texas MDL system workable, and may be appropriate given that the MDL concept overrides the policy interests underlying Section 74.053 objections. The portion of the second sentence above preceding the brackets would independently authorize or ratify the assignment of judges to the pretrial court under Chapter 74 so as to immunize them from Section 74.053 objections. The subsequent bracketed language reflects two alternative limitations on objections. The first would bar all objections, as does current Rule 11. The second is a compromise that would permit each “side” a single objection to an assigned judge. This alternative seeks to balance the interests in making the use of assigned judges in MDL proceedings workable while giving parties a check against conceivable abuses.

[(d) Case management. Once a case is consolidated or coordinated, the pretrial court shall, at the earliest practical date, conduct a hearing and enter a case management order promptly thereafter. Among the subjects that should be considered at such a conference are:

(1) Settling the pleadings

(2) Determining whether severance, consolidation, or coordination with other actions is desirable

(3) Scheduling motion to dismiss or other preliminary motions

(3a) Scheduling discovery proceedings and setting limitations, if necessary, on discovery, including the establishment and timing of discovery procedures

(4) Issuing protective orders

(5) Scheduling alternative dispute resolution conferences

(6) Appointing liaison counsel

(7) Scheduling dispositive motions

(8) Providing for exchange of documents, including adopting a uniform numbering system for documents, establishment of a document depository, determining whether electronic service of discovery materials and pleading is warranted

(10) Determining if the use of technology, videoconferencing, or teleconferencing is appropriate

(11) Consideration of such other matters the court or the parties deems appropriate for the just and efficient resolution of the cases

(12) Scheduling further conferences as necessary.]

13.6 Remand to Trial Court.

(a) *Disposed cases.* The pretrial court may enter final and appealable dispositive orders in related cases or any portion thereof, including any part of a claim or defense. Such orders are not to be remanded to the trial court.

(b) *Trial-ready cases.* When related cases or any portion thereof are ready for trial, the pretrial court may sever any claim or party from a transferred case and remand for trial, or may remand the entire case to the trial court for trial.

(c) *General remand.* The pretrial court may order remand of cases transferred under this rule when pretrial proceedings have been completed to such a degree that the purposes of the transfer have been fulfilled. The order may be entered sua sponte, or on motion filed by a party. Any party may file a response to a motion to remand within ten [twenty] days after service of the motion. Any party who opposes remand may apply to the MDL panel for an order setting aside the remand in whole or in part and returning the case to the pretrial court [*a new transfer order transferring related cases to the original or any other pretrial court*].

[(c) *General remand.* The MDL panel may order remand of related cases transferred under this rule when pretrial proceedings in those related cases have been completed to such a degree that the purposes of the transfer have been fulfilled. The order may be entered sua sponte, or on motion filed by a party accompanied by a copy of the pretrial court's final pretrial order, if any, and [an affidavit] reciting whether the pretrial court has requested a general remand, whether pretrial proceedings have been completed, and the state of compliance with any outstanding orders by the pretrial court. The MDL panel ordinarily will consider remand only if the pretrial judge has requested it. Any party may file a response to a motion to remand within __ days after service of the motion.]

13.7 Proceedings in trial court after remand.

(a) *Transferred upon notice.* A related case is deemed remanded from the pretrial court to the trial court when a notice of remand with a copy attached of the pretrial court's order [*MDL panel's order*] is filed in the trial court.

(b) *Transfer of pretrial court files.* The parties remaining in the case at time of remand must designate and obtain certified copies of pleadings and orders from the pretrial court file as needed. The clerk of the pretrial court must send the designated pleadings and orders to the clerk of the trial court, who will reopen the trial court file and accept the pleadings under the old cause number of the trial court.

(c) *Effect of pretrial orders.* All nondispositive orders by the pretrial court must be considered pretrial orders pursuant to Rule 166, and shall control the subsequent course of the trial, unless modified by the trial court to prevent manifest injustice.

[(c) *Effect of pretrial orders. Absent a showing of manifest injustice, the trial court may reconsider any rulings by the pretrial court except the following:*

(1) *rulings by the pretrial court concerning*

(A) *matters of jurisdiction, such as special appearance, joinder, and motions to transfer venue;*

(B) *dispositive motions or special exceptions;*

(C) *expert challenges that are case dispositive; and*

(D) *discovery rulings.*

(2) *motions to strike witnesses or exhibits or motions for sanctions based on claims of discovery abuse except for discovery abuse that first occurs or is discovered after the case has been remanded to the trial court; and*

(3) *a discovery schedule, docket control order, date for mediation or other form of alternative dispute resolution, or trial setting that is earlier than the dates, if any, set by the pretrial judge.]*

13.8 Review.

(a) *MDL decision.* An MDL order granting or denying a motion for transfer of related cases may be reviewed only by the Supreme Court in an original mandamus proceeding.

(b) *Orders by pretrial court.* Orders and judgments of the pretrial court may be reviewed to the extent otherwise permitted by law by the appellate court or courts having jurisdiction concerning orders or judgments of the pretrial court.

[(b) Orders by pretrial court. Orders and judgments of the pretrial court may be reviewed to the extent otherwise permitted by law by a court of appeals designated by the MDL panel at the time of transfer or thereafter OR randomly selected by the MDL clerk. Parties desiring review by a randomly selected court of appeals shall notify the MDL clerk that such a review is desired, upon which notification the MDL clerk, within 24 hours, shall advise the party by written notice of the court of appeals that has been randomly selected. This procedure shall not extend or modify any appellate deadlines. The party seeking review shall attach a copy of the MDL's written notice to its notice of appeal or original proceeding. To the extent otherwise permitted by law, orders and judgments of the pretrial court may also be reviewed, by appeal or by original proceeding, by the supreme court.]

(c) *Orders by trial court.* Orders and judgments of the trial court following remand, including rulings of the pretrial court [*remanded to the trial court and*] otherwise reviewable as part of a final judgment, may be reviewed to the extent otherwise permitted by law by the appellate court or courts having jurisdiction concerning orders or judgments of the trial court.

13.9 Applicability. This rule applies to any civil action involving one or more common questions of fact filed in a constitutional county court, county court at law, probate court, or district court of this state on or after September 1, 2003. Cases filed before that date are governed by Rule 11 of these rules.

Comment: When related cases are filed both before and after September 1, 2003, the pretrial court should confer and coordinate proceedings with any judge assigned pursuant to Rule 11 of these rules.

11.3 Assignment of Pretrial Judge.

(a) *By presiding judge.* On motion under 11.4, a presiding judge may assign an active district judge, including himself or herself, and including the judge of a pretrial court designated pursuant to Rule 13, to a case to conduct all pretrial proceedings and decide all pretrial matters.

6(e) Complex Cases.

It is recognized that in especially complex cases or special circumstances it may not be possible to adhere to these standards. [*However, a court, especially a pretrial court handling cases consolidated or coordinated under Rule 11, must handle complex cases in a manner that ensures just and efficient conduct of the actions. Accordingly, a court:*

(1) should apply judicial management methods early, continuously and actively, based on knowledge of the circumstances of each case.

(2) should regularly use time limits, established early, tailored to the circumstances of each case, firmly and fairly maintained, and accompanied by other methods of sound judicial management, to expedite phases of this litigation; and

(3) should in most cases complete the duties of the pretrial court within 18 months of the assignment of the cases to the court by the Judicial Panel on Multidistrict Litigation.]