

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**PUBLIC NOTICE**

**PROPOSED AMENDMENTS TO LOCAL RULE  
40.1 RELATED CRIMINAL CASES**

The United States District Court for the District of Massachusetts issues for comment the attached proposed amendment to Local Rule 40.1. The proposed amendment adds subsection (h), all subsequent subsections would be re-lettered accordingly.

Those wishing to comment on the proposed amendment to the Local Rules for the District of Massachusetts may do so in writing or by email. All comments must be received on or before August 14, 2023, and should be addressed to:

Robert M. Farrell, Clerk of Court  
United States District Court  
One Courthouse Way - Suite 2-300  
Boston, MA 02210

or by email to: [rules@mad.uscourts.gov](mailto:rules@mad.uscourts.gov)

This public notice has been posted to the “Announcements” and “Rules” pages of the court’s web site at at <https://www.mad.uscourts.gov>.

July 12, 2023

*Robert M. Farrell*  
Clerk of Court

**Addition to Local Rule 40.1:**

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Add subsection (and then re-letter the existing (h) through (l) in the existing rule)

**(h) Related Criminal Cases.**

(1) *Definition of “Related” Criminal Cases.* For purposes of this rule, a criminal case shall be deemed related to another criminal case only if:

- (A) the case arises out of the same, or substantially similar, charged scheme(s), transaction(s) and/or event(s) or a series of same, regardless of whether the matter is charged as a conspiracy;  
or
- (B) one or more cases, by sharing common events or defendants, would entail substantial duplication of effort in the pretrial, trial and/or sentencing phases if heard by different judges.

That an individual defendant is charged in more than one case before different judges pending at the same time (if those cases are not otherwise related as defined above) does not make those cases related. However, nothing in this subsection shall bar transfer of a revocation matter involving new criminal conduct to the judge who has drawn any new indictment for that criminal conduct. Moreover, nothing in this subsection shall bar the transfer of criminal cases as allowed under Section (j)(2) of this Rule.

(2) *Criminal and Civil Cases.* For the purposes of this rule, a criminal case shall be deemed related to a civil case only under the circumstance explained in Section (g)(2) of this Rule.

(3) *Common Questions of Law Not Sufficient.* Criminal cases, even when they involve some or all of the same defendants, shall not be deemed related to each other solely on the ground that they:

- (A) involve the same charge(s);
- (B) challenge the legality of the charge or government policy or practice; or
- (C) otherwise involve a common question of law.

(4) *Time Limitation.* Criminal cases shall not be deemed related if more than two years have lapsed since the closing of the earlier case and commencement of the new case.

(5) *Designation of Relatedness.* If the government believes that the case is related to any earlier filed case (regardless of whether the earlier case was initiated by indictment or information) and whether or not the earlier case is still open (provided that not more than two years has elapsed since the closing of the earlier case), the government shall:

- (A) notify the clerk by notation on the criminal category sheet indicating the title and number of the earlier filed case; and

- (B) file a written certification in the later-filed case specifically stating the basis for designating the two cases as related.
  - (C) Unless good cause is shown, designation of relatedness by the government shall be made at the time of the filing of the initial charging document (whether that is by indictment or information). One example of “good cause” would be the prior authorized sealing of the indictment or information.
- (6) *Objection to Designation of Relatedness or Lack of Designation of Relatedness.*
  - (A) If a defendant believes that a case that has been designated as related should not have been so designated, that party shall file a motion in the later filed case to return the case to the clerk for reassignment.
  - (B) If a defendant believes that a case that has not been designated as related should have been so designated, that party shall file a motion in the later filed case for the judge’s consideration of transfer or reassignment of the case pursuant to Section j of this Rule.
  - (C) Unless good cause is shown, objection to designation of relatedness or lack of designation of relatedness shall be made within 30 days of arraignment.
- (7) *Assignment by Clerk.* The clerk shall assign related cases to the same district judge without regard to the number of other cases in that category previously assigned to that judge. Related cases shall be counted as cases assigned, except as the chief judge may otherwise direct.
- (8) *Correction of Designation as “Related.”* The assignment of cases as related by the clerk shall be subject to correction only by the district judge to whom they have been assigned, who shall return cases erroneously assigned based on relatedness to the clerk for reassignment.
- (9) *Correction of Designation as “Not Related.”* The treatment of a case as not related to another case shall be subject to correction only by the joint decision of the district judge to whom it has been assigned and the district judge to whom it would be assigned, if related to an earlier filed case. If a joint decision between the district judges cannot be reached, then the chief judge shall decide if correction is necessary. The judge(s) may then transfer the case and shall notify the clerk of the transfer.