

GENERAL ORDER NO. 44

ASSIGNMENT PLAN

A. Purpose.

This plan is adopted pursuant to 28 U.S.C. § 137 and Civil L. R. 3-3(a). The purpose of the plan is to provide an equitable system for a proportionate division of the caseload among the Judges and Magistrate Judges of the Court, for random assignment of cases, to make necessary adjustments to caseload assignments and to provide a basis for monitoring the operation of the case assignment system.

B. Administration.

The Executive Committee shall have the power to make and review all orders of assignment and reassignment consistent with this plan. As provided in Civil L.R. 77-2(e), the Clerk, when directed by the committee or as specifically provided for in this plan, may sign orders on behalf of the Executive Committee.

C. Case Numbers.

Each case commenced in or transferred to the Court pursuant to Civil L.R. 3-2 shall be assigned a case number by the Clerk upon filing. A separate sequence of case numbers shall be maintained for criminal and civil cases. Case numbers shall conform to the format approved by the Administrative Office of the United States Courts.

D. Assignment of Cases.

1. Unless otherwise required by the Executive Committee, cases shall be assigned by the Clerk to the Judges holding chambers in the Courthouse or Courthouses serving the county in which the action arises.

2. Cases shall be assigned blindly and at random by the Clerk by means of a manual, automated or combination system approved by the Judges of the Court. Such system will be designed to accomplish the following:

a. Proportionate, random and blind assignment of cases;

b. Except as set forth in subparagraphs D(3) through D(7), an approximately equal distribution of newly filed civil cases within each of the categories set forth below to each of the active Judges of the Court. This shall be accomplished by means of a manual or automated ballot system, in which one ballot per active Judge will be made available for draw for each case category. After all ballots have been drawn in a given case category, the ballot pool shall be refreshed in the

same manner, subject to adjustment, as necessary, for prior reassignment of cases between Judges, as provided for in Sections D.2.d. and E.

1. Contract
2. Real Property
3. Personal Injury
4. Personal Property
5. Civil Rights
6. Prisoner Petitions
7. Forfeiture/Penalty
8. Labor
9. Property Rights
10. Antitrust
11. Bankruptcy
12. Social Security
13. Tax
14. Intellectual Property
15. Securities Class Action
16. Capital *Habeas Corpus*¹
99. Other Actions

c. A high level of security so as to reasonably avoid prediction of the results of any case assignment;

d. A system of credits and debits to adjust for reassignments of cases among and between Judges;

e. A record of all assignments and reassignments made.

3. The Chief Judge shall receive at least a fifty percent draw of the cases assigned to an active Judge.

4. The Executive Committee may modify the case load of an active Judge pursuant to a case management program or General Order of the Court (e.g., settlement program or Periodic Calendar Adjustment Program).

¹This category includes only the first action filed by a petitioner in which (1) the petitioner seeks relief from a state court conviction and sentence of death, (2) the petitioner has completed at a minimum his or her state direct appeal, (3) and the case is properly venued in this District. Subsequent petitions which meet these three criteria, and which are assigned to a Judge other than the Judge who heard the prisoner's first category 16 case pursuant to Section O.4., are also included in this category. All other *habeas corpus* petitions filed by prisoners sentenced to death are to be categorized as: "6. Prisoner Petitions."

5. Notwithstanding any other provision of the Assignment Plan, the Clerk shall maintain a separate system of assignment for Prisoner Petitions, Intellectual Property cases (Patent, Trademark and Copyright), Securities Class Actions and Capital *Habeas Corpus* cases. Venue for cases in these categories shall be proper in any Courthouse in this District. Cases in these categories shall be randomly assigned to any Judge of this Court, and shall not be reassigned on the basis of intra-district venue.

6. Notwithstanding any other provision of the Assignment Plan, the Clerk shall maintain a separate system of assignment for cases transferred to this District pursuant to FRCrimP 20. Assignment of Rule 20 cases shall be made prior to execution of a consent to transfer in the manner set forth in Crim. L.R. 20-1. Any subsequent Rule 20 proceeding involving the same defendant and arising out of the same or superseding charges shall be deemed to be a related case and shall be assigned to the originally assigned Judge.

7. Notwithstanding any other provision of the Assignment Plan, the Clerk shall assign any non-capital civil action filed by a prisoner to the same Judge who was assigned any previous actions filed on behalf of that prisoner.

E. Reassignment of Cases.

1. **Related cases.** Upon the filing of an order pursuant to Civil L.R. 3-12(e) by a Judge assigned to an earlier-filed case that a later-filed case is related to the case pending before that Judge, or pursuant to Crim. L.R. 8-1(e) that a case determined to be related is to be reassigned, the Clerk shall reassign the later-filed case to that Judge and give the transferee Judge a credit and the transferor Judge a debit in the appropriate category for the reassigned case.

2. **Disqualification.** If a Judge is disqualified to hear an assigned case, the Clerk shall reassign the case at random and give the transferee Judge a credit and the transferor Judge a debit in the appropriate category.

3. **Intradistrict Reassignment of Cases.** Whenever a civil or criminal case is transferred from one Courthouse of the Court to another, the Clerk shall randomly reassign the case to a Judge designated to hold court at the receiving Courthouse. A credit will be given in the appropriate category to the transferee Judge and a debit in the appropriate category will be given to the transferor Judge.

4. **Reassignment Between Judges.** Any case, except a capital *habeas corpus* case, may be reassigned between Judges on the consent of the transferring and accepting Judge. Notice of the reassignment shall be given to the parties by a written order signed by each transferring Judge and each accepting Judge. A reassignment between Judges pursuant to this provision does not require approval of the Executive Committee. A credit will be given in the appropriate category to the transferee Judge and a debit in the appropriate category will be given to the transferor Judge.

5. **Reassignment of Fugitive Criminal Cases.** When a criminal charge has been on file for more than sixty (60) days and the case file indicates that initial process has not been executed and the

defendant is not otherwise before the Court, or a bench warrant has been issued and remains outstanding for sixty (60) days or more, the Clerk shall reassign the case as to such defendant to the Executive Committee.

a. On Part II of the monthly JS-1 report to the Administrative Office, the Clerk shall report cases assigned to the Executive Committee on the line designated “UNASSIGNED.”

b. In the event of any subsequent activity in a case which has been assigned to the Executive Committee, that Committee shall reassign the case to the Judge originally drawn pursuant to paragraph D. If such Judge is no longer sitting or receiving criminal case assignments, the case shall be reassigned in accordance with paragraph J.

F. Assignments in the Interest of Justice and Economy.

The Executive Committee may make such other assignments, reassignments or related orders as are conducive to the equitable division and just, efficient and economical determination of the business of the Court.

G. Senior Judges.

A Senior Judge of this Court may participate in the regular assignment of cases to the extent that he or she is willing and able to do so.

H. Visiting Judges.

Whenever a Judge is assigned to serve as a Visiting Judge in this Court, the Executive Committee shall make an order forming the Judge's calendar by reassigning from other Judges cases designated by them as available for transfer. Selection of cases for this purpose shall be made upon a basis equitable among all the Judges of this Court and after consultation with them. No debits will be recorded for assignment of cases to a Visiting Judge.

I. Newly Appointed Judges.

When a judge is appointed to serve on this Court, the Clerk shall, under the direction of the Executive Committee, prepare the pending caseload for the new Judge. The new Judge's caseload shall represent as nearly as possible the average pending caseload of an active Judge at the time in the Courthouse or Courthouses serving the counties where the new Judge shall hold chambers and the caseload will be drawn equally, at random and in accordance with Internal Operating Procedure No 1, from active civil cases other than capital *habeas corpus* cases, pending before, and made available for reassignment by, the active Judges at such Courthouse or Courthouses. Upon approval of such caseload by the Executive Committee, such cases will be reassigned to the newly appointed

Judge. Following assignment of his or her initial caseload, a newly appointed judge shall be assigned civil and criminal cases pursuant to Secs. D and E of this order. Assignment of capital *habeas corpus* cases will be governed by provisions of Sec. O.2.c.

J. Judge Unavailable.

When a Judge becomes unavailable for the assignment of cases due to retirement, resignation or death, the Executive Committee shall order the reassignment on an equitable basis of such Judge's pending cases to the other Judges of the Courthouse or Courthouses serving the counties where the Judge held chambers.

K. General Duty Judge.

The Chief Judge shall, from time to time, appoint a member of the Court at each division of the Court to serve as the General Duty Judge for that division for a period of time. Appointments shall be made on an equitable and rotating basis. Any miscellaneous matter filed or brought before a Judge while serving as General Duty Judge shall be retained by that Judge until that matter is terminated. The General Duty Judge may also act for the assigned Judge when that Judge is unavailable and a matter requires the attention of a judicial officer prior to the return of the assigned Judge. In the event an order is needed in a closed case assigned to a judicial officer who is deceased or no longer sitting, the Clerk shall refer the matter to the General Duty Judge for disposition. If a ruling by the General Duty Judge results in the reopening of such a case, the Clerk shall randomly reassign the case pursuant to Section D.

L. Review of Assignments.

1. A Judge may request the Executive Committee to review an assignment or reassignment of any case, except a capital *habeas corpus* case. If the Judge who requests such review is a member of the Executive Committee, the Chief Judge will designate another Judge to serve in that Judge's stead for the consideration of such request. A Judge affected by a ruling of the Executive Committee may have the ruling reviewed by the Court *en banc*.

2. A Judge may request the Capital *Habeas Corpus* Committee to review an assignment or reassignment of any capital *habeas corpus* case. If the Judge who requests such review is a member of the Capital *Habeas Corpus* Committee, the requesting Judge will not participate in the consideration of such request. A Judge affected by a ruling of the Capital *Habeas Corpus* Committee may have the ruling reviewed by the Court *en banc*. The Clerk shall maintain a written record of any interpretation of the capital *habeas corpus* assignment rules made by the Capital *Habeas Corpus* Committee or the Court.

3. This Plan does not create any right or privilege to any litigant to demand or challenge the assignment of a case.

M. Reassignment Register and Report.

1. The Clerk shall maintain an assignment register in a form approved by the Court containing a record of all cases assigned to each of the Judges of the Court or to any visiting Judge and all reassignments among Judges.

2. At the end of each month the Clerk shall prepare and distribute to the Judges of the Court a report showing the number of cases assigned to and pending before each Judge and such other information as the Executive Committee may direct.

N. Assignment of Cases to Magistrate Judges.

1. The full-time Magistrate Judges of this District shall be included in the civil case assignment system in the same manner as active District Judges, except for prisoner petitions not filed by prisoners who have filed previous actions pursuant to Sec. D.7., capital *habeas corpus* cases and bankruptcy appeals or bankruptcy withdrawal of reference cases. The percentage of civil cases assigned to each Magistrate Judge may be modified from time to time as the Executive Committee may instruct. With respect to such assignments, the following procedures shall apply:

a. In cases assigned at filing to a Magistrate Judge, he or she shall hear and determine all pretrial matters not dispositive of a claim or defense pursuant to 28 U.S.C. § 636(b)(1)(a) and Federal Rule of Civil Procedure 72(a). Further, the Magistrate Judge shall conduct all further proceedings including a jury or bench trial and shall order the entry of a final judgment upon the written consent of all parties in the case in accordance with 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73.

b. In all cases assigned at filing to a Magistrate Judge other than prisoner *pro se* actions, the Clerk shall provide all parties with a copy of the forms adopted by the Court for “Notice of Assignment of Case To A United States Magistrate Judge for Trial.” The form shall indicate that upon written consent of the parties the Magistrate Judges of this District have been designated to conduct any and all proceedings in a civil case, including a jury or nonjury trial and order the entry of a final judgment. Prior to the Magistrate Judge taking any dispositive action in the case, the Clerk shall obtain from the parties written consent to the jurisdiction of the Magistrate Judge in accordance with Title 28, U.S.C. §636(c) and Federal Rule of Civil Procedure 73.

c. In prisoner *pro se* actions, the Clerk shall provide all parties with a copy of the form adopted by the Court for “Notice of Assignment of Case Involving *Pro Se* Prisoner To A United States Magistrate Judge

For Trial” and “Consent to Assignment or Request for Reassignment.” The form shall instruct all parties to return this form within 30 days after their initial appearance, that is, 30 days after the complaint is filed, in the case of the plaintiff, or 30 days after an answer or dispositive motion is filed, in the case of a defendant.

d. If a party declines to consent to a United States Magistrate Judge, the Clerk shall reassign the case to a District Judge on a random basis. The reassigned case shall not be counted in determining the proportion of cases for the reassigning Magistrate Judge.

2. Upon filing, the following will be assigned to a Magistrate Judge for all pretrial proceedings. When the case is ready for trial, upon consent of the parties, it will be retained by the Magistrate Judge for trial. If all parties do not so consent, the Clerk will randomly assign the case to a District Judge in the division where the case is pending.

a. All actions filed on behalf of the United States to recover on a claim for a debt;

b. Pre-judgment or post-judgment applications by the United States under the Federal Debt Collection Procedures Act.

O. Assignment of Capital *Habeas Corpus* Petitions

1. Administration. The Chief Judge shall appoint a Capital *Habeas Corpus* Committee. This committee shall have the power to make and review all orders of assignment and reassignment of capital *habeas corpus* cases consistent with this plan. The Clerk, when directed by the committee, may sign orders on behalf of the Capital *Habeas Corpus* Committee.

2. Assignment to District Judge. Notwithstanding the provisions of Sec. D, capital *habeas corpus* cases which fall within the definition of category 16 (per subpara. D.2.b.) shall be assigned to Judges of the Court as follows:

a. All active District Judges of the Court shall participate in the assignments without regard to location in a divisional courthouse.

b. Cases will be assigned blindly and randomly by the Clerk, as provided in subpara. D.2.

c. A newly-appointed Judge will receive a capital *habeas corpus* case debit upon joining the Court and will be assigned the next capital *habeas corpus* case ready for assignment or reassignment following the Judge's appointment. However, a capital *habeas corpus* case will not be

included in the establishment of the newly-appointed Judge's initial caseload which is developed by reassignment of cases from other Judges, pursuant to Sec. I. New cases filed within seven days of a scheduled execution, pursuant to General Order No. 43, subpara. C.3.c., may not be assigned to a newly-appointed judge until after that judge has received his or her first capital *habeas corpus* assignment.

3. Reassignment. Capital *habeas corpus* cases which fall within the definition of category 16 (per subpara. D.2.b.) shall be reassigned to Judges of the Court as follows:

a. If a Judge is disqualified to hear an assigned case, the Clerk shall reassign the case by the random assignment method used for new cases and give the transferee Judge a credit and the transferor Judge a debit in the capital *habeas corpus* case category.

b. When an assigned Judge assumes senior status, at his or her option, the Judge may have any pending case reassigned. The Clerk will reassign the case by the random assignment method used for new cases, and the newly-assigned Judge will receive a case credit.

c. If an assigned Judge becomes unavailable due to retirement, resignation or death, the Clerk will reassign any pending case by the random assignment method used for new cases. The newly-assigned Judges will receive a case credit.

d. If practicable, the Clerk will inform the chair of the Capital *Habeas Corpus* Committee of any intended reassignment of a case before it is actually made.

4. Subsequent Petitions. If a petitioner has previously filed a category 16 capital *habeas corpus* case in this Court challenging his or her conviction and sentence of death, the Clerk will assign any subsequent petition challenging the conviction and sentence of death as a regular prisoner petition under category 6 of Section D.2.b. and will assign it to the Judge, if he or she is still sitting, who was assigned to the prior proceeding. If the Judge who was assigned to the prior proceeding is no longer sitting, the Clerk will assign the subsequent petition randomly as a new category 16 Capital *Habeas Corpus* case.

ADOPTED BY THE COURT: JULY 22, 1997

AMENDED: JULY 18, 2000

AMENDED: MARCH 1, 2002

AMENDED: JANUARY 30, 2003

AMENDED: AUGUST 26, 2003

FOR THE COURT:

/S/ Marilyn Hall Patel

MARILYN HALL PATEL

Chief Judge