

Subpoena Motion Practice in Multidistrict Litigation: the Conflict on Authority Over Subpoena-Related Disputes

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A key purpose of multidistrict litigation (MDL) is centralized management of pretrial proceedings to avoid duplicative discovery and resolve common issues in an efficient manner. An MDL court becomes sufficiently familiar with the facts, scientific issues, and procedural history of the litigation to often allow a just and efficient resolution of complex discovery disputes.

One type of dispute common in MDL proceedings concerns third-party discovery. Often, third parties are essential sources of critical information about a claim—such as physicians who treated a plaintiff in product liability litigation. Just as frequently, these third parties are located outside the district of the MDL judge, forcing parties to serve extra-district subpoenas to obtain such discovery.

When disagreements arise over the scope or content of a subpoena, Rule 45 of the Federal Rules of Civil Procedure requires such disputes to be brought in the “district court where compliance is required,” which is rarely the MDL court. Those situations raise the question whether the MDL court can exercise jurisdiction over subpoena-related disputes despite the mandate of Rule 45. This article analyzes the apparent conflict between Section 1407’s authorization of MDL courts to resolve pretrial disputes and Rule 45’s subpoena requirements, and how courts have resolved this conflict for MDL litigants.

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