

**GUIDELINES FOR THE DIVISION OF BUSINESS
AMONG DISTRICT JUDGES**

EASTERN DISTRICT

ADOPTED PURSUANT TO 28 U.S.C. § 137

These rules are adopted for the internal management of the caseload of the court and shall not be deemed to vest any rights in litigants or their attorneys and shall be subject to such amendments from time to time as shall be approved by the court.

50.3.1 Related Civil Cases

(a) **“Related” Civil Case Defined.** A civil case is “related” to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge.

(b) **Civil Cases Not Deemed “Related”.** A civil case shall not be deemed “related” to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties.

(c) **Civil Cases Presumptively Not “Related”: Unless Both Cases Are Still Pending.** Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be “related” unless both cases are still pending before the court.

(d) **Judicial Determination That Civil Cases Are “Related”.** Except of the cases described in the final sentence of paragraph (e), all civil cases shall be randomly assigned when they are filed. Other than the cases described in the final sentence of paragraph (e), civil cases shall not be deemed to be “related” for purposes of this guideline at the instance of any litigant or attorney unless and until there has been a determination by a judge of this court that the standard of paragraph (a) is met, i.e., that because of the similarity of facts and legal issues or because the cases arise from

the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge. Any party may apply for such a determination by filing with the clerk a letter of no more than three single-spaced pages explaining why the standard of paragraph (2) is met and serving copies of the letter on all other parties. Such an application must be made after the date when at least a majority of the defendants have been served with the complaint, but not more than 30 days after that date unless the judge passing on the application permits a later filing for good cause shown. Before making such an application, the applicant must confer in good faith with all other parties in an effort to reach an agreement on whether or not the case is “related”. After such an application is made, any other party may serve and file within five business days a letter of no more than three single-spaced pages supporting or opposing the application. Any determination by a judge of this court that the standard of paragraph (a) is or is not met shall be made by a judge or judges designated by the chief judge, who shall not include the judge to whom the case has been randomly assigned or the judge to whom the case will be assigned if it is determined to be “related”.

(e) **Assignment of Related Cases.** Cases which have been judicially determined to be related shall be assigned by the clerk to the judge to whom was assigned the case with the lowest docket number in the series of related cases. The clerk shall advise the judge of such assignment of a related case. In the interest of judicial economy, the following categories of civil cases shall be deemed to be “related” without further order of the court: (1) all habeas corpus petitions filed by the same petitioner; (2) all pro se civil actions filed by the same individual; and (3) any other subject-matter category of cases where the chief judge finds that the standard of paragraph (a) is met.

(f) **No Vested Rights.** As stated in the Introduction to these Division of Business Rules, this rule is adopted for the internal management of the case load of the court and shall not be deemed to vest any rights in litigants or their attorneys and shall be subject to such amendments from time to time as shall be approved by the court. This rule shall not be deemed to prevent the reassignment of cases at the initiative of and by agreement of the judges involved.

Amended: September 22, 2008

50.2 Assignment of Cases

(a) Time of Assignment.

The clerk shall assign a civil case upon the filing of the initial pleading. In a criminal case after an indictment is returned or after an information (including a juvenile information under 18 U.S.C. § 5032) or a motion to transfer under 18 U.S.C. § 5032 has been filed, the United States Attorney shall refer the case to the clerk who shall then assign the case. The United States attorney shall arrange with the judge to whom the case is assigned, or if that judge is absent or unavailable as provided in 50.5, with the miscellaneous judge, to have the defendant arraigned and a plea entered as promptly as practicable.

(b) Random Selection Procedure.

All cases shall be randomly assigned by the clerk or his designee in public view in one of the clerk's offices in such a manner that each active judge shall receive as nearly as possible the same number of cases, except as provided in paragraph (h). Where a party or his counsel requests prior to selection that he or she be present at the selection, the clerk shall make reasonable efforts to comply with the request. In Brooklyn civil cases a magistrate judge shall be drawn at the same time and in the same manner as a judge. All Long Island civil cases shall be assigned to the Long Island magistrate judge. The parties to any Long Island case assigned to a Brooklyn judge may stipulate that the case be assigned to the Long Island magistrate judge, for pretrial purposes.

(c) Assignment of Civil Cases.

There shall be separate Brooklyn and Long Island civil assignment wheels. At least quarterly the Chief Judge shall fix the proportion of cases to be assigned to the Long Island courthouses so as to distribute the civil cases relatively equally among all the active judges.

(d) Assignment of Criminal Cases.

(1) There shall be a Brooklyn criminal and a Long Island criminal assignment wheel.

(2) There shall be Brooklyn and Long Island criminal misdemeanor assignment wheels for the random assignment of these matters to a magistrate.

(e) Place of Trial

Except in emergencies a case shall be tried at the place to which it has been assigned.

(f) Objection.

Any objection by a party to designation of a judge or to place of trial shall be made by letter or motion to the judge assigned

(1) in a criminal case, within ten days from arraignment or from initial notice of appearance, whichever is earlier; or

(2) in a civil case, within the time allowed to respond to the complaint.

(g) Special Cases.

(1) The miscellaneous judge shall send all narcotics addict commitment cases involving "eligible individual" as defined by 28 U.S.C. § 2901(g) to the clerk for assignment as provided in paragraph (b).

(2) *Pro se* applications or claims by persons in custody shall be filed without prepayment of fees upon receipt, prior to decision on their *in forma pauperis* petitions.

(3) Multidistrict litigation is to be assigned to the judge selected by the multidistrict litigation panel; subject to reassignment by the Chief Judge of the Eastern District of New York, according to the usual reassignment rules of the district, to adjust caseload distribution in the interests of justice.

(h) Chief Judge; Senior Judges; Temporarily Overloaded Judges; Notice of Removal from Wheel.

The chief judge and each senior judge shall indicate from time to time to the clerk the percentage of a full caseload that he or she elects to have assigned. The chief judge, with the consent of a judge, may remove that judge from any wheel temporarily to reduce the number of pending cases and prevent delay in the disposition of cases by a judge who is then overburdened by cases or due to ill health. The chief judge shall return that judge to the wheel only on consent of the judge. The clerk shall upon request inform any attorney or party of the identity of judges whose names have been removed from a wheel.

(i) Visiting Judge

The chief judge shall approve the assignment or transfer of cases to a visiting judge.

(j) Proceedings After Assignment

All proceedings in a case after assignment shall be conducted by the assigned judge, except as provided by these guidelines.

(k) Recusal.

A judge or magistrate judge may recuse himself or herself at any time in accordance with U.S.C. § 455. This guideline takes precedence over any other guideline.

(l) Appeals-Assignment on Reversal or Remand.

(1) In a criminal case upon reversal of a judgment and a direction for retrial or re-sentence, on receipt of the mandate of the appellate court the clerk shall randomly select a different judge to preside over the case. Notwithstanding this provision the chief judge

may order the case assigned to the original president judge to avoid placing an excessive burden on another Judge.

(2) In a civil case upon reversal the case shall remain assigned to the judge who was previously assigned, unless the chief judge or his designee orders otherwise.

50.3 Related Cases: Motion for Consolidation of Cases

(a) “Related” Case Defined.

A case is “related” to another for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge.

(b) Civil Cases

By way of illustration and not limitation, the following civil cases are “related”; when a case (A) relates to property involved in an earlier pending suit, or (B) involves the same factual issue or grows out of the same transaction as does a pending suit, or (C) involves the validity or infringement of a patent already in suit in a prior case.

(c) Criminal Cases.

Criminal cases are “related” only when (A) a superseding indictment or information is filed, or (B) more than one indictment or information is filed against the same defendant or defendants, or (C) when an application is filed by a person in custody that relates to a prior action. Other cases will be deemed “related” only upon written application by a party, upon not less than ten days’ notice to each other party, to the judge presiding over the earlier assigned case. The application will be

granted only if a substantial saving of judicial resources is likely to result from assigning both cases to the same judge, or is otherwise in the interest of justice.

(d) Designation of Related Case; Service of Civil Information Sheet.

If the party filing a case believes it to be related to a prior case, whether pending or closed, the party shall so indicate on the information sheet, specifying for each such case the title and the docket number, if any. A copy of the information sheet shall be served with the summons and complaint or petition for removal of the action. Each attorney in a case has an ongoing duty to advise the clerk in writing upon learning of any facts indicating that his or her case may be related to any other pending case.

(e) Assignment of Related Cases.

Related cases shall be assigned by the clerk to the judge to whom was assigned the case with the lowest docket number in the series of cases. The clerk shall advise the judge of such assignment of a "related case." In the interest of judicial economy, all habeas corpus petitions filed by the same petitioner shall be deemed related. Likewise, all pro se civil actions filed by the same individual shall be deemed related.

(f) Case Erroneously Assigned as Related.

The designation of cases as related may be corrected *sua sponte* by the judge to whom they are assigned, by returning to the clerk for reassignment cases erroneously so assigned. The failure to assign related cases appropriately shall be corrected only by agreement of all of the judges to whom the related cases are assigned; if they agree, they may transfer the later-filed cases as provided in paragraph (e), and notify the clerk of that action.

(g) Credit for Related Cases.

A related case transferred or assigned to a judge shall be counted as would a newly-filed case regularly assigned. A judge shall be assigned an additional case for each case transferred from him or her under this guideline.

50.4 Reassignment of Cases

No case shall be reassigned except in the interest of justice and the efficient disposition of the business of the court. The chief judge may at any time, with the consent of the judges involved, reassign individual cases. Reassignment of cases to accommodate changes in the complement of judges shall be made in accordance with the order of the Board of Judges.

50.5 Miscellaneous Judge

(a) Duties and Functions.

(1) Hear and determine:

(A) Matters requiring immediate action in cases already assigned to any judge of the court, if that judge is unavailable or otherwise unable to hear the matter only for such immediate emergency action; the case to remain with the assigned judge.

(B) Special proceedings which cannot be assigned in the ordinary course, including motions under Fed. R. Crim. Proc. 41 made prior to indictment;

(C) Any other proceeding not part of or related to a case, including admissions to the bar and naturalization proceedings.

- (D) Requests to be excused from service on the grand and petit juries; and
- (E) All matters relating to proceedings before the grand jury;

(2) Impanel the grand jury, receive indictments, and refer criminal cases to the clerk for assignment pursuant to 50.2.

(b) Emergency Matters.

The miscellaneous judge shall dispose of matters under paragraph (1)(1) only to the extent necessary and shall continue the case before the assigned judge. All applications for emergency action or relief shall disclose any prior application to a judge for the same or related relief and the outcome thereof.

50.6 Calendars

(a) Numbers; Order of Cases.

The docket number of each case shall be the calendar number. No note of issue shall be required to place the case on the calendar. Each judge shall dispose of cases assigned to him or her as required by law and the efficient administration of justice.

(b) Preferences.

Each judge shall schedule cases appearing on his or her docket in such order as seems just and appropriate, giving preference to the processing and disposition of the following:

- (1) *habeas corpus* petitions and motions attacking a federal sentence;
- (2) Proceedings involving recalcitrant witnesses before federal courts or grand juries under 28.S.C. § 1846;

- (3) Actions for temporary or preliminary injunctive relief; and
- (4) Any other action if good cause is shown.

(c) Publication of Calendars.

Each court day the clerk shall post on bulletin boards throughout the courthouse and provide to legal newspapers for publication copies of the judges' calendars.

50.7 Conference

The judge assigned to any case may direct the attorneys to appear to discuss the case informally, to entertain oral motions, to discuss settlement, or to set a schedule for the events in the case, including completion of discovery, pretrial and trial.