UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

GENERAL ORDER 25-0005

The Court's Rules Committee considered the proposed amendments to Internal Operating Procedure 16 – Initial Calendar for New District Judges over several months. At its March 13, 2025 meeting, the Rules Committee recommended that the full Court adopt the amendments to Internal Operating Procedure 16.

The full Court considered the recommendation of the Rules Committee at its meeting on March 20, 2025, and adopted the amendments to Internal Operating Procedure 16. Therefore,

IT IS HEREBY ORDERED that Internal Operating Procedure 16 be adopted and implemented as attached (additions shown thus, deletions shown ~~thus~~).

ENTER:

FOR THE COURT

Hon. Virginia M. Kendall, Chief Judge

Dated at Chicago, Illinois this 3rd day of April 2025

United States District Court
NORTHERN DISTRICT OF ILLINOIS

IOP 16. Initial Calendar for New District Judge

(a) Applicability of Procedures. These procedures expand upon the provisions of LR40.1(g). They apply only to the formation of the initial calendar of a new judge designated to sit in the Eastern Division. They are intended to assure that the initial calendar is a reasonable cross-section of the calendars of all of the judges in the Division. The exception to this goal is that no criminal cases shall be reassigned as part of the initial calendar. Instead, an additional number of civil cases equivalent to the number of criminal cases that would have been assigned shall be reassigned as part of the initial calendar. The incoming judge will be added to the Court's criminal case assignment system ninety (90) days from the entry of the initial calendar reassignment order so that the judge shall thereafter receive a full share of such cases. Should the incoming judge be a current Assistant United States Attorney, the judge will be added to the criminal case assignment system after 12 months.

(b) Number of Participating Judges. In general each regular active judge on full assignment participates in the reassignment of cases to form an initial calendar for any newly appointed judge to the extent of one share. The chief judge and each participating senior judge participate to the extent of one share weighted by the proportion of new civil filings that judge currently receives.

The chief judge routinely participates both in the reassignment of cases to form new calendars and in receiving cases reassigned when the calendar of another judge is eliminated or reduced. Usually, senior judges participate in the reassignment of cases to form new calendars only if (1) they are currently receiving a share of new filings and (2) they agree to receive reassignments in those instances where the calendar of another judge is eliminated or reduced. The Executive Committee will determine the participation of senior judges who are not currently receiving a share of new filings. For the purposes of these procedures, a senior judge is considered to be currently participating in the assignment of new cases unless there has been an order entered directing that the judge receive no new cases until further order of court.

The total of the number of participating judges receiving a full share of new civil cases plus the total of the weighted shares of those participating judges receiving less than a full share of new civil cases shall constitute the total participating judge equivalencies.

(c) Number of Pending Cases. The class value for the total number of cases to be reassigned to form the new calendar is the adjusted number of pending cases divided by the total participating judge equivalencies. The Executive Committee initiates the process by selecting the date on which the count of cases will be based.

For the process of creating an initial calendar, the adjusted number of pending cases on calendars of regular active judges will be the total number of civil and criminal cases reported as pending on the calendars of the participating judges on the date selected by the Executive Committee including any pending petitions for leave to proceed *in forma pauperis*, but net of any higher-numbered related cases or cases assigned to a multidistrict litigation ("MDL") docket. Pending cases filed by persons in custody that are directly assigned pursuant to LR40.3(b) are to be treated as a related set. The adjusted number of pending cases for the chief judge and participating senior judges will be determined in the same manner as regular active judges but may be weighted to reflect lower participation in the assignment of new cases.

The Case Management and Electronic Case Filing System ("CM/ECF") will serve as the source for information on the pending cases.

The clerk will instruct the courtroom deputies assigned to the participating judge to submit a list of related cases shortly before the reassignment process is started. Failure to identify a case as a higher-numbered related case results in its remaining on the list used to select primary and secondary lists. Where it is subsequently discovered that a case on the primary or secondary list was a higher-numbered related case, it is removed from the list. The related set is not reassigned in such circumstances. If the case appeared on the primary list, the appropriate substitution from the secondary list is made.

Cases pending before the chief judge and any of the senior judges participating are weighted on the basis of whether or not such judge retained his or her calendar on changing judicial status, i.e., on becoming chief judge or taking senior status, and the extent of such judge's current participation in the assignment of new cases. The weighting is fixed as follows:

(1) each case is given a weight on 1.0, i.e., counted in full, under the following conditions:

(A) civil cases where the judge disposed of a substantial proportion of his or her civil calendar on changing judicial status; and

(B) criminal cases where the judge disposed of a substantial proportion of his or her criminal calendar on changing judicial status and the judge is currently receiving new criminal cases, or where the judge retained his or her pending criminal cases on changing judicial status but the judge is not currently receiving new criminal cases.

(2) each case is given a weight equivalent to the current rate at which the judge participates in the assignment of new cases under the following conditions:

(A) civil cases where the judge retained his or her calendar and the judge is currently receiving new civil cases; and

(B) criminal cases where the judge retained his or her calendar of pending criminal cases on changing judicial status and the judge is receiving new criminal cases.

The adjusted total number of cases pending before the participating regular active judges on full assignment and the weighted total of the number of cases pending before the chief judge and senior judges is the final adjusted grand total. The adjusted total number of judges participating in the process is the sum of the number of participating regular active judges on full assignment, plus the number of new judges for whom initial calendars are to be formed, plus a weighted total for the chief judge and participating senior judges, where the weight applied to each is that at which they are currently participating in the assignment of new civil cases. The class calendar size is derived by dividing the adjusted grand total of cases pending by the adjusted total number of judges participating.

(d) Number of Cases to be Reassigned from Each Judge. The number of cases to be reassigned from each judge is calculated by dividing the class calendar by the sum of the number of participating regular active judges on full assignment plus the assignment equivalencies for the chief judge and participating judges. The result is rounded to the nearest integer.

(e) Primary & Secondary Lists. The actual selection process is performed by a computer program. The following is a description of the steps involved:

(1) A calendar list is prepared for each participating judge. The list contains the case numbers and short title of all of the civil cases other than MDL cases pending on that judge's calendar. Higher-numbered related cases are included on the list, but only for the purpose of identifying

any cases associated with the lower-numbered lead case. Each related set is counted as one case for the purpose of the selection process.

(2) The case numbers are sorted so that they are listed in case number order with the oldest case, i.e., earliest case number, first.

(3) Cases that have previously been reassigned two or more times for any reason other than recusal, and cases that are motions to reduce sentence filed pursuant to 28 U.S.C. §2255 are included on the list in the position determined by their age and in the count of cases. However, such cases are flagged so that the computer can identify them as cases not to be reassigned.

(4) The total, T, of the cases on the calendar list net of higher-numbered related cases is calculated.

(5) An interval number, I, is computed by dividing T by the number of cases to be reassigned from the calendar ("R"). As T/R will rarely result in an integer and the interval must be an integer, only the integer portion of T/R is taken.

(6) A primary start number, S1, is randomly selected from the set of numbers 1,2,3,...,(I-2),(I-1),I. The random number generator used to select S1 is such that each number in the set has an equal chance of being selected.

(7) The primary lists consists of the S1th case, the (S1 + I)th case, the (S1 + 2I)th case, the (S1 + 3I)th case,..., and the [S1 + (R-1)I]th case, provided that if a flagged case is selected, e.g., one that was previously reassigned two or more times to form an initial calendar, the next lower-numbered case is then substituted. The computer keeps track of the cases so selected and flags them as they are selected.

(8) A secondary start number, S2, is selected in the same manner as the primary start number, except that it must be a number other than the primary start number.

(9) The secondary list is selected in a manner similar to that used to select the primary list.

(10) If as part of the process of forming either the primary or the secondary list the case selected is a flagged case, e.g., a case previously reassigned two or more times as part of the formation of an initial calendar, the next lower-numbered unflagged case is selected. Should there be no lower-numbered unflagged case, the next higher-numbered unflagged case is selected.

(f) Review of Primary& Secondary Lists. The primary and secondary lists are sent to each of the participating judges. The cases on the primary list are those cases to be reassigned to form the initial calendar of the new judge. However, a case may be withheld from the primary list under certain circumstances. Where a case is to be withheld, the case on the secondary list with the case number closest to that of the case to be withheld will be substituted. As the reasons for withholding apply to cases on both lists, both should be reviewed by the judge.

Cases may be withheld from reassignment only if they meet one or more of the following conditions:

(1) the case is closed and the J.S. 6 statistical closing form has been received by the central Clerk's Office;

(2) the case has been reassigned to the calendar of another judge;

(3) the trial has started or has been completed;

(4) the case was remanded with instructions for action by the judge on whose calendar the case is pending at the time of the reassignment to form a new calendar;

(5) the case is found not to meet the criteria for inclusion in the pool of cases used to prepare the primary and secondary lists (e.g., the case is part of an MDL, the proceeding is not statistically reportable as a civil case).

In instances where a case is to be reassigned to a magistrate judge on consent of the parties, the case will be withheld from reassignment to the initial calendar only where the case has been transferred to the Executive Committee by the district judge from whose calendar the case is to be reassigned before the entry of the general order of reassignment.

In addition, where the new judge is coming from private practice or a position with an organization or agency that might have filed cases in this Court, a search will be made of CM/ECF records to identify all cases that the law firm, organization, or agency has pending before the Court. These cases are flagged and are skipped during the process of selecting cases for the primary and secondary lists in the same manner as higher-numbered related cases.

(g) Review of Substitutions. Whenever a case from the secondary list is to be substituted for a case on the primary list because the latter is to be withheld, the judge will indicate the reason the case is to be withheld. The Executive Committee shall decide whether or not a case is to be withheld in instances where it is unclear whether the reason given for withholding the case satisfies one or more of the conditions included in sections (e) and (f).

(h) Closed Cases. Where a case selected for reassignment is closed before it is reassigned to the initial calendar, the case with the closest case number on the secondary list is substituted for the closed case. Closings taking place after the date the cases have actually been reassigned are credited to the calendar of the new judge regardless of which judge closed the case and no substitutions are to be made for the case.

For the purposes of this section a case is considered closed when a J.S. 6 statistical reporting form indicating that the date of closing was prior to the date the new judge took office is received by the central Clerk's Office within a week of the date of closing.

(i) Recusals by New Judge. Recusals in cases assigned to a judge as part of an initial calendar will be reassigned to the calendar of the judge from which it was reassigned. That judge may transfer to the Executive Committee for reassignment to the recusing judge a case requiring a like amount of judicial effort for disposition.

Committee Comment. In a large multi-judge trial court that uses the random assignment process, the formation of the initial calendar of a new judge is a vital part of that process. Over the years the Court has adopted procedures that have steadily increased the randomness of the process. IOP16 and the Comment are based on these procedures. Because of the complexity of IOP16, the Comment is long. It has been broken into sections, each designated to correspond to the section of IOP16 being discussed.

(a) Applicability of Procedures. IOP16 is intended to provide a new judge with a calendar that is an average of that pending before the other judges. It applies only to the Eastern Division because currently there is only one regular active judge assigned to the Western Division.

Under these procedures cases are reassigned from the calendars of the sitting judges to form the initial calendar of the new judge. The process is timed so that the new calendar is ready when the newly appointed district judge enters on duty. Pursuant to LR40.1(b) "[t]he assignment of cases to calendars and judges and the preparation of calendars and supplements thereto shall be done solely under the direction of the Executive Committee by the clerk or a deputy clerk who is designated by the clerk as an assignment clerk." It is the usual practice for the

Executive Committee to enter one order setting the process in motion and a second, following the selection, that specifies the cases to be reassigned to form the initial calendar.

Any set of procedures used to create a new calendar by reassigning cases from existing calendars has to provide for (1) the total number of cases to be reassigned, (2) the number of cases to be reassigned from each of the participating calendars, (3) the method of choice, (4) criteria for exempting cases falling within specified statuses prior to the actual reassignment, and (5) provisions for handling the need to make adjustments following the actual reassignment. Practical considerations call for the elimination of cases falling within certain statuses. For example, it makes little sense to reassign a case that has been tried or a criminal case in which a guilty plea has been entered. The procedures provide for withholding cases in a limited number of such statuses.

(b) Number of Participating Judges. For the purposes of these procedures, a judge who is not receiving cases due to the periodic calendar adjustment program (See IOP18) is treated as a regular active judge on full assignment. Similarly, a senior judge may participate in new civil assignments to the extent of a three-quarter share which is received through the judge getting a full share during nine months of the year and no new cases for the remaining three months of the year. This judge would be considered currently on assignment for the purpose of participating in the reassignment to form a new calendar even if not actually receiving cases at the time, provided that the order taking the judge's name off the wheel indicated that it was for a set period and the name would be returned at the end of that period.

The following is an example of calculating the number of participating judge equivalents. 20 active judges participate in the process. Of these 17 are regular active judges on full assignment, one is a senior judge receiving a full share of civil cases, one is the chief judge receiving a one-half share of new civil cases, and one is a senior judge, also receiving a one-half share of new civil filings. The 17 regular active judges on full assignment and the senior judge receiving a full share of new civil cases each count as 1 participating judge equivalent. The chief judge and the senior judge receiving a one-half share of new civil filings each count as ½ of a participating judge equivalent. The 20 judges thus total 19 participating judge equivalencies, i.e., 17+1+½+½.

(c) Number of Pending Cases. In order to arrive at an average calendar size, some adjustments need to be made to the total number of cases pending. The most obvious adjustment involves related cases. A condition for reassigning cases as related required by LR40.4(b) is that "the handling of both cases by the same judge is likely to result in a substantial saving of judicial time and effort," Accordingly, the Court has determined that each set of related cases should be treated as one case for the purpose of forming an initial calendar. In order that a related set have the same chance of reassignment as any other case, only the lowest-numbered case in the set is included in the totals and in the list from which cases are picked. If the lowest-numbered case in the set is selected, all of the cases in the set are reassigned.

It is not unusual to discover that two or more of the cases in a related set were inadvertently included in the calendar list without the higher-numbered cases being flagged. This makes the likelihood that a related set will be selected greater than if the lowest-numbered case in the set is the only one listed. Where this has occurred and it is discovered that the higher-numbered case was selected for a primary or secondary list, the related set is not reassigned. A substitute is selected in a manner similar to that used where a case that is selected is closed before the reassignment.

Where two or more case filed by a person in custody are pending on a judge's calendar and one or more of them was directly assigned to a judge's calendar pursuant to LR40.3(b), the cases are treated as a related set.

Under the standards governing case statistics approved by the Judicial Conference of the United States a petition for leave to proceed *in forma pauperis* is not counted as a case. Such a

petition is counted as a case for the purposes of selecting an initial calendar.

Cases on MDL dockets are not included in the formation of an initial calendar because the handling of such a docket involves a degree of choice on the part of the judge. Traditionally, the regular docket reports circulated among the judges have separated MDL dockets from other civil cases.

The weight accorded the pending cases of the chief or a senior judge is adjusted based on both the level of that judge's participation in new case assignments and the action that judge took with respect to his or her pending calendar at the time that judge became the chief or a senior judge. It is common practice for judges to reduce the size of their pending calendar on becoming chief judge or taking senior status by an amount equal to the rate at which they will participate in new assignments. For example, the chief judge generally receive a one-half share of new civil cases. It is common practice for a judge who becomes the chief judge to reduce his or her pending calendar by one-half on assuming the office of chief judge.

Experience has shown that over time the number of cases processed by a judge correlates more strongly with the number of cases assigned to than the number pending before that judge. Accordingly, an adjustment is made to the calendars of the chief and participating senior judges that weighs each of their pending caseloads based on their current participation in the assignment process.

For example, assume that initial calendars are to be created for two new judges from cases pending on the calendars of 17 regular active judges on full assignment in the Eastern Division, the chief judge, and two senior judges. Assume that the chief judge disposed of part of his calendar on becoming chief judge and receives a one-half share of civil case assignments and no criminal case assignments, that senior judge A retained her calendar on taking senior status and receives a full share of new civil case assignments and no criminal case assignments, and that senior judge B disposed of part of his calendar on taking senior status and receives a one-half share of civil case assignments and no criminal case assignments. If the adjusted total number of civil and criminal cases pending before seventeen regular active judges on full assignment at the end the month selected were 5,974, and 451 of these were higher-numbered related cases, the preliminary adjusted grand total would be 5,974 less 451 or 5,523. Assume that the chief judge has a pending civil calendar of 150 cases of which 10 were higher-numbered related cases, and that senior judges A and B have pending civil calendars of 250 and 130 cases of which 19 and 10, respectively, were, higher-numbered related cases. The preliminary grand total would be adjusted by adding 140, i.e, 150 less 10, to take the chief judge's participation into account plus 351, i.e., 380 less 29, for senior judges A and B, resulting in a final grand total of 6,014, i.e., 5,523 plus 491. The adjusted number of participating judges is 21, i.e., 17 for the regular active judges on full assignment, plus ½ each for the chief judge and senior judge B, plus 1 for senior judge A, plus 2 for the new judges. The class calendar would be 6,014 divided by 21, or 286.38.

(d) Number of Cases to be Reassigned from Each Judge. In the example given above, the class calendar was 286.38 and the adjusted number of participating judges was 21. Of these two represented the new judge. Therefore, there were 19 judge equivalencies from whose calendars cases were to be reassigned. participating judge equivalencies other than the two new judges. 15 cases would be reassigned from the calendar of each judge on full assignment (286.93 divided by 19 equals 15.10. 15.10 rounded to the nearest integer is 15.) 7 cases would be reassigned from the calendar of the chief judge and a further 7 from the calendar of senior judge B as each receives a one-half share of new civil assignments. The total number of cases to be reassigned would be 284, i.e., 15 for each of the 17 regular active judges on full assignment, 7 for the chief judge, 15 for senior judge A, and 7 for senior judge B.

(e) Primary & Secondary Lists. Two sets of cases are selected from the each judge's list of pending cases. The first set forms the primary lists and the second the secondary list. The selection process is a form of stratified random selection process that selects the cases

randomly but evenly spaced. In this way the initial calendar has a mix of cases by age that is the average for the Court. (The case number, the variable used to arrange the cases on the calendar list, is an accurate indicator of case age.)

The primary list is the list of cases intended to go to the new calendar. Experience has shown that there are always a small number of cases that for a variety of reasons--all specified in these procedures--should not be reassigned as part of an initial calendar. Accordingly, a secondary list is prepared using the same procedures as used to create the primary list. If a case on the primary list cannot be reassigned, then the case on the secondary list with the closest case number is substituted. (For purposes of these procedures the string of case numbers is assumed to be continuous so that the number following the last one assigned in year x is the first case number in year (x+1). This is rarely of importance where a new case is involved, the most likely situation as the process results in many relatively new cases being selected for reassignment. Where the "closest case number" involves an old case, however, the single number sequence approach provides a fair and uniform manner for determining which of two old cases should be substituted.)

Subsection (e)(3) mentions two categories of cases which are included on the list and counted, but are not to be reassigned. These are motions to reduce sentence filed pursuant to 28 U.S.C. §2255 and cases that have previously been reassigned two or more times to form an initial calendar. §2255 motions are given a civil case number but are part of an underlying criminal proceeding. As the motions are assigned to the sentencing judge, reassignment is inappropriate.

The restriction of the number of times a case can be reassigned to form an initial calendar is a compromise between the goal of providing the new judge with a calendar which is an accurately reflection of an average calendar and the need to keep disruptive reassignments to a minimum. Experience showed that without such a limit a large proportion of the oldest cases being reassigned had been reassigned more than three times to make up an individual calendar system. The Court agreed to limit the number of such reassignments to two per case.

Subsections (e)(5) and (e)(6) establish the mechanism used to select cases. First an interval number, I, is selected. If the case count of a judge's calendar list is 293 and the judge is reassign 15 cases, then I will be 19. A start number, S, is randomly selected from the numbers 1,2,3,…,17,18,19. Assume that 11 was selected as S. Then the 11th and every 19th case thereafter will be picked from the calendar list. The last case will be the 277th.

Because the interval number will rarely be an integer, there is a residual block of cases that has no chance of being selected. In the example given above, the 286th through the 293rd cases on the list have not chance of being selected. By definition this block of cases that have no chance of being selected must contain fewer than R cases. Furthermore, because of the way in which the selection process operates, the cases in this block are always the most recently filed cases on the calendar list.

(f) Review of Primary & Secondary Lists. The criteria for cases that may be withheld from reassignment are quite specific. The conditions specified for each category must exist. Potentially meeting the conditions is not sufficient. For example, the parties may indicate to the judge that the case will settle shortly. However, it can be withheld as closed only when there is a closing order and a J.S. 6 has been filed in the central Clerk's Office.

The reassignment of cases filed by the law firm or organization with which the new judge was recently associated would result in subsequent reassignments when the new judge entered recusals. For this reason they are, to the extent possible, identified and flagged as not to be reassigned.

(g) Review of Substitutions. The procedure makes explicit that the Executive Committee has reviewing authority over any substitutions proposed by a judge.

(h) Closed Cases. The process of creating calendars takes time. As a result, it is not unusual for some of the cases selected for reassignment to be closed by the judge from whom they are to be reassigned prior to the time of the reassignment. In such instances the case from the secondary list with the closest case number will be substituted for the closed case. As with subsection (f)(1), for a case to be considered closed under this section, the J.S. 6 statistical reporting form must have been received by the central Clerk's Office prior to the date of the reassignment or the date on which the new judge takes office, whichever is later.

(i) Recusals by New Judge. Where the new judge enters a recusal in a case reassigned to form that judge's initial calendar, it is reassigned to the judge from whose calendar it came. This minimizes the disruption to parties. The judge receiving the case is authorized to send to the Executive Committee for reassignment to the new judge a case requiring similar judicial effort.

Amended May 23, 2014, 11/06/2019

#Rule ID219

IOP 16. Initial Calendar for New District Judge

(a) **Applicability of Procedures.** These procedures expand upon the provisions of LR40.1(g). They apply only to the formation of the initial calendar of a new judge designated to sit in the Eastern Division. They are intended to assure that the initial calendar is a reasonable cross-section of the calendars of ~~all of~~all the judges in the Division. The exception to this goal is that no criminal cases shall be reassigned as part of the initial calendar. ~~Instead, an additional number of civil cases equivalent to the number of criminal cases that would have been assigned shall be reassigned as part of the initial calendar. The incoming judge will be added to the Court's criminal case assignment system ninety (90) days from the entry of the initial calendar reassignment order so that the judge shall thereafter receive a full share of such cases. Should the incoming judge be a current Assistant United States Attorney, the judge will be added to the criminal case assignment system after 12 months.~~

(b) **Implementation**: When a new judge takes the oath, the Clerk of Court shall implement this IOP with the oversight of the Executive Committee. Unless otherwise ordered, the following procedures shall be followed:

(1) The next business day after the new judge takes the oath of office, add the new judge to the Civil Case Assignment Wheel to receive a full share of cases.

(2) The Clerk of Court shall create the Primary and Secondary List as outlined below upon the judge taking the oath of office that provides an initial calendar that equals fifty percent of an district judge.

(3) No later than ten days after the new judge takes the oath, the Clerk of Court will distribute the lists for review by the district judges participating in the reassignment.

(4) Each judge will have up to ten days to review the list and identify cases that are to be withheld pursuant to the provisions of this IOP.

(5) After the judges review the primary and secondary lists, the newly appointed judge will screen the cases that are to be reassigned for conflicts. If a judge determines they have a conflict with a case that remains on the primary list, the Clerk of Court shall replace the case from the secondary list. This review must be completed within 27 days of taking the oath of office.

(6) Within 30 days of the newly appointed judge taking the oath of office, the Clerk of Court will reassign the cases to form the initial calendar.

(~~b~~c) **Number of Participating Judges**. In ~~general~~general, each regular active judge on full assignment participates in the reassignment of cases to form an initial calendar for any newly appointed judge to the extent of one share. The chief judge and each participating senior judge participate to the extent of one share weighted by the proportion of new civil filings that judge currently receives.

~~The chief judge routinely participates both in the reassignment of cases to form new calendars and in receiving cases reassigned when the calendar of another judge is eliminated or reduced. Usually, senior judges participate in the reassignment of cases to form new calendars only if (1) they are currently receiving a share of new filings and (2) they agree to receive reassignments in those instances where the calendar of another judge is eliminated or reduced. The Executive Committee will~~

~~determine the participation of senior judges who are not currently receiving a share of new filings. For the purposes of these procedures, a senior judge is considered to be currently participating in the assignment of new cases unless there has been an order entered directing that the judge receive no new cases until further order of court.~~

~~The total of the number of participating judges receiving a full share of new civil cases plus the total of the weighted shares of those participating judges receiving less than a full share of new civil cases shall constitute the total participating judge equivalencies.~~

~~(c) **Number of Pending Cases**. The class value for the total number of cases to be reassigned to form the new calendar is the adjusted number of pending cases divided by the total participating judge equivalencies. The Executive Committee initiates the process by selecting the date on which the count of cases will be based.~~

~~For the process of creating an initial calendar, the adjusted number of pending cases on calendars of regular active judges will be the total number of civil and criminal cases reported as pending on the calendars of the participating judges on the date selected by the Executive Committee including any pending petitions for leave to proceed in forma pauperis, but net of any higher-numbered related cases or cases assigned to a multidistrict litigation ("MDL") docket. Pending cases filed by persons in custody that are directly assigned pursuant to LR40.3(b) are to be treated as a related set. The adjusted number of pending cases for the chief judge and participating senior judges will be determined in the same manner as regular active judges but may be weighted to reflect lower participation in the assignment of new cases. The Case Management and Electronic Case Filing System ("CM/ECF") will serve as the source for information on the pending cases.~~

~~(c)~~d) **Related Cases Review**: The clerk will instruct the courtroom deputies assigned to the participating judge to submit a list of related cases shortly before the reassignment process is started. Failure to identify a case as a higher-numbered related case results in its remaining on the list used to select primary and secondary lists. Where it is subsequently discovered that a case on the primary or secondary list was a higher-numbered related case, it is removed from the list. The related set is not reassigned in such circumstances. If the case appeared on the primary list, the appropriate substitution from the secondary list is made.

~~Cases pending before the chief judge and any of the senior judges participating are weighted on the basis of whether or not such judge retained his or her calendar on changing judicial status, i.e., on becoming chief judge or taking senior status, and the extent of such judge's current participation in the assignment of new cases. The weighting is fixed as follows:~~

~~(1) each case is given a weight on 1.0, i.e., counted in full, under the following conditions:~~

~~(A) civil cases where the judge disposed of a substantial proportion of his or her civil calendar on changing judicial status; and~~

~~(B) criminal cases where the judge disposed of a substantial proportion of his or her criminal calendar on changing judicial status and the judge is currently receiving new criminal cases, or where the judge retained his or her pending criminal cases on changing judicial status but the judge is not currently receiving new criminal cases.~~

~~(2) each case is given a weight equivalent to the current rate at which the judge participates in the assignment of new cases under the following conditions:~~

~~(A) civil cases where the judge retained his or her calendar and the judge is currently receiving new civil cases; and~~

~~(B) criminal cases where the judge retained his or her calendar of pending criminal cases on changing judicial status and the judge is receiving new criminal cases.~~

~~The adjusted total number of cases pending before the participating regular active judges on full assignment and the weighted total of the number of cases pending before the chief judge and senior judges is the final adjusted grand total. The adjusted total number of judges participating in the process is the sum of the number of participating regular active judges on full assignment, plus the number of new judges for whom initial calendars are to be formed, plus a weighted total for the chief judge and participating senior judges, where the weight applied to each is that at which they are currently participating in the assignment of new civil cases. The class calendar size is derived by dividing the adjusted grand total of cases pending by the adjusted total number of judges participating.~~

(~~d~~e) **Number of Cases to be Reassigned from Each Judge.**

The number of civil cases to be assigned to a newly appointed judge's calendar will be determined pursuant to calculation by using a fraction in which:

(1) the numerator is the average number of pending civil cases for the 12 months preceding the creation of the new calendar, and

(2) the denominator is the number of active district judgeships plus the number of active district judgeship equivalents. Specifically, each active district judge and each vacant judgeship counts as 1.0 equivalency. Each senior district judge counts as the percentage of civil case draw being assigned to that judge; thus, for example, a senior district judge on a full draw count as 1.0, while a senior district judge on a 40% draw will count as 0.4 equivalency.

(3) The result of this calculation—average number of pending civil cases divided by number of active district judgeship equivalents—will then divided by two to yield the number of cases to be assigned to each new appointed judge's calendar.

~~The number of cases to be reassigned from each judge is calculated by dividing the class calendar by the sum of the number of participating regular active judges on full assignment plus the assignment equivalencies for the chief judge and participating judges. The result is rounded to the nearest integer.~~

(~~e~~f) **Primary & Secondary Lists**. ~~(e) Primary & Secondary Lists.~~ Two sets of cases are selected from ~~the each~~each judge's list of pending cases. The first set forms the primary lists and the second the secondary list. The selection process is a form of stratified random selection process that selects the cases randomly but evenly spaced. In this way the initial calendar has a mix of cases by age that is the average for the Court.

~~The actual selection process is performed by a computer program.~~ The following is a description of the steps involved:

(1) ~~(1)~~ A calendar list is prepared for each participating judge. The list contains the case numbers and short title of ~~all of~~all the civil cases other than MDL cases, cases that have previously been reassigned two or more times for any reason other than recusal, and cases that are motions to reduce sentence filed pursuant to 28 U.S.C. §2255. ~~pending on that judge's calendar.~~ Higher-numbered related cases are included on the list, but only for the purpose of identifying any cases associated with the lower-numbered lead case. Each related set is counted as one case for the purpose of the selection process.

~~(1)~~ where the newly appointed judge is coming from private practice or a position with an organization or agency that might have filed cases in this Court, a search will be made of CM/ECF records to identify all cases that the law firm, organization, or agency has pending before the Court.

(2)

~~(2)~~

~~(2)~~ The case numbers are sorted so that they are listed in case number order with the oldest case, i.e., earliest case number, first.

~~(3) Cases that have previously been reassigned two or more times for any reason other than recusal, and cases that are motions to reduce sentence filed pursuant to 28 U.S.C. §2255 are included on the list in the position determined by their age and in the count of cases. However, such cases are flagged so that the computer can identify them as cases not to be reassigned.~~

(3)

~~(4) The total, T, of the cases on the calendar list net of higher-numbered related cases is calculated.~~

(4~~5~~) The total, T, of the cases on the calendar list net of higher-numbered related cases is calculated. An interval number, I, is computed by dividing T by the number of cases to be reassigned from the calendar ("R"). As T/R will rarely result in an integer and the interval must be an integer, only the integer portion of T/R is taken.

(5~~6~~) A primary start number, S1, is randomly selected from the set of numbers 1,2,3,...,(I-2),(I-1),I. The random number generator used to select S1 is such that each number in the set has an equal chance of being selected.

(6~~7~~) The primary lists consists of the S1th case, the (S1 + I)th case, the (S1 + 2I)th case, the (S1 + 3I)th case,..., and the [S1 + (R-1)I]th case, provided that if a flagged case is selected, e.g., one that was previously reassigned two or more times to form an initial calendar, the next lower-numbered case is then substituted. ~~The computer keeps track of the cases so selected and flags them as they are selected.~~

(7~~8~~) A secondary start number, S2, is selected in the same manner as the primary start number, except that it must be a number other than the primary start number.

(8~~9~~) The secondary list is selected in a manner similar to that used to select the primary list.

(9~~10~~) If as part of the process of forming either the primary or the secondary list the case selected is a flagged case, e.g., a case previously reassigned two or more times as part of the formation of an initial calendar, the next lower-numbered unflagged case is selected. Should there be no lower-numbered unflagged case, the next higher-numbered unflagged case is selected.

(~~f~~g) **Review of Primary & Secondary Lists.** The primary and secondary lists are sent to each of the participating judges. The cases on the primary list are those cases to be reassigned to form the initial calendar of the new judge. However, a case may be withheld from the primary list under certain circumstances. Where a case is to be withheld, the case on the secondary list with the case number closest to that of the case to be withheld will be substituted. As the reasons for withholding apply to cases on both lists, both should be reviewed by the judge.

Cases may be withheld from reassignment only if they meet one or more of the following conditions:

(1) the case is closed and the J.S. 6 statistical closing form has been received by the central Clerk's Office;

(2) the case has been reassigned to the calendar of another judge;

(3) the trial has started or has been completed;

(4) the case was remanded with instructions for action by the judge on whose calendar the case is pending at the time of the reassignment to form a new calendar;

(5) the case is found not to meet the criteria for inclusion in the pool of cases used to prepare the primary and secondary lists (e.g., the case is part of an MDL, the proceeding is not statistically reportable as a civil case~~));~~ and ~~.~~

(6) the case is to be reassigned to a magistrate judge on consent of the parties, the case will be withheld from reassignment.

~~In instances where a case is to be reassigned to a magistrate judge on consent of the parties, the case will be withheld from reassignment to the initial calendar only where the case has been transferred to the Executive Committee by the district judge from whose calendar the case is to be reassigned before the entry of the general order of reassignment.~~

~~In addition, where the new judge is coming from private practice or a position with an organization or agency that might have filed cases in this Court, a search will be made of CM/ECF records to identify all cases that the law firm, organization, or agency has pending before the Court. These cases are flagged and are skipped during the process of selecting cases for the primary and secondary lists in the same manner as higher-numbered related cases.~~

(~~g~~h) **Review of Substitutions.** Whenever a case from the secondary list is to be substituted for a case on the primary list because the latter is to be withheld, the judge will indicate the reason the case is to be withheld. The Executive Committee shall decide whether or not a case is to be withheld in instances where it is unclear whether the reason given for withholding the case satisfies one or more of the conditions included in sections (~~e~~f) and (~~f~~g). ~~Review of Substitutions. The procedure makes explicit that t~~The Executive Committee has reviewing authority over any substitutions proposed by a judge.

(~~h~~i) **Closed Cases.** Where a case selected for reassignment is closed before it is reassigned to the initial calendar, the case with the closest case number on the secondary list is substituted for the closed case. Closings taking place after the date the cases have actually been reassigned are credited to the calendar of the new judge regardless of which judge closed the case and no substitutions are to be made for the case.

For the purposes of this section a case is considered closed when a J.S. 6 statistical reporting form indicating that the date of closing was prior to the date the new judge took office is received by the central Clerk's Office within a week of the date of closing.

(~~i~~j) **Recusals by New Judge.** **Once the cases are reassigned, if the new judge determines a recusal is necessary in a case that was reassigned as part of these procedures, the matter** ~~Recusals in cases assigned to a judge as part of an initial calendar~~ will be reassigned to the calendar of the judge from which it was reassigned. That judge may transfer to the Executive Committee for reassignment to the recusing judge a case requiring a like amount of judicial effort for disposition.

(~~j~~k) Criminal Cases: The incoming judge will be added to the Court's criminal case assignment system ninety (90) days from the entry of the initial calendar reassignment order so that the judge

shall thereafter receive a full share of such cases. Should the incoming judge be a current Assistant United States Attorney, the judge will be added to the criminal case assignment system after 12 months.

~~**Committee Comment**. In a large multi-judge trial court that uses the random assignment process, the formation of the initial calendar of a new judge is a vital part of that process. Over the years the Court has adopted procedures that have steadily increased the randomness of the process. IOP16 and the Comment are based on these procedures. Because of the complexity of IOP16, the Comment is long. It has been broken into sections, each designated to correspond to the section of IOP16 being discussed.~~

~~(a) Applicability of Procedures. IOP16 is intended to provide a new judge with a calendar that is an average of that pending before the other judges. It applies only to the Eastern Division because currently there is only one regular active judge assigned to the Western Division.~~

~~Under these procedures cases are reassigned from the calendars of the sitting judges to form the initial calendar of the new judge. The process is timed so that the new calendar is ready when the newly appointed district judge enters on duty. Pursuant to LR40.1(b) "[t]he assignment of cases to calendars and judges and the preparation of calendars and supplements thereto shall be done solely under the direction of the Executive Committee by the clerk or a deputy clerk who is designated by the clerk as an assignment clerk." It is the usual practice for the Executive Committee to enter one order setting the process in motion and a second, following the selection, that specifies the cases to be reassigned to form the initial calendar.~~

~~Any set of procedures used to create a new calendar by reassigning cases from existing calendars has to provide for (1) the total number of cases to be reassigned, (2) the number of cases to be reassigned from each of the participating calendars, (3) the method of choice, (4) criteria for exempting cases falling within specified statuses prior to the actual reassignment, and (5) provisions for handling the need to make adjustments following the actual reassignment. Practical considerations call for the elimination of cases falling within certain statuses. For example, it makes little sense to reassign a case that has been tried or a criminal case in which a guilty plea has been entered. The procedures provide for withholding cases in a limited number of such statuses.~~

~~(b) Number of Participating Judges. For the purposes of these procedures, a judge who is not receiving cases due to the periodic calendar adjustment program (See IOP18) is treated as a regular active judge on full assignment. Similarly, a senior judge may participate in new civil assignments to the extent of a three-quarter share which is received through the judge getting a full share during nine months of the year and no new cases for the remaining three months of the year. This judge would be considered currently on assignment for the purpose of participating in the reassignment to form a new calendar even if not actually receiving cases at the time, provided that the order taking the judge's name off the wheel indicated that it was for a set period and the name would be returned at the end of that period.~~

~~The following is an example of calculating the number of participating judge equivalents. 20 active judges participate in the process. Of these 17 are regular active judges on full assignment, one is a senior judge receiving a full share of civil cases, one is the chief judge receiving a one-half share of new civil cases, and one is a senior judge, also receiving a one-half share of new civil filings. The 17 regular active judges on full assignment and the senior judge receiving a full share of new civil cases each count as 1 participating judge equivalent. The chief judge and the senior judge receiving a one-half share of new civil filings each count as ½ of a participating judge equivalent. The 20 judges thus total 19 participating judge equivalencies, i.e., 17+1+½+½.~~

~~(c) Number of Pending Cases. In order to arrive at an average calendar size, some adjustments need to be made to the total number of cases pending. The most obvious adjustment involves related cases. A condition for reassigning cases as related required by LR40.4(b) is that "the handling of both cases by the same judge is likely to result in a substantial saving of judicial time and effort," Accordingly, the Court has determined that each set of related cases should be treated as one case for the purpose of forming an initial calendar. In order that a related set have the same chance of reassignment as any other case, only the lowest-numbered case in the set is included in the totals and in the list from which cases are picked. If the lowest-numbered case in the set is selected, all of the cases in the set are reassigned.~~

~~It is not unusual to discover that two or more of the cases in a related set were inadvertently included in the calendar list without the higher-numbered cases being flagged. This makes the likelihood that a related set will be selected greater than if the lowest-numbered case in the set is the only one listed. Where this has occurred and it is discovered that the higher-numbered case was selected for a primary or secondary list, the related set is not reassigned. A substitute is selected in a manner similar to that used where a case that is selected is closed before the reassignment.~~

~~Where two or more case filed by a person in custody are pending on a judge's calendar and one or more of them was directly assigned to a judge's calendar pursuant to LR40.3(b), the cases are treated as a related set.~~

~~Under the standards governing case statistics approved by the Judicial Conference of the United States a petition for leave to proceed in forma pauperis is not counted as a case. Such a petition is counted as a case for the purposes of selecting an initial calendar.~~

~~Cases on MDL dockets are not included in the formation of an initial calendar because the handling of such a docket involves a degree of choice on the part of the judge. Traditionally, the regular docket reports circulated among the judges have separated MDL dockets from other civil cases.~~

~~The weight accorded the pending cases of the chief or a senior judge is adjusted based on both the level of that judge's participation in new case assignments and the action that judge took with respect to his or her pending calendar at the time that judge became the chief or a senior judge. It is common practice for judges to reduce the size of their pending calendar on becoming chief judge or taking senior status by an amount equal to the rate at which they will participate in new assignments. For~~

example, the chief judge generally receive a one-half share of new civil cases. It is common practice for a judge who becomes the chief judge to reduce his or her pending calendar by one-half on assuming the office of chief judge.

Experience has shown that over time the number of cases processed by a judge correlates more strongly with the number of cases assigned to than the number pending before that judge. Accordingly, an adjustment is made to the calendars of the chief and participating senior judges that weighs each of their pending caseloads based on their current participation in the assignment process.

For example, assume that initial calendars are to be created for two new judges from cases pending on the calendars of 17 regular active judges on full assignment in the Eastern Division, the chief judge, and two senior judges. Assume that the chief judge disposed of part of his calendar on becoming chief judge and receives a one-half share of civil case assignments and no criminal case assignments, that senior judge A retained her calendar on taking senior status and receives a full share of new civil case assignments and no criminal case assignments, and that senior judge B disposed of part of his calendar on taking senior status and receives a one-half share of civil case assignments and no criminal case assignments. If the adjusted total number of civil and criminal cases pending before seventeen regular active judges on full assignment at the end the month selected were 5,974, and 451 of these were higher-numbered related cases, the preliminary adjusted grand total would be 5,974 less 451 or 5,523. Assume that the chief judge has a pending civil calendar of 150 cases of which 10 were higher-numbered related cases, and that senior judges A and B have pending civil calendars of 250 and 130 cases of which 19 and 10, respectively, were, higher-numbered related cases. The preliminary grand total would be adjusted by adding 140, i.e, 150 less 10, to take the chief judge's participation into account plus 351, i.e., 380 less 29, for senior judges A and B, resulting in a final grand total of 6,014, i.e., 5,523 plus 491. The adjusted number of participating judges is 21, i.e., 17 for the regular active judges on full assignment, plus ½ each for the chief judge and senior judge B, plus 1 for senior judge A, plus 2 for the new judges. The class calendar would be 6,014 divided by 21, or 286.38.

(d) **Number of Cases to be Reassigned from Each Judge.** In the example given above, the class calendar was 286.38 and the adjusted number of participating judges was 21. Of these two represented the new judge. Therefore, there were 19 judge equivalencies from whose calendars cases were to be reassigned. participating judge equivalencies other than the two new judges. 15 cases would be reassigned from the calendar of each judge on full assignment (286.93 divided by 19 equals 15.10. 15.10 rounded to the nearest integer is 15.) 7 cases would be reassigned from the calendar of the chief judge and a further 7 from the calendar of senior judge B as each receives a one-half share of new civil assignments. The total number of cases to be reassigned would be 284, i.e., 15 for each of the 17 regular active judges on full assignment, 7 for the chief judge, 15 for senior judge A, and 7 for senior judge B.

(e) Primary & Secondary Lists. Two sets of cases are selected from the each judge's list of pending cases. The first set forms the primary lists and the second the secondary list. The selection process is a form of stratified random selection process that selects the cases randomly but evenly spaced. In this way the initial calendar has a mix of cases by age that is the average for the Court. (The case

number, the variable used to arrange the cases on the calendar list, is an accurate indicator of case age.)

The primary list is the list of cases intended to go to the new calendar. Experience has shown that there are always a small number of cases that for a variety of reasons--all specified in these procedures--should not be reassigned as part of an initial calendar. Accordingly, a secondary list is prepared using the same procedures as used to create the primary list. If a case on the primary list cannot be reassigned, then the case on the secondary list with the closest case number is substituted. (For purposes of these procedures the string of case numbers is assumed to be continuous so that the number following the last one assigned in year x is the first case number in year (x+1). This is rarely of importance where a new case is involved, the most likely situation as the process results in many relatively new cases being selected for reassignment. Where the "closest case number" involves an old case, however, the single number sequence approach provides a fair and uniform manner for determining which of two old cases should be substituted.)

Subsection (e)(3) mentions two categories of cases which are included on the list and counted, but are not to be reassigned. These are motions to reduce sentence filed pursuant to 28 U.S.C. §2255 and cases that have previously been reassigned two or more times to form an initial calendar. §2255 motions are given a civil case number but are part of an underlying criminal proceeding. As the motions are assigned to the sentencing judge, reassignment is inappropriate.

The restriction of the number of times a case can be reassigned to form an initial calendar is a compromise between the goal of providing the new judge with a calendar which is an accurately reflection of an average calendar and the need to keep disruptive reassignments to a minimum. Experience showed that without such a limit a large proportion of the oldest cases being reassigned had been reassigned more than three times to make up an individual calendar system. The Court agreed to limit the number of such reassignments to two per case.

Subsections (e)(5) and (e)(6) establish the mechanism used to select cases. First an interval number, I, is selected. If the case count of a judge's calendar list is 293 and the judge is reassign 15 cases, then I will be 19. A start number, S, is randomly selected from the numbers 1,2,3,…,17,18,19. Assume that 11 was selected as S. Then the 11th and every 19th case thereafter will be picked from the calendar list. The last case will be the 277th.

Because the interval number will rarely be an integer, there is a residual block of cases that has no chance of being selected. In the example given above, the 286th through the 293rd cases on the list have not chance of being selected. By definition this block of cases that have no chance of being selected must contain fewer than R cases. Furthermore, because of the way in which the selection process operates, the cases in this block are always the most recently filed cases on the calendar list.

(f) Review of Primary & Secondary Lists. The criteria for cases that may be withheld from reassignment are quite specific. The conditions specified for each category must exist. Potentially meeting the conditions is not sufficient. For example, the parties may indicate to the judge that the

~~case will settle shortly. However, it can be withheld as closed only when there is a closing order and a J.S. 6 has been filed in the central Clerk's Office.~~

~~The reassignment of cases filed by the law firm or organization with which the new judge was recently associated would result in subsequent reassignments when the new judge entered recusals. For this reason they are, to the extent possible, identified and flagged as not to be reassigned.~~

(g) ~~Review of Substitutions. The procedure makes explicit that the Executive Committee has reviewing authority over any substitutions proposed by a judge.~~

~~(h) Closed Cases. The process of creating calendars takes time. As a result, it is not unusual for some of the cases selected for reassignment to be closed by the judge from whom they are to be reassigned prior to the time of the reassignment. In such instances the case from the secondary list with the closest case number will be substituted for the closed case. As with subsection (f)(1), for a case to be considered closed under this section, the J.S. 6 statistical reporting form must have been received by the central Clerk's Office prior to the date of the reassignment or the date on which the new judge takes office, whichever is later.~~

~~(i) Recusals by New Judge. Where the new judge enters a recusal in a case reassigned to form that judge's initial calendar, it is reassigned to the judge from whose calendar it came. This minimizes the disruption to parties. The judge receiving the case is authorized to send to the Executive Committee for reassignment to the new judge a case requiring similar judicial effort.~~

Amended May 23, 2014, 11/06/2019, and XXX

IOP 16. Initial Calendar for New District Judge

(a) **Applicability of Procedures.** These procedures expand upon the provisions of LR40.1(g). They apply only to the formation of the initial calendar of a new judge designated to sit in the Eastern Division. They are intended to assure that the initial calendar is a reasonable cross-section of the calendars of all the judges in the Division. The exception to this goal is that no criminal cases shall be reassigned as part of the initial calendar.

(b) **Implementation**: When a new judge takes the oath, the Clerk of Court shall implement this IOP with the oversight of the Executive Committee. Unless otherwise ordered, the following procedures shall be followed:

(1) The next business day after the new judge takes the oath of office, add the new judge to the Civil Case Assignment Wheel to receive a full share of cases.

(2) The Clerk of Court shall create the Primary and Secondary List as outlined below upon the judge taking the oath of office that provides an initial calendar that equals fifty percent of an district judge.

(3) No later than ten days after the new judge takes the oath, the Clerk of Court will distribute the lists for review by the district judges participating in the reassignment.

(4) Each judge will have up to ten days to review the list and identify cases that are to be withheld pursuant to the provisions of this IOP.

(5) After the judges review the primary and secondary lists, the newly appointed judge will screen the cases that are to be reassigned for conflicts. If a judge determines they have a conflict with a case that remains on the primary list, the Clerk of Court shall replace the case from the secondary list. This review must be completed within 27 days of taking the oath of office.

(6) Within 30 days of the newly appointed judge taking the oath of office, the Clerk of Court will reassign the cases to form the initial calendar.

(c) **Number of Participating Judges**. In general, each regular active judge on full assignment participates in the reassignment of cases to form an initial calendar for any newly appointed judge to the extent of one share. The chief judge and each participating senior judge participate to the extent of one share weighted by the proportion of new civil filings that judge currently receives.

(d) **Related Cases Review**: The clerk will instruct the courtroom deputies assigned to the participating judge to submit a list of related cases shortly before the reassignment process is started. Failure to identify a case as a higher-numbered related case results in its remaining on the list used to select primary and secondary lists. Where it is subsequently discovered that a case on the primary or secondary list was a higher-numbered related case, it is removed from the list. The related set is not reassigned in such circumstances. If the case appeared on the primary list, the appropriate substitution from the secondary list is made.

(e) **Number of Cases to be Reassigned from Each Judge.** The number of civil cases to be assigned to a newly appointed judge's calendar will be determined pursuant to calculation by using a fraction in which:

(1) The numerator is the average number of pending civil cases for the 12 months preceding the creation of the new calendar; and

(2) The denominator is the number of active district judgeships plus the number of active district judgeship equivalents. Specifically, each active district judge and each vacant judgeship counts as 1.0 equivalency. Each senior district judge counts as the percentage of civil case draw being assigned to that judge; thus, for example, a senior district judge on a full draw count as 1.0, while a senior district judge on a 40% draw will count as 0.4 equivalency.

(3) The result of this calculation—average number of pending civil cases divided by number of active district judgeship equivalents—will then divided by two to yield the number of cases to be assigned to each new appointed judge's calendar.

(f) **Primary & Secondary Lists**. Two sets of cases are selected from each judge's list of pending cases. The first set forms the primary lists and the second the secondary list. The selection process is a form of stratified random selection process that selects the cases randomly but evenly spaced. In this way the initial calendar has a mix of cases by age that is the average for the Court.

The following is a description of the steps involved:

(1) A calendar list is prepared for each participating judge. The list contains the case numbers and short title of all the civil cases other than MDL cases, cases that have previously been reassigned two or more times for any reason other than recusal, and cases that are motions to reduce sentence filed pursuant to 28 U.S.C. §2255. Higher-numbered related cases are included on the list, but only for the purpose of identifying any cases associated with the lower-numbered lead case. Each related set is counted as one case for the purpose of the selection process.

(2) where the newly appointed judge is coming from private practice or a position with an organization or agency that might have filed cases in this Court, a search will be made of CM/ECF records to identify all cases that the law firm, organization, or agency has pending before the Court.

(3) The case numbers are sorted so that they are listed in case number order with the oldest case, i.e., earliest case number, first.

(4) The total, T, of the cases on the calendar list net of higher-numbered related cases is calculated. An interval number, I, is computed by dividing T by the number of cases to be reassigned from the calendar ("R"). As T/R will rarely result in an integer and the interval must be an integer, only the integer portion of T/R is taken.

(5) A primary start number, S1, is randomly selected from the set of numbers 1,2,3,...,(I-2),(I-1),I. The random number generator used to select S1 is such that each number in the set has an equal chance of being selected.

(6) The primary lists consists of the S1th case, the (S1 + I)th case, the (S1 + 2I)th case, the (S1 + 3I)th case,..., and the [S1 + (R-1)I]th case, provided that if a flagged case is selected, e.g., one that was previously reassigned two or more times to form an initial calendar, the next lower-numbered case is then substituted.

(7) A secondary start number, S2, is selected in the same manner as the primary start number, except that it must be a number other than the primary start number.

(8) The secondary list is selected in a manner similar to that used to select the primary list.

(9) If as part of the process of forming either the primary or the secondary list the case selected is a flagged case, e.g., a case previously reassigned two or more times as part of the

formation of an initial calendar, the next lower-numbered unflagged case is selected. Should there be no lower-numbered unflagged case, the next higher-numbered unflagged case is selected.

(g) **Review of Primary & Secondary Lists.** The primary and secondary lists are sent to each of the participating judges. The cases on the primary list are those cases to be reassigned to form the initial calendar of the new judge. However, a case may be withheld from the primary list under certain circumstances. Where a case is to be withheld, the case on the secondary list with the case number closest to that of the case to be withheld will be substituted. As the reasons for withholding apply to cases on both lists, both should be reviewed by the judge. Cases may be withheld from reassignment only if they meet one or more of the following conditions:

(1) the case is closed and the J.S. 6 statistical closing form has been received by the central Clerk's Office;

(2) the case has been reassigned to the calendar of another judge;

(3) the trial has started or has been completed;

(4) the case was remanded with instructions for action by the judge on whose calendar the case is pending at the time of the reassignment to form a new calendar;

(5) the case is found not to meet the criteria for inclusion in the pool of cases used to prepare the primary and secondary lists (e.g., the case is part of an MDL, the proceeding is not statistically reportable as a civil case); and

(6) the case is to be reassigned to a magistrate judge on consent of the parties, the case will be withheld from reassignment.

(h) **Review of Substitutions.** Whenever a case from the secondary list is to be substituted for a case on the primary list because the latter is to be withheld, the judge will indicate the reason the case is to be withheld. The Executive Committee shall decide whether or not a case is to be withheld in instances where it is unclear whether the reason given for withholding the case satisfies one or more of the conditions included in sections (f) and (g). The Executive Committee has reviewing authority over any substitutions proposed by a judge.

(i) **Closed Cases.** Where a case selected for reassignment is closed before it is reassigned to the initial calendar, the case with the closest case number on the secondary list is substituted for the closed case. Closings taking place after the date the cases have actually been reassigned are credited to the calendar of the new judge regardless of which judge closed the case and no substitutions are to be made for the case.

For the purposes of this section a case is considered closed when a J.S. 6 statistical reporting form indicating that the date of closing was prior to the date the new judge took office is received by the central Clerk's Office within a week of the date of closing.

(j) **Recusals by New Judge. Once the cases are reassigned, if the new judge determines a recusal is necessary in a case that was reassigned as part of these procedures, the matter** will be reassigned to the calendar of the judge from which it was reassigned. That judge may transfer to the Executive Committee for reassignment to the recusing judge a case requiring a like amount of judicial effort for disposition.

(k) **Criminal Cases:** The incoming judge will be added to the Court's criminal case assignment system ninety (90) days from the entry of the initial calendar reassignment order so that the judge shall thereafter receive a full share of such cases. Should the incoming judge be a current Assistant

United States Attorney, the judge will be added to the criminal case assignment system after 12 months.

Amended May 23, 2014, November 6, 2019, and March 20, 2025