UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

RE: AMENDMENT OF LOCAL RULES
REGARDING THE ASSIGNMENT OF   Administrative Order
MISCELLANEOUS CASES and   No.   17-RL-003
ACCESS TO SEALED CASES
_____/
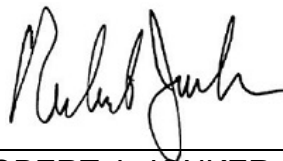
By Administrative Order entered October 5, 2016, (Administrative Order No. 16-RL-096), the Court published for comment proposed amendments to Local Civil Rule 3.3.1(e), Local Criminal Rule 56.5(e), and Local Civil Rule 83.3(c) governing the assignment of miscellaneous cases and access to sealed cases. The public comment period closed on November 1, 2016, without receipt of any comment. Accordingly:

IT IS ORDERED that W.D. Mich. LCivR 3.3.1(e) and 83.3(c), and W.D. Mich. LCrR 56.5(e) are amended as written in the attachment to this order, effective February 21, 2017.

IT IS FURTHER ORDERED that the Clerk shall provide a copy of this Administrative Order to the Judicial Council of the Sixth Circuit and the Administrative Office of the U. S. Courts. All attorneys registered for electronic service on the CM/ECF system shall be given electronic notice of these rule amendments, and the official rules posted on the Court's website will be amended accordingly.

FOR THE COURT:

Dated: January 3, 2017   _____
                                                        ROBERT J. JONKER
                                                        CHIEF UNITED STATES DISTRICT JUDGE

Local Civil Rule
3.3.1 Assignment of cases to district judges

(a) Method - Each civil action (except social security cases) and each bankruptcy appeal, shall be assigned to a district judge, who shall continue in the case or matter until its final disposition, except as hereinafter provided. Each Social Security action shall be assigned at random to a magistrate judge at the time of filing. The parties will thereafter be given an opportunity to consent voluntarily to the dispositive jurisdiction of the assigned magistrate judge pursuant to 28 U.S.C. § 636(c). If all parties do not timely consent, the case will be assigned to a district judge at random and will be referred to the originally assigned magistrate judge under 28 U.S.C. § 636(b)(1).

(b) Sequence - At the commencement of each civil case, the Clerk shall assign the case a sequential case number and assign the case to a judge in accordance with the next subsection. The numbering and assignment of each case shall be completed before processing of the next case is commenced.

(c) Procedure - The Clerk shall use automated or manual means to assign new cases to judges at random in accordance with administrative orders issued by the Court from time to time. The Clerk shall mark the name of the assigned judge on the first document of the case and preserve a record of such assignments.

(d) Exceptions

(i) Refilings - If a case is dismissed or remanded to state court and later refiled, either in the same or similar form, upon refiling it shall be assigned or transferred to the judge to whom it was originally assigned.

(ii) Subsequent proceedings - Subsequent proceedings in cases shall be assigned to the judge assigned to the original case, if that judge is still hearing cases.

(iii) Related cases - Cases related to cases already assigned to a judge shall be assigned or transferred as set out below.

(A) Definition - Cases are deemed related when a filed case (1) relates to property involved in an earlier numbered pending suit, or (2) arises out of the same transaction or occurrence and involves one or more of the same parties as a pending suit, or (3) involves the validity or infringement of a patent already in suit in any pending earlier numbered case.

(B)   Determination - When it appears to the Clerk that two or more cases may be related cases, they shall be referred to the magistrate judge assigned to the judge who has the earliest case to determine whether or not the cases are related. If related, the cases will be assigned to the same judge. If cases are found to be related cases after assignment to different judges, they may be reassigned by the Chief Judge to the judge having the related case earliest filed.

(e)   Miscellaneous docket - The miscellaneous docket of the Court shall be assigned at random to a magistrate judge at the time of filing. If a miscellaneous docket matter is contested and requires proceedings conducted before a district judge, the case will be randomly reassigned to a district judge and a new civil action number will be assigned.

(f)   Effect - This rule is intended to provide for an orderly division of the business of the Court and not to grant any right to any litigant.

(g)   Duty of parties - All parties shall notify the Court in writing of all pending related cases and any dismissed or remanded prior cases.

Local Criminal Rule
56.5   Assignment of cases to judges

(a)   New criminal cases - Upon the filing of an initial indictment or information, the Clerk must assign the case the next sequential number. The case must be assigned to a district judge by automated means at random, in the proportions established from time to time by administrative order. The Clerk will cause the case number and the name of the assigned judge to be reflected on the official record.

(b)   [Repealed.]

(c)   [Repealed.]

(d)   Exceptions

(i)   Refilings - If a case is dismissed and later refiled, either in the same or similar form, upon refiling it shall be assigned or transferred to the judge to whom it was originally assigned.

(ii)   Subsequent proceedings - Post-conviction proceedings in criminal cases (including motions under section 2255 and proceedings to modify or revoke probation or supervised release) shall be assigned to the judge who sentenced the defendant.

(iii)   Related cases

(A)   Definition - Cases are deemed related when (1) a superseding indictment or information has been filed; or (2) any other indictment or information is pending against the same defendant(s); (3) an indictment or information charges contempt of court or other crime arising from alleged violation of an order entered in a previous case; (4) an indictment is returned against a defendant who is then on probation or supervised release to a judge, provided the new case involves only the same defendant; or (5) two or more cases are based upon a substantial common nucleus of facts, events, or transactions.

(B)   Determination - When it appears to the United States Attorney that two or more cases may be related cases, the United States Attorney shall file at the earliest practicable time a statement in all affected cases, describing the basis for concluding that the cases may be related. The duty magistrate judge shall promptly determine whether the cases are related. If related, the cases will be assigned to the same judge. If cases are found to be related cases after assignment to different judges, they may be reassigned by the Chief Judge to the judge having the related case earliest filed.

(e)   <u>Miscellaneous docket</u> - The miscellaneous docket of the Court shall be conducted and assigned at random to a magistrate judge at the time of filing, and it shall include all grand jury matters. If a miscellaneous docket matter is contested and requires proceedings conducted before a district judge, the case will be randomly reassigned to a district judge and a new civil action number will be assigned.

(f)   <u>Effect</u> - This rule is intended to provide for an orderly division of the business of the Court and not to grant any right to any litigant.

(g)   <u>Duty of parties</u> - All parties shall notify the Court in writing of all pending related cases and any dismissed or remanded prior cases.

Local Civil Rule
83.3   Miscellaneous

    (a)   Courthouse conduct - [Repealed]

    (b)   Certification of issues to state courts - Upon motion or after a hearing ordered by the judge sua sponte, the Court may certify an issue for decision to the highest court of the state whose law governs any issue, claim or defense in the case. An order of certification shall be accompanied by written findings that: (a) the issue certified is an unsettled issue of state law; (b) the issue certified will likely affect the outcome of the federal suit; and (c) certification of the issue will not cause undue delay or prejudice. The order shall also include citation to authority authorizing the state court involved to resolve certified questions. In all such cases, the order of certification shall stay federal proceedings for a fixed time, which shall be subsequently enlarged only upon a showing that such additional time is required to obtain a state court decision. In cases certified to the Michigan Supreme Court, in addition to the findings required by this rule, the Court must approve a statement of facts to be transmitted to the Michigan Supreme Court by the parties as an appendix to briefs filed therein.

    (c)   Sealed Cases - The court may enter an order sealing an entire civil case file only if (a) sealing is required by statute or court rule, or (b) sealing is justified by a showing of extraordinary circumstances and the absence of narrower feasible and effective alternatives (such as sealing discrete documents or redacting specific information), such that sealing an entire case file is a last resort. Any order sealing an entire case file under ground (b) of this rule must contain specific findings justifying sealing. The order may be vacated on motion of any party or on the court's own motion when the reason for sealing has ended. Government attorneys of record in miscellaneous cases involving Grand Jury matters will be afforded remote electronic access to the miscellaneous case.

    (d)   Appearance - An attorney appears by filing any pleading or other paper or by acknowledging in court that the attorney acts in the proceeding on behalf of a party. The appearance of an attorney is deemed to be the appearance of the law firm. Any attorney in the firm may be required by the Court to conduct a court-ordered conference or trial. Withdrawal of appearance may be accomplished only by leave of court.

    (e)   Amendment - These rules may be amended by a majority vote of the judges of this district in conformity with Rule 83 of the Federal Rules of Civil Procedure.

    (f)   Payment to court reporters - All parties ordering a transcript must pay in advance by cash or certified check unless the court reporter agrees to other arrangements.