

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

ADMINISTRATIVE ORDER RE:)	
PROPOSED AMENDMENTS TO)	
LOCAL CRIMINAL RULES 56.5 AND)	Administrative Order
56.6 REGARDING RELATED CASES)	No. <u>16-RL-001</u>
AND COGNATE CASES)	
<hr style="width:40%; margin-left:0;"/>)	

Pursuant to 28 U.S.C. § 2071 and Rule 57 of the Federal Rules of Criminal Procedure, the Court hereby gives notice of its consideration of amendments to Local Criminal Rules 56.5 and 56.6, regarding related and cognate cases. Criminal Rule 56.5(d)(iii) presently defines related cases and the process for determination of such. The proposed amendments to this rule expand the definition of a related case and modify the process for making a related case determination. Criminal Rule 56.6 presently addresses reassignment to promote judicial economy. The proposed amendments to this rule include a definition and procedure for reassignment of cognate cases.

The proposed amendments have been reviewed and tentatively approved by the Judges of this Court at a regular meeting conducted on December 11, 2015. The text of the proposed rule amendments and a brief commentary are attached to this order and are also available on the Court's website or in paper form at the Clerk's Office.

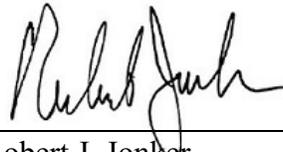
NOTICE IS HEREBY GIVEN to all members of the public of their opportunity to review and comment upon the attached proposed rule amendments. A copy of this order will be available in each divisional office and on the Court's website. In addition, the Clerk shall send electronic notice to all attorneys registered to use the CM/ECF system. The Clerk shall provide a copy of the proposed amendment to the Federal Bar Association, West Michigan Chapter, the State Bar of Michigan Committee on United States Courts, and the *Michigan Lawyer's Weekly*.

All comments should be in writing and must be received by the Court no later than **January 29, 2016**. Comments should be addressed to:

Clerk of Court
United States District Court
399 Ford Federal Building
110 Michigan, N.W.
Grand Rapids, MI 49503

or submitted electronically to ecfhelp@miwd.uscourts.gov. The Court will consider all comments before promulgating a final version of the proposed rules.

FOR THE COURT:

A handwritten signature in black ink, appearing to read "Robert J. Jonker", written over a horizontal line.

Dated: January 4, 2016

Robert J. Jonker
Chief United States District Judge

**COMMENTARY TO PROPOSED AMENDMENTS
TO LOCAL CRIMINAL RULES**

JANUARY 2016

W.D. Mich LCrimR 56.5(d)(iii)

The only proposed change to Part (A), the definition of related cases, is the addition of Subpart (5), which includes those cases involving a “substantial common nucleus of facts, events, or transactions.” The word “substantial” is included to preclude a relatedness determination for cases that are only marginally factually related, such as a drug conspiracy that has one or more members who are involved in another conspiracy.

The proposed revisions to Part (B), modify the process for determining related criminal cases. Under the current rule, the Clerk is expected to discern when cases may be related, and to refer potentially-related cases to the magistrate judge assigned to the judge presiding over the earliest case. This process has become impractical for two reasons: first, the Clerk is usually not in a position to recognize when two or more cases are factually related; and second, most of the magistrate judges are no longer paired with particular district judges. Accordingly, under the proposed rule, the United States Attorney would alert the duty magistrate judge of potentially-related cases. Having the United States Attorney describe the basis for the relatedness determination will allow the duty magistrate judge to make an informed decision.

W.D. Mich LCrimR 56.6

Local Criminal Rule 56.6 presently addresses reassignment to promote judicial economy. The proposed amendments adds a definition and procedure for reassignment of cognate cases. This proposed rule is identical to the cognate case rule for civil cases, *see* W.D. Mich. LCivR 3.3.2(c), with the exception that the definition of cognate cases substitutes “pending criminal actions” for “pending civil actions.” While the cognate case rule anticipates that the reassignment process would be initiated by a judicial officer, there is nothing in the rule that would preclude any party from asking the Court to review cases for cognate determination.

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 refiled 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; (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; **or** (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 ~~Clerk~~ **United States Attorney** 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.~~ **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 **district** 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 conducted in the same manner as the assignment of cases covered in this rule and it shall include all grand jury matters.
- (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.

56.6 Reassignment of Cases

- (a) Reassignment to promote judicial economy - The Court may reassign cases from one district judge to another ~~(a)~~ (i) to equalize and balance workloads among judges; ~~(b)~~ (ii) to assign cases to senior or visiting judges or remove cases from their dockets as necessary; ~~(c)~~ (iii) to comply with the requirements of the Speedy Trial Act, or ~~(d)~~ (iv) for other reasons of judicial economy. Any case may be reassigned under this rule from one judge to another judge with the consent of both judges. Cases may also be reassigned by administrative order of the Chief Judge if approved by a majority of active district judges.

(b) Reassignment of Cognate Cases

- (i) **Definition** – Cognate cases are pending criminal actions that have substantial questions of fact or law in common such that their assignment to a single judge is likely to effect a substantial saving of judicial effort and to avoid wasteful and duplicative proceedings for the court and the parties.
- (ii) **Procedure for Reassignment** – When a judge determines that reassignment of cognate cases would serve the interests of justice and judicial economy, the judge will contact all other judges to whom cognate cases have been assigned. If all those judges agree to reassignment, the Chief Judge will enter an administrative order reassigning such cognate cases to the judge with the earliest numbered case. The administrative order may also provide for automatic assignment of future cognate cases to that judge, and for an adjustment of future case assignments to that judge to compensate for the increased workload.