

STATE OF MICHIGAN

IN THE 16<sup>TH</sup> JUDICIAL CIRCUIT COURT FOR THE COUNTY OF MACOMB  
IN THE PROBATE COURT FOR THE COUNTY OF MACOMB

In re: Assignment of Civil and Criminal Circuit Court Cases

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Circuit Court Local Administrative Order #2019-02J  
Probate Court Local Administrative Order #2019-02J

Rescinds Circuit Court Local Administrative Order 2014-02J  
Rescinds Probate Court Local Administrative Order 2014-01J

IT IS ORDERED:

This Administrative Order is issued in accordance with Michigan Court Rule 8.112(B)(1), which allows a trial court to issue administrative orders governing internal court management. This order provides a method for assigning general civil and criminal cases in the Sixteenth Judicial Circuit Court. The assignment of Family Division cases is addressed in Circuit Court Joint Local Administrative Order #2014-04J and Probate Joint Local Administrative Order #2014-03J. The assignment of Probate Court cases is addressed in Circuit Court Joint Local Administrative Order #2014-03J and Probate Court Joint Local Administrative Order #2014-02J.

I. ASSIGNMENT OF CASES

Judicial Assignments shall be accomplished by blind draw.

A. Civil Cases

1. Assignment shall occur at the time the case is filed unless otherwise provided by court rule, administrative order or written directive of the Chief Judge. The County Clerk shall perform the blind draw for civil case.

B. Criminal Cases

2. Unless otherwise provided by court rule, administrative order or written directive of the Chief Judge, the Circuit Court Judge will be assigned as follows: After the arraignment conference in District Court, the District Court will notify the Case Management Division; whereupon the Case Management Division shall immediately assign a Circuit Court Judge to the case by blind draw;

## II. BLIND DRAW PROCEDURE

Assignment by "lot" is implemented by the Court's Case Management System's Division's blind draw functionality utilizing 'draw credits'. The assignment of one case results in one draw credit for the judge assigned to it. Every other judge must have the same number draw credits in that identified category/case type before any judge receives another case in the identified category/case type. However, the Chief Judge may designate a reduction in caseload for himself/herself and/or the Chief Judge Pro Tempore. The Chief Judge may institute other unequal allocation of cases assigned by blind draw as necessary to ensure the efficient management of the Court's caseload.

### A. Civil Cases

1. Cases are assigned evenly by lot by case-type suffixes established by the State Court Administrator's Office, subject to the exceptions set forth in Section III, below.

### B. Criminal Cases

1. Cases are assigned evenly by lot by 'action code groups': assault; driving offenses; burglary; criminal sexual conduct; criminal sexual conduct 1<sup>st</sup> degree; drug offenses; fraud; manslaughter; miscellaneous offenses; murder; murder 1<sup>st</sup> degree; murder 2<sup>nd</sup> degree; negligent homicide; OUIL offenses; property offenses; robbery; robbery-capital; and weapon offenses, subject to the exceptions set forth in Section III, below.

### C. Computer Outage

1. Heat sealed, pre-numbered blind draw packs containing an equal number of cards per judge with his/her name printed thereon shall be prepared by the Case Management Division and provided to the County Clerk's Office in the event the computerized blind draw is unavailable.
2. When a case is filed, the bottom card bearing a judge's name shall have the case number recorded thereon in permanent ink. Once recorded, the card will be detached and the name of the judge disclosed. Upon restoration of the computerized blind draw, the cards will be returned to the Case Management Division for record retention.

## III. EXCEPTIONS TO BLIND DRAW

A case shall not be assigned by blind draw if it falls within one of the exceptions listed below.

### A. Civil Case Exceptions

1. Assignment of civil cases arising out of the same transaction or occurrence is governed by MCR 8.111(D). For purposes of the blind draw, a civil case arises out of the same transaction or occurrence if:

- a. The parties are identical, and
  - b. The case suffix codes are identical.
2. A judge(s) or the Chief Judge may determine that a case assigned by blind draw arise out of the same transaction or occurrence as a previously filed case. In such case, an order reassigning the later filed case to the judge with the earlier case number shall be entered.
  3. Pursuant to MCR 2.113(C)(2), plaintiff must indentify a prior action on the first page of their complaint.
  4. Specialized Business Docket – A case determined to be eligible for placement on the Specialized Business Docket will be assigned to the designated Specialized Business Docket Judge.
  5. All remanded cases returned to Circuit Court shall be assigned to the judge to whom the case was assigned upon original filing in the Circuit Court. This includes criminal cases remanded for further proceedings in District Court and civil cases transferred to District Court pursuant to MCR 2.227 and later appealed.
  6. A declaratory action shall be assigned to the same judge to whom the underlying case in controversy was assigned. If a declaratory action is filed prior to the case in controversy, the case in controversy shall be assigned to the same judge to whom the declaratory action was assigned.

#### B. Criminal Case Exceptions

1. Multiple cases arising from the same criminal transaction – Where two or more criminal cases arise out of the same criminal transaction or occurrence the Case Management Division shall perform only one blind draw. All cases then or subsequently started arising from that criminal transaction shall be assigned to the judge whose name was drawn.
2. Single defendant, previous case(s) pending – if a criminal defendant in a case being started is the sole defendant, and he/she has a previous pending case (defined in subsection (9)) in which he/she is also the sole defendant, there shall be no blind draw. This case shall be assigned to the judge who has the previous pending case.
3. Multiple defendants, previous cases(s) pending. Section III(B)(2) shall also apply to identical multiple defendants with previous case(s) pending.
4. District Court Drug Court - Circuit Court cases involving defendants determined to be eligible for a District Court Drug Court may be assigned to the District Court Judge in our case management system. The District Court Drug Court Judge shall be assigned to assist with the docket and shall handle all further proceedings in such cases.

5. The Chief Judge may determine a judge that will handle all cases involving Felony Support (Child or Spousal): Failing to Pay.
6. Dismissed Case Started Again – Upon starting any criminal case(s) arising out of the same transaction or occurrence as a case(s) dismissed without prejudice, the later criminal case(s) shall be assigned to the Judge to whom the dismissed criminal case was previously assigned.
7. Prior Civil Actions – A forfeiture (CF) action is the only civil matter that is used as a prior action in criminal cases.
8. For purposes of this section, a prior criminal action is where the defendant is still on probation or was on probation at the time of the new offense or where the defendant has another pending (pre-conviction) action before a Circuit Court Judge.

### C. Miscellaneous Matters

Miscellaneous matters, including, but not limited to, group proceedings for admission to the State Bar of Michigan, ex-parte freeze orders, writs which are not related to a particular case, warrants issued prior to cases being bound over, extradition cases, petitions for a grand jury, and show cause proceedings against jurors which are not related to a particular case shall be assigned to the Chief Judge. The Chief Judge shall notify the Bench of the filing of a petition for grand jury. In addition:

#### 1. One-Person Grand Jury

If a petition for a one-person grand jury is granted, the judge who shall act as the grand juror shall be selected by blind draw from the judges assigned to the Criminal/Civil Division. Upon presentment of an indictment, a new judge shall be selected by blind draw from the remaining judges assigned to the Criminal/Civil Division, to preside over any subsequent trial proceedings.

#### 2. Citizens' Grand Jury

- a. If a petition for a citizens' grand jury is granted, the Chief Judge shall direct the Jury Clerk to draw the names of the specified number of persons to appear for selection to serve as grand jurors. The Chief Judge shall preside over the selection of a number of the grand jurors as prescribed in MCL 767.11 and any alternates the Chief Judge deems appropriate.
- b. Upon presentment of one or more indictments by the grand jury, assignment of the indictments shall be conducted by blind draw from the judges assigned to the Civil/Criminal Division.

#### IV. REASSIGNMENT OF CASES

##### A. Existing Prior Action

1. A judge(s) or the Chief Judge may determine that a case assigned by blind draw arises out of the same transaction or occurrence as a previously filed case. In such case, an order reassigning the later filed case to the judge with the earlier case number shall be entered. The Case Management Division will transfer a case of similar type and age from the receiving judge to the sending judge pursuant to section VIII, below.
2. If a case arising out of the same transaction or occurrence as a case previously filed in this Circuit Court is inadvertently assigned by blind draw to a judge other than the judge handling the previously filed case, the new case shall be reassigned to the judge handling the previously filed case.

##### B. Specialty Courts

1. Specialized Business Court – If a case is reassigned to the Specialized Business Court post-initiation, court staff will notify the Case Management Division and they will immediately prepare an Order of Reassignment. Equalization occurs as outlined in Section VIII.
2. Circuit Court Drug Court – Circuit Court cases involving defendants determined to be eligible for Circuit Court Drug Court shall be reassigned to the designated Circuit Court Drug Court Judge upon acceptance into the program. Equalization occurs as outlined in Section VIII.
3. Veterans' Treatment Court - Circuit Court cases involving defendants determined to be eligible for Veterans' Treatment Court shall be reassigned to the designated Veterans' Treatment Court Judge upon acceptance into the program. Equalization occurs as outlined in Section VIII.
4. Mental Health Treatment Court – Circuit Court cases involving defendants determined to be eligible for Mental Health Treatment Court shall be reassigned to the designated Mental Health Treatment Court Judge upon acceptance into the program.

C. The Chief Judge may direct assignment of cases involving similar actions to one judge to achieve efficient use of court resources provided that the Chief Judge notify each affected Circuit Court Judge in writing.

D. If it appears to any two judges that the interest of justice would better be served by reassignment of any case, that case may be reassigned to another judge of this Circuit Court for good cause and by written order of the Chief Judge.

E. If a previously filed case has been closed, and the judge who handled the previously filed case is no longer handling that case type, specifically due to a Family Court Plan or Concurrent

Jurisdiction Plan, any new or subsequent case arising out of the same transaction or occurrence will be assigned to the successor judge. MCR 8.111(C)(2). If the successor judge cannot be determined, the case will be assigned by blind draw.

F. If it comes to the attention of the Court Administrator that for any reason proper procedures were not followed in the assignment of any case, he/she shall notify the judges involved, and may initiate an Order of Reassignment in accordance with this Administrative Order or authorize a new blind draw.

G. Any dispute as to the proper reassignment of any case shall be resolved by the Chief Judge.

#### V. DISQUALIFICATION OF A JUDGE

##### A. Voluntary

When a judge disqualifies himself/herself, the Case Management Division Manager will be contacted for a new random judge assignment. The reason for the disqualification will be provided and stated on the Order of Disqualification and Reassignment. The Order of Disqualification and Reassignment is submitted to the disqualified judge, newly assigned judge, and Chief Judge for signature. Equalization is done pursuant to VIII, as outlined in this Local Administrative Order.

##### B. By Chief Judge Pursuant to MCR 2.003

If the Chief Judge determines that a judge should be disqualified pursuant to MCR 2.003, the Case Management Division Manager will be contacted for a new random judge assignment. The reason for the disqualification will be provided and stated on the Order of Disqualification and Reassignment. The Order of Disqualification and Reassignment is submitted to the disqualified judge, newly assigned judge, and Chief Judge for signature. Equalization is done pursuant to VIII, as outlined in this Local Administrative Order.

##### C. By Motion

1. When a motion for disqualification is filed by one of the parties and the assigned judge denies their request, the challenged judge shall refer the motion to the Chief Judge, who shall decide the motion de novo. MCR 2.003(D)(3).
2. When a motion for disqualification is filed by one of the parties and the assigned judge grants their request, the Court shall contact the Case Management Division Manager for a new random judge assignment. The reason for the disqualification will be provided and stated in the Order of Disqualification and Reassignment. The Order of Disqualification and Reassignment is submitted to the disqualified judge, newly assigned judge, and Chief Judge for signature. Equalization is done pursuant to VIII, as outlined in this Local Administrative Order.

#### D. Out-of-County Assignment

Upon the disqualification of a judge, the case or cases shall be randomly reassigned to another judge in that same division. If all judges in that division disqualify themselves, the case or cases may be reassigned randomly to judges in another division. If all judges of both divisions disqualify themselves, the case or cases may be reassigned randomly to one of the judges of the Probate Court. If all Circuit and Probate Court Judges are disqualified, the Chief Judge shall request assignment of a visiting judge from another court from the Region 6 State Court Administrative Office pursuant to State Court Administrative Office guidelines.

#### VI. CONSOLIDATION

Motions to consolidate are brought before the judge who would receive the case. If the motion is granted and the files are assigned to different judges, an Acceptance and Order of Reassignment will be prepared assigning the consolidated files to the judge with the lowest case number or the judge that granted the motion and will submit it to the judge receiving the file and the Chief Judge. These files are not equalized and the new Judge is not incremented. The clerk will conform to the State Court Administrator's standards as set forth in the Michigan Trial Court Case File Management Standards, Component 13 of Area 1.1.1: Establishing and Maintaining Case Files.

#### VII. PROCEDURE FOR ORDER OF REASSIGNMENT

A. All Orders of Reassignment shall be on forms prepared by the Case Management Division and approved by the Chief Judge. The Order shall contain the reason for reassignment. If the reason for reassignment is based upon an Order for Consolidation or Disqualification of a Judge, such order shall be attached to the Order for Reassignment.

B. All Order of Reassignment shall be initiated by the Case Management Division and noted prior to circulation for signature.

C. All Orders for Reassignment shall first be presented to the judge transferring the case, second to the judge whom the case will be reassigned, and finally to the Chief Judge for signature.

D. After approval by the Chief Judge, the Order for Reassignment shall be returned to the County Clerk's Office for filing.

#### VIII. EQUALIZATION

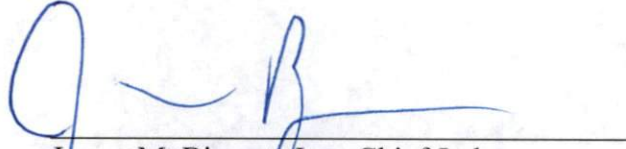
A. A file is equalized for the following reasons: when a judge is disqualified from a case; when a criminal case is reassigned to the Drug Court at the time of the sentence; when the defendant is accepted into Veterans' Treatment Court; when a defendant is accepted into Mental Health Court; when a case is reassigned due to placement in the Specialized Business Court post-initiation.

B. The Case Management Division Manager uses the following criteria in selecting a case for equalization: 1) case code; 2) jury or non-jury; 3) status of the case; and 4) type of offense in criminal cases.

C. The Case Management Division Manager prepares the Order of Equalization and submits it to the Chief Judge for signature.

This Order shall be effective immediately upon approval of the State Court Administrator's Office.

Dated: 5-24-19



James M. Biernat, Jr. – Chief Judge  
16<sup>th</sup> Judicial Circuit, Macomb County  
Probate Court and 42<sup>nd</sup> District Courts