
RULES FOR THE DIVISION OF BUSINESS AMONG DISTRICT JUDGES,
SOUTHERN DISTRICT OF NEW YORK

Adopted by the Board of Judges of the Southern District of New York

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RULES FOR THE DIVISION OF BUSINESS AMONG DISTRICT JUDGES, SOUTHERN DISTRICT OF NEW YORK

These Rules are 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.

Rule 1. Individual Assignment System

This court shall operate under an individual assignment system to assure continuous and close judicial supervision of every case. Each civil and criminal action and proceeding, except as otherwise provided, shall be assigned by lot to one judge for all purposes. The system shall be administered by an assignment committee in such a manner that all active judges, except the chief judge, shall be assigned substantially an equal share of the categories of cases of the court over a period of time. There shall be assigned or transferred to the chief judge such matters as the chief judge is willing and able to undertake, consistent with the chief judge's administrative duties.

Rule 2. Assignment Committee

An assignment committee is established for the administration of the assignment system. The committee shall consist of the chief judge and two other active judges selected by the chief judge, each to serve for one year. The chief judge shall also select two other active judges, each to serve for a period of one year, as alternate members of the committee.

The assignment committee shall supervise and rule upon all issues relating to assignments under this system, in accordance with these Rules, as amended from time to time by the court.

Rule 3. Part I

(a) Establishment of Part I

Part I is established for hearing and determining certain emergency and miscellaneous matters in civil and criminal cases. Judges shall choose assignment to Part I from an appropriate schedule, in order of their seniority, for periods not to exceed three weeks in each year. The judge(s) assigned full-time to White Plains do not sit in Part I in

Manhattan. The assignment committee may, on consent of the judges affected, change such assignments, if necessary, to meet the needs of the court.

Part I shall be open from 9:00 a.m. to 5:00 p.m. Monday through Friday except on holidays. The judge presiding in Part I may fix such other times for any proceeding as necessary.

(b) Civil Proceedings in Part I

Admissions to the bar shall be heard in Manhattan on Tuesdays at 10:00 a.m. Admissions to the bar shall be held in White Plains on a schedule to be published annually. Civil matters other than emergencies shall be heard in Manhattan on Tuesdays at 11:00 a.m. Naturalization proceedings shall be conducted in Manhattan on Fridays at 11:00 a.m.

(1) Miscellaneous Civil Matters

The judge presiding in Part I shall hear and determine those miscellaneous proceedings in civil matters not assigned to a judge.

(2) Civil Emergency Matters

The Part I judge shall hear and determine all emergency matters in civil cases which have been assigned to a judge when the assigned judge is absent or has expressly referred the matter to Part I only when that judge is unavailable due to extraordinary circumstances. In the absence of a judge at the White Plains Courthouse, emergency matters are heard in Part I at the Manhattan Courthouse. Depending on the procedures the Part I judge deems the more efficient, the Part I judge may either dispose of an emergency matter only to the extent necessary to meet the emergency, or, on consent of the assigned judge and notice to the clerk, transfer the action to himself or herself for all further proceedings.

(3) Subsequent Emergency Proceedings

If a civil emergency matter is brought before the Part 1 judge and the judge concludes that for lack of emergency or otherwise the proceeding should not be determined in Part I, the party who brought the proceeding shall not present the

same matter again to any other Part I judge unless relevant circumstances have changed in the interim in which case the party shall advise the judge of the prior proceedings and changed circumstances.

(4) Modifications

When a modification or further action on a Part I determination is sought, it shall be referred in the first instance to the judge who made the original determination even though that judge is no longer sitting in Part I.

(c) Criminal Proceedings in Part I

The judge presiding in Part I shall:

(1) Hear and determine all emergency matters in criminal cases which have been assigned to a judge when the assigned judge is absent or has expressly referred the matter to Part I only when that judge is unavailable due to extraordinary circumstances. In the absence of a judge at the White Plains Courthouse, emergency matters are heard in Part I at the Manhattan Courthouse.

(2) Hear and determine appeals from orders of a magistrate judge in cases that have not yet been assigned to a district judge.

Rule 4. Civil Actions or Proceedings (Filing and Assignment)

(a) Filing with the Clerk

All civil actions and proceedings shall be numbered consecutively by year upon the filing of the first document in the case.

When a complaint or the first document is filed in a civil action or proceeding, counsel shall accurately complete and file a Civil Cover Sheet consistent with Rule 18 below. Counsel shall file the Civil Cover Sheet in the same manner — electronically or paper form — as the complaint.

(b) Assignment by the Clerk by Lot

Each civil action and proceeding, except applications for leave to proceed *in forma pauperis*, upon being filed and each appeal from the bankruptcy court upon being

docketed in this court shall be assigned by lot within each designated category to a district judge for all purposes.

An action, case, or proceeding may not be dismissed and thereafter refiled for the purpose of obtaining a different judge. If an action, case, or proceeding, or one essentially the same, is dismissed and refiled in this court, or removed or transferred to this court, it shall be assigned to the same judge. It is the duty of every attorney appearing to bring the facts of the refiling to the attention of the clerk.

Rule 5. Criminal Actions or Proceedings (Filing and Assignment)

(a) Filing with the Clerk

Criminal actions shall be numbered consecutively by year upon the filing of the indictment or information. The number of a superseding indictment or information shall be preceded by the letter "S".

When an indictment or information is filed, the United States Attorney shall simultaneously file the original and two copies of the indictment or information. The United States Attorney shall also supply form AO257: Defendant Information Relative to a Criminal Action and the Designation Form issued by the United States Attorney, in triplicate.

Rule 6. Criminal Proceedings

(a) Indictments designated for Manhattan may be returned by the grand jury in open court to the magistrate judge presiding in the criminal part. Indictments designated for White Plains may be returned by the grand jury to the magistrate judge presiding in the White Plains Courthouse.

(b) Assignments

In a criminal case, after an indictment has been returned by the Grand Jury or a notice has been filed by the United States Attorney's Office of an intention to file an information upon the defendant's waiver of indictment, the magistrate judge on duty will randomly draw from the criminal wheel, in open court, the name of a judge to

whom the case should be assigned for all purposes. The notice to file an information upon the defendant's waiver of indictment shall be signed by the United States Attorney's Office and by the defendant's attorney. Waiver of indictment cases will not be assigned a criminal docket number until the waiver has been accepted by the assigned judge. Sealed indictments will be assigned a criminal docket number upon filing, but a judge will not be selected until such time that the indictment is unsealed.

(c) Arraignments

The United States Attorney's Office will promptly contact the judge to whom the case is assigned and request the scheduling of a pretrial conference at which the defendant will be arraigned.

(d) Waiver of Indictments

When any person offers to waive indictment, the judge to whom the case has been assigned will conduct or refer to a magistrate judge such proceedings as may be required by law to establish that the waiver is both knowing and voluntary before an information is filed. The judge or the assigned magistrate judge shall then arraign the defendant. If the defendant fails to waive indictment and is subsequently indicted on the same or similar charges, the case shall be assigned by the clerk to the same judge to whom the original information was assigned.

(e) Assignment of Superseding Indictments and Informations

An indictment or information designated by the grand jury or the United States Attorney as a superseding indictment or information will be assigned to the same judge to whom the original indictment or information was assigned and may not be reassigned from that judge except pursuant to the order of that judge or in the circumstances outlined in Rules 14 through 17. Any questions with respect to such designation as a superseding indictment or information shall be decided by that judge subject to appellate review where applicable. The judge may require the United States Attorney to explain in writing, either under seal or otherwise, the reasons for

proceeding by superseding indictment or information before that judge rather than in another manner.

(f) With the exception of Rules 6(a) and 6(e), which apply in Manhattan and White Plains, this Rule applies only to Manhattan. The judges in White Plains will continue to follow such procedures as they find convenient.

Rule 7. Cases Certified for Prompt Trial or Disposition

When the assignment committee certifies that a case requires extraordinary priority or a prompt trial or other disposition, it shall so advise the judge to whom the case has been assigned. The judge so assigned shall advise the assignment committee whether that judge can accord the case the required priority. In the event the judge so assigned advises the assignment committee that he or she cannot accord the required priority, the case shall immediately be assigned to another judge by lot and the same procedure followed until the case is assigned to a judge able to accord it the required priority. The name of the judge to be so assigned shall be drawn by lot in the same manner as other civil and criminal actions are initially assigned.

Rule 8. [Deleted]

Rule 9. Motions for Collateral Relief from Federal Convictions

When a motion for collateral relief under 28 U.S.C. § 2255 or an audita querellas is filed, it shall be assigned for all further proceedings to the judge to whom the underlying case was assigned.

When a motion under Federal Rule of Criminal Procedure 41(g) for the return of property seized in a criminal case is filed, it shall be assigned for all further proceedings to the judge to whom the underlying case was assigned. Federal Rule of Criminal Procedure 41(g) motions that are filed after the related criminal case is closed, shall be opened as a new civil action, and all filings shall be docketed therein.

If the judge to whom the underlying case was assigned is unable to entertain the motion, the motion shall be assigned by lot or to the chief judge where appropriate.

Rule 10. Assignments to New Judges

When a new judge is inducted, the assignment committee shall transfer to the new judge an equal share of all cases then pending (including cases on the suspense docket).

The cases shall be taken equally, by lot, from the dockets of each of the judges' most recent chronological list of cases which have been designated by the transferor as eligible for transfer, except if the Assignment Committee determines that the interests of court administration require an alternative method of reassignment. No case shall be transferred without the consent of the transferor judge. The assignment committee shall also direct the clerk to add the name of the new judge to the random selection system for assigning new cases to active judges.

Rule 11. Assignments to Senior Judges

If a senior judge is willing and able to undertake assignment of new cases for all purposes, that judge shall advise the assignment committee of the number and categories of new cases which that judge is willing and able to undertake. New cases in the requested number in each category shall then be assigned to that judge in the same manner as new cases are assigned to active judges.

If a senior judge is willing and able to undertake assignment of pending cases from other judges, that judge may (1) accept assignment of all or any part of any case from any judge on mutual consent, or (2) advise the assignment committee of the number, status and categories of pending cases which that judge is willing to undertake. Such cases will be drawn by lot from current lists provided to the assignment committee by the judges wishing to transfer cases under this Rule. If a senior judge does not terminate any action so transferred, it shall be reassigned to the transferor judge.

Rule 12. Assignments to Visiting Judges

When a visiting judge is assigned to this district, that judge shall advise the assignment committee of the number and categories of pending cases which that judge is required or willing to accept. The assignment committee shall then transfer to that judge the required number of cases in each category with the consent of the transferor judge. If

the visiting judge does not terminate the action, it shall be reassigned to the transferor judge.

Rule 13. Related Cases

(a) Determination of Relatedness

(1) General Rule. Subject to the limitations set forth below, a civil case, bankruptcy appeal, or motion to withdraw the bankruptcy reference will be deemed related to one or more civil cases, appeals, or motions when the interests of justice and efficiency will be served. In determining relatedness, a judge will consider whether

(A) the actions concern the same or substantially similar parties, property, transactions, or events;

(B) there is substantial factual overlap;

(C) the parties could be subjected to conflicting orders; and

(D) whether absent a determination of relatedness there would be a substantial duplication of effort and expense, delay, or undue burden on the court, parties, or witnesses.

Bankruptcy appeals will be deemed related if they arise from the same order or judgment of the bankruptcy court. Motions to withdraw the bankruptcy reference will be deemed related if they seek withdrawal with respect to all or part(s) of the same adversary proceeding. Nothing in this Rule is intended to preclude parties from moving for consolidated proceedings under Federal Rule of Civil Procedure 42.

(2) Limitations on General Rule. Notwithstanding paragraph (a)(1):

(A) Civil cases shall not be deemed related merely because they involve common legal issues or the same parties.

(B) Other than cases subject to Rule 4(b) and actions seeking the enforcement of a judgment or settlement in or of an earlier case, civil cases presumptively shall

not be deemed related unless both cases are pending before the court (or the earlier case is on appeal).

(C) Criminal cases are not treated as related to civil cases. Criminal cases are not treated as related to each other unless a motion is granted for a joint trial.

(D) Bankruptcy appeals and motions to withdraw the reference are not treated as related merely because they arise from the same bankruptcy proceeding.

(b) Procedure in Regard to Cases Said to Be Related

(1) Disclosure of contention of relatedness

When a civil case is filed or removed or a bankruptcy appeal or motion to withdraw the reference of an adversary proceeding from the bankruptcy court is filed, the person filing or removing shall disclose on the Civil Cover Sheet any contention of relatedness and shall file a Related Case Statement stating clearly and succinctly the basis for the contention. A copy of the Civil Cover Sheet and Related Case Statement shall be served with the complaint, notice of removal, notice of appeal, or motion. Any party may contest a claim of relatedness by any other in writing addressed to the judge having the case with the lowest docket number of all cases claimed to be related. However, the foregoing shall not delay the assignment process or the operation of this Rule.

(2) Assignment of cases that are designated as related

A case, bankruptcy appeal, or motion to withdraw the bankruptcy reference that is designated as related shall be forwarded to the judge before whom the allegedly related case, appeal, or motion having the lowest docket number is or was pending, who shall decide whether to accept or reject the case. The decision of the judge with the lowest docket number shall control unless the Assignment Committee determines otherwise, applying the standards of relatedness set forth in this Rule. The judge with the lowest docket number shall notify the Assignment Committee of his or her decision to accept or reject the case, appeal, or motion and provide the Committee with the Related Case Statement and any submission in opposition to the contention that the cases are related. If the

Assignment Committee does not concur with the judge's decision to accept the allegedly related case, appeal, or motion, the matter shall be assigned by the clerk by random selection.

(3) Claims of relatedness by other parties

A party other than the one filing a case, bankruptcy appeal, or motion to withdraw the reference that contends its case is related to another may so advise in writing the judge assigned in its case and request a transfer of its case to the judge that the party contends has the related case with the lowest docket number. If the assigned judge believes the case is related under paragraph (a), he or she shall refer the question to the judge having the case with the lowest docket number. In the event the latter judge agrees, the case shall be transferred to that judge unless the Assignment Committee disagrees.

(c) Other Matters

A defendant in a criminal case may move on notice to have all of his or her sentences in this district imposed by a single judge. All such motions shall be noticed for hearing before the judge having the lowest docket number, with courtesy copies to be provided to the judge or judges having the cases with the higher docket numbers.

Rule 14. Transfer of Cases by Consent

Any judge, upon written advice to the assignment committee, may transfer directly any case or any part of any case on that judge's docket to any consenting judge except where Rule 16 applies.

Rule 15. Transfers from Senior Judges

A senior judge may keep as much of his or her existing docket as that judge desires and furnish the assignment committee with a list of all cases which the judge desires to have transferred. The assignment committee will distribute the cases equally by lot to each active judge.

Rule 16. Transfer Because of Disqualification, etc.

If a judge is disqualified or if a judge has presided at a mistrial or former trial of the case, and requests reassignment, the assignment committee shall transfer the case by lot.

Rule 17. Transfer of Cases Because of a Judge's Death, Resignation, Prolonged Illness, Disability, Unavoidable Absence, or Excessive Backlog

The assignment committee shall, in the case of death or resignation, and may, in the event of a judge's prolonged illness, disability, unavoidable absence, or the build up of an excessive backlog, transfer any case or cases pending on the docket of that judge by distributing them to any judge or visiting judge willing to accept such case and thereafter, distributing them as equally as is feasible by lot, to all remaining active judges and to such senior judges who are willing and able to undertake them.

Rule 18. Assignment of Cases to White Plains or Manhattan

(a) Civil

- (1) All social security cases and habeas corpus petitions brought under 28 U.S.C. § 2241 shall be assigned on a district-wide basis.
- (2) Habeas corpus petitions brought under 28 U.S.C. § 2254 shall be assigned as follows:
 - (A) habeas corpus petitions arising out of convictions obtained in New York County or Bronx County will be assigned to Manhattan; and
 - (B) habeas corpus petitions arising out of convictions obtained in the Counties of Dutchess, Orange, Putnam, Rockland, Sullivan, and Westchester (the "Northern Counties") will be assigned to White Plains.
- (3) With respect to any other filed civil case, the plaintiff's attorney shall, at the time of filing, designate on the Civil Cover Sheet whether the case should be assigned to White Plains or Manhattan in accordance with the following:
 - (A) A civil case shall be designated for assignment to White Plains if:

- (i) the claim arose in whole or in major part in the Northern Counties and at least one of the parties resides in the Northern Counties; or
 - (ii) the claim arose in whole or in major part in the Northern Counties and none of the parties resides in this district.
- (B) A civil case may be designated for assignment to White Plains if:
- (i) the claim arose outside this district and at least some of the parties reside in the Northern Counties; or
 - (ii) at least half of the parties reside in the Northern Counties.
- (C) All civil cases other than those designated for assignment to White Plains in accordance with this Rule shall be designated for assignment to Manhattan.

(b) Criminal

The U.S. attorney designates on the Criminal Cover Sheet that the case is to be assigned to White Plains if the crime was allegedly committed in whole or predominant part in the Northern Counties.

Defendants in any criminal case designated for White Plains may be arraigned at the White Plains Courthouse before a magistrate judge or a district judge.

Bail applications in any case designated for White Plains may be heard before a magistrate judge at White Plains, or, if unavailable, before a district judge in White Plains or a magistrate judge in Manhattan.

Rule 19. Reassignment of Cases Between Manhattan and White Plains

If the judge to whom a case is assigned believes that it should be assigned to the other courthouse under these Rules, a request for reassignment shall be sent to the Assignment Committee, which shall determine if the case should be reassigned. If the case is reassigned, it will be reassigned as if it were a new filing, but will retain its original case number.

Rule 20. Removed Actions and Bankruptcy Matters

(a) Assignment of Removed Actions and Bankruptcy Matters

Other than cases subject to Rule 4(b), actions removed from state court and bankruptcy appeals will be assigned as follows:

- (1) cases removed from a state court in New York County or Bronx County, and bankruptcy appeals from the Manhattan bankruptcy courthouse, will be assigned to Manhattan; and
- (2) cases removed from a state court in any of the Northern Counties, and bankruptcy appeals from a bankruptcy courthouse in the Northern Counties, will be assigned to White Plains.

(b) Reassignment of Removed Actions and Bankruptcy Matters

Any party may move for reassignment of a removed case or a bankruptcy appeal as provided in these Rules.

Rule 21. [Deleted]

Rule 22. Filing at Either Courthouse

Complaints and all subsequent papers are accepted at either courthouse, regardless of the place for which the case is designated.