

# Internal Operating Procedures of the United States District Court Northern District of Illinois



(With revision through October 2005)

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## INTERNAL OPERATING PROCEDURES

### Introduction

These are procedures for the court's internal operations. They are intended to supplement the *Guide to Judiciary Policies and Procedures* and the local rules. They set out the procedures generally to be used by chambers and the clerk's office in performing certain administrative tasks. While the procedures are public and available on request, litigants acquire no rights under them. The Court's web page, [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov), provides procedures used in the chambers of each of the judges. A current copy of these procedures and any proposed changes is also available at that site.

### IOP1. Meetings of District Judges

(a) MEETINGS OF THE DISTRICT JUDGES. The judges of this Court shall establish the policies of the Court, determine its programs and adopt and promulgate its rules at their official meetings. The regular active and senior judges shall assemble not less than once a month for such official meetings except as they determine otherwise. Each judge attending the meeting, whether active or senior, shall be entitled to vote on matters brought before the meeting, except as otherwise required by statute.

(b) SECRETARY OF THE COURT. At the September meeting the least senior regular active judge who has not previously served as secretary shall be designated as secretary of the Court. The secretary shall make and maintain the official minutes of the judges' meetings. The secretary, if unable to attend the meeting, shall make arrangements for another judge to act as secretary and inform the chief judge of such arrangements.

### IOP2. Executive Committee

(a) DUTIES & RESPONSIBILITIES. This Court shall administer and conduct its business by action of its Executive Committee. The Executive Committee shall prescribe its own rules of procedure. Each of the members other than the non-voting members shall have one vote. The presiding chief judge or acting chief judge may vote in the case of a tie.

The members of the Executive Committee shall meet not less than once a month, except as they otherwise determine. Such meetings shall be prior to the regular monthly meetings of the Court. The chief judge may call the members of the Committee to attend a special meeting where a ruling of the Committee is required and such ruling cannot be delayed until the next scheduled regular meeting.

The Executive Committee shall report a summary of its actions and activities to the Court at regularly scheduled meetings of the judges. Decisions and actions of the Executive Committee taken on behalf of the Court may be approved or disapproved by a majority of the judges of the Court.

(b) COMPOSITION OF THE EXECUTIVE COMMITTEE. The Executive Committee shall be composed of the chief judge, the acting chief judge, four regular active judges of the Court, the presiding magistrate judge, and the clerk of the Court. The chief judge, the acting chief judge, the presiding magistrate judge, and the clerk will be non-voting members of the Executive Committee. The chief judge or, in the absence of the chief judge, the acting chief judge, shall preside over the meetings of the Executive Committee. The clerk shall serve as secretary to the Executive Committee.

Membership in the Executive Committee shall be rotated among the regular active judge of the Court in order of seniority. Except as otherwise provided by this section, the term of each regular active judge other than one holding non-voting membership shall start on 15 September and end on 14 September four years later. As the term of such a member of the Executive Committee expires or terminates for any reason, the regular active judge with the most seniority who has not served on the

Executive Committee shall become a member. When all the regular active judges of the Court have served one term, membership shall be rotated on the basis of seniority of the active judges then members of this Court, provided that the chief judge may not serve as both a four year term member and ex officio. When a judge assumes an unexpired term vacated by another judge, that judge shall serve for four years starting on the day following the last day of service of the judge who failed to complete a four year term.

#### Drafting Note

In the first paragraph we have added the phrase designating the Chief Judge or Acting Chief Judge as the person eligible to cast a vote in the event of a tie. This change is necessary to avoid possible (but unlikely) confusion since we now use the phrase “presiding judge” to refer to a magistrate judge as well as the chief judge.

#### **IOP3. Liaison Judges and Committees**

The administrative business of the Court will be accomplished through liaison judges and such committees as the Court or the chief judge shall create. The chief judge shall make the assignments of liaison judges and members of committees created by the chief judge. The judges so assigned shall serve until such time as the chief judge designates a successor. Members of committees created by the Court shall be appointed and served in the manner provided for in the general order creating such committee.

Each liaison judge and committee shall be responsible for maintaining effective liaison with the departments or agencies or areas of special concern that constitute the administrative area to which the judge or committee was assigned. From time to time each liaison judge or committee shall report to the Court on the activities of the administrative area concerned and make any recommendations for actions on the part of the Court that the liaison judge or committee deems necessary.

From time to time the chief judge after consulting the full Court will cause to be published an order listing the administrative areas to which liaison judges or committees are to be assigned together with any committees of the Court other than the Executive Committee. Such order will also indicate the names of the judges designated as liaison judges or as members of a committee.

#### **IOP4. Presiding Magistrate Judge**

The chief judge shall appoint from among the full-time magistrate judges a presiding magistrate judge. The presiding magistrate judge shall preside at any meeting of the magistrate judges, shall serve as an ex-officio member of the Executive Committee, shall be responsible for maintaining liaison on matters pertaining to magistrate judges with the district judge designated as liaison judge to magistrate judges, and shall be responsible for performing such other duties as the chief judge directs. The order of appointment will fix the length of the appointment which shall not exceed two years.

#### **IOP5. Meetings of Magistrate Judges**

The presiding magistrate judge shall call meetings of the magistrate judges not less often than quarterly for the purpose of discussing matters of common interest to the magistrate judges in the performance of their duties.

**IOP6 through IOP9 are reserved.**

## **IOP10. Case Numbers and Case Categories**

(a) CLASSES OF CASES. All cases filed in this Court shall be assigned to one of the following six classes of cases:

(1) *adversary proceedings* which include any cases initiated by the filing of an adversary complaint in a bankruptcy proceeding pursuant to the provisions of the Bankruptcy Act or of the Bankruptcy Code;

(2) *bankruptcy cases* which include any cases initiated by the filing of a petition pursuant to the provisions of the Bankruptcy Code;

(3) *criminal cases* which include any cases initiated (A) by the filing of a complaint, an information or an indictment for the punishment of a crime against the United States, including cases instituted under the Federal Juvenile Delinquency Act, removal cases and complaints for the apprehension of a material witness or (B) by the issuing of a rule to show cause why a person should not be held in contempt where criminal contempt is involved, including such contempts arising from grand jury proceedings;

(4) *disciplinary proceedings* which include any cases involving the discipline of members of the bar of this Court pursuant to LR83.25, *et seq.*;

(5) *magistrate judge cases* which include (A) any cases initiated before a magistrate judge by documents other than a criminal complaint, including but not limited to search warrants, orders appointing counsel where no complaint has been filed and inspection of warrants, but not generally including petty offenses based on violation notices, and (B) any petty offense proceeding based on the issuance of a violation notice in which the defendant does not waive the right to trial before a district judge and the case is referred to the district court for trial; and

(6) civil cases which include (A) any other case or matters initiated by the filing of an application, complaint or petition, (B) any appeal from an order entered by a bankruptcy judge, and (C) any certificates for contempt filed by a magistrate judge or by a bankruptcy judge.

(b) CASE NUMBERS. Each case, upon the filing of the initial paper, shall be given a case number which shall indicate the year in which it was filed, the class to which it belongs, and a sequence number, as follows:

(1) the year of filing will be indicated by the use of the last two digits of the calendar year in which the initial paper is filed;

(2) the class to which the case belongs will be indicated by use of the letter A, B, CR, D, M or C, to indicate, respectively, the classes of adversary proceedings, bankruptcy cases, criminal cases, disciplinary proceedings, magistrate judge cases, or civil cases;

(3) the sequence number will be the next available number taken from the appropriate case number series. In each of the two Divisions of the Court there shall be eleven consecutive number series, one for each class of cases other than disciplinary proceedings and one for disciplinary proceedings. The number series in the Eastern Division and the number series for disciplinary proceedings will start each year with the number 1. The number series in the Western Division will start with the number 50,001.

(c) EXCEPTIONS TO NUMBERING SYSTEM IN CRIMINAL CASES. An indictment or information that arises out of offenses charged in one or more previously filed criminal complaints shall be designated by the same case number as the earliest filed complaint. Any indictment or information that supersedes an earlier filed indictment or information as defined by subsection (4) of LCrR50.2 shall be designated by the same case number as that of the superseded indictment or information.

In order to identify clearly and uniquely each defendant named in a criminal complaint, indictment, or information, each defendant listed in the caption of the original complaint, indictment, or information shall be assigned a number such that the first listed defendant shall be defendant 1, the second, defendant 2, etc. Where pursuant to this section an indictment or information is designated by the same case number as either an earlier filed criminal complaint or a superseded indictment or information, each defendant included in the later filed indictment or information who was included in the earlier filed complaint, indictment, or information shall be assigned the same defendant number as was assigned at the earlier filing. Where a defendant included in the earlier filed complaint, indictment, or information is not included in the later filed indictment or information, the number assigned to that defendant will be skipped. Where one or more defendants are included in the later filed indictment or information who were not included in the earlier filed complaint, indictment, or information, defendant numbers shall be assigned starting with the lowest number not assigned at the time of the filing of the initial complaint, indictment, or information.

**IOP11. Filing & Assignment of New Cases** (Amended 02/07/02; 04/03.02)

(a) FILING PROCEDURES. The assignment clerk shall file each new case in the following manner:

(1) Except where the case was accepted for filing by the emergency judge outside of regular business hours and the date and time of filing are already noted, the date and time of filing shall be stamped or written on the cover of the documents initiating the case.

(2) The appropriate case number shall be stamped on the initiating document and the file jacket.

(3) The case number and assignment category shall be entered into the computerized assignment system and the case shall be assigned.

(4) A magistrate judge shall be designated for the case in the manner provided for by section (c).

(5) Except as provided for in section (f) below, the name of the district judge to whom the case is assigned and, where applicable, the name of the designated magistrate judge shall be stamped on the initiating documents and on the file jacket.

Where two or more indictments or informations are presented to the assignment clerk for assignment, the order in which they are to be filed and assigned shall be according to their grand jury numbers, the earliest such number being assigned first. Where indictments returned by two or more grand juries are presented for filing at the same time, the indictments of the older grand jury shall be taken first. If two grand juries were impaneled in the same month, the indictments of the special grand jury shall be taken first.

(b) ASSIGNMENT OF CASES: EASTERN DIVISION. The clerk shall maintain an automated assignment system for the assignment and reassignment of cases in the Eastern Division. All cases filed in the Eastern Division shall be by assigned using the automated assignment system.

For the purposes of assigning cases to the calendars of the judges serving in the Eastern Division, the civil and criminal cases shall be divided into the categories indicated:

(1) Criminal Cases: (A) Criminal I, (B) Criminal II, (C) Criminal III, (D) Criminal IV, and (F) Criminal V; and

(2) Civil Cases: (A) Civil I, (B) Civil II, (C) Civil III, (D) Civil IV, (E) Civil V, (F) Civil VI, (G) Civil VII, (H) certificates for contempt filed by bankruptcy judges pursuant to Rule 920 of the National Bankruptcy Rules and certificates for contempt filed by magistrate judges.



In addition, those magistrate judge cases involving petty offenses based on the issuance of violation notices wherein defendants did not waive their right to trial before a judge of the district court which are referred to a judge of the district court shall constitute a separate assignment category.

The Executive Committee shall establish the types of cases to be included in Criminal categories I, II, III, IV, and V and in Civil categories I, II, III, IV, V, VI, and VII. A master list of the types of cases included in those categories shall be used by the assignment clerk in the assignment of civil and criminal cases.

The automated assignment system shall provide a separate process for assigning cases in each of the enumerated categories. In each process the name of each judge of this Court, other than the chief judge or any senior judge, shall appear an equal number of times. The sequence of judges' names within each block shall be kept secret. The process shall record for each case assigned the case number, the assignment category, and date and time of the assignment.

A motion for the return of property filed pursuant to FRCrP41(e) after an indictment or information has been filed in a criminal case shall be directly assigned to the district judge before whom the criminal case was last pending. If that judge is no longer sitting, the motion shall be assigned by lot to a district judge.

Whenever it appears that a case has been assigned by lot that should have been assigned directly under the provisions of this section, the judge receiving the case shall transfer it to the Executive Committee for reassignment to the calendar of the judge to whom it should have been assigned directly.

The automated assignment system will at the time of the reassignment of any case introduce any equalization required. The equalization will take the form of an adjustment to the appropriate assignment process that will treat the reassignment as a new assignment to the judge receiving the case and negate the assignment of the case to the judge reassigning it. Unless otherwise ordered by the Executive Committee in the order of reassignment, such equalization will apply in each of the following instances:

- (1) where a case is reassigned as related pursuant to LR40.4;
- (2) to correct an assignment error where a case that should have been assigned directly pursuant to LR40.3 was assigned by lot;
- (3) where a case is reassigned following a result of a recusal with equalization pursuant to IOP13(f); or
- (4) where the order of reassignment directs that the reassignment be with equalization.

The clerk shall periodically report to the Executive Committee on the performance of the automated assignment system. Such report shall include a summary of any assignments or reassignments for which equalization is required in addition to any automatic equalization authorized by these procedures. Where it determines additional equalization is required, the Executive Committee will enter an appropriate order.

Records of the system shall be preserved for five years except as otherwise ordered by the Executive Committee.

(c) DESIGNATION CYCLES FOR MAGISTRATE JUDGES. There shall be a designation cycle for magistrate judges for each of the assignment categories specified in IOP11(b), provided that the Executive Committee may direct that two or more of the categories other than Civil I, II, and III, and Criminal I, II, and III be combined into a single designation cycle. Each designation cycle shall consist of the names of each of the magistrate judges assigned to the Eastern Division. The names shall be arranged in order of seniority. Whenever a new case is assigned to a district judge using one of the assignment decks enumerated above, the clerk shall designate the magistrate judge whose name next appears on the designation cycle for that assignment category as the magistrate judge in the case.

Whenever pursuant to LR40.3(b) or LCrR50.2 a new case is assigned to a district judge directly and not by lot, the magistrate judge designated for the case originally assigned by lot will be designated for the later filed case. The provisions of this section notwithstanding, where an indictment or information arises out of one or more criminal complaints, the designated magistrate judge shall be the magistrate judge to whom the earliest of those complaints was assigned.

(d) ASSIGNMENT OF CASES: WESTERN DIVISION. Cases in the Western Division shall at filing be assigned to the district judge and referred generally to the magistrate judge whose duty stations are in that division, provided that the district judge may in any case set aside the initial general reference to the magistrate judge.

(e) Duties under the Federal Debt Collection Procedures Act.

Pursuant to 28 U.S.C. § 3008, the Court assigns its duties in proceedings under Chapter 176 of Title 28 of the United States Code, the Federal Debt Collection Procedures Act, (“FDCPA”) in all civil cases to the United States Magistrate Judges of this Court.

When relief under the FDCPA is sought by the United States, all necessary documents shall be submitted to the designated magistrate. If no magistrate judge has been previously designated, or where the designated magistrate judge is no longer sitting, a magistrate judge shall be designated as provided for by section (c). The designated magistrate shall supervise proceedings, decide all nondispositive matters, and prepare a report and recommendation in all dispositive matters. If the designated magistrate judge enters a report and recommendation on a dispositive motion, the clerk shall assign the case by lot to a district judge if one has not been previously assigned.

If the parties consent to the reassignment of the proceedings to a magistrate judge, the clerk shall reassign the case to the designated magistrate judge without the entry of a separate Executive Committee reassignment order.

(f) Assignment of Student Loan and Veteran Education Loan Cases. When a complaint is filed on behalf of the Department of Education or the Veterans’ Department alleging a failure to repay a student loan or a failure to repay an educational overpayment, the person filing the complaint shall indicate its nature to the assignment clerk. When a complaint of this type is filed, the assignment clerk shall designate a magistrate judge as provided for by section (c) above and shall assign the case generally to the United States magistrate judges. When necessary, the designated magistrate judge shall supervise pretrial proceedings, which may include the preparation of a report and recommendation for the disposition of any motion for injunctive relief, for judgment on the pleadings, for summary judgment, or to dismiss for any reason.

If the parties consent to the reassignment of the case to a magistrate judge, the clerk shall reassign the case to the designated magistrate judge without the entry of a separate Executive Committee reassignment order. If the magistrate judge enters the pretrial order or issues a report and recommendation on a dispositive motion, the clerk shall assign the case by lot to a district judge.

Where a case requires the involvement of a magistrate judge and no magistrate judge has been previously designated, or where the designated magistrate judge is no longer sitting, a magistrate judge shall be designated as provided for by section (c).

## **IOP12. Western Division Backup Judge**

(a) SELECTION. A regular active judge, whose duty station is the Eastern Division and who is not currently serving as chief judge, shall serve as the Western Division backup judge. The judge shall serve as backup judge for a period of 1 year commencing on the first day of January. The backup judge shall

be selected from among the eligible regular active judges on the basis of seniority, the most senior being selected first. No judge eligible to serve as the backup judge shall serve a second term until all other eligible judges have served at least once. No judge who has been in office for less than 6 months is eligible to serve as the backup judge.

(b) REASSIGNMENT OF CASES. Any case in which the judge assigned to the Western Division enters a recusal will be transferred to the Executive Committee for reassignment to the judge serving as Western Division backup judge. The Executive Committee will reassign the case to the calendar of the judge acting as backup judge as of the date of the Committee's order. The order of reassignment will also provide that the backup judge receive equalization for each case so reassigned in the form of a skip in the assignment of new cases in the same category.

### **IOP13. Reassignments and Transfers**

(a) MULTIDISTRICT LITIGATION. When it is brought to the attention of the Executive Committee that proceedings similar to those in a case pending in this District are pending in one or more other districts and that coordinated or consolidated pretrial discovery proceedings should be conducted, the Committee will notify each judge upon whose calendars such cases appear of the proceedings in the other district or districts. Each such judge will transfer the case or cases to the calendar of the Executive Committee. The Committee will reassign the cases to a judge designated by the Committee for the purpose of hearing and determining any and all motions in connection with such multi-district litigation. The judge to whom the cases are so assigned shall have the power to transfer them for the purpose of discovery to another district, either in this or in another circuit, when it is deemed necessary to promote multi-district discovery, provided that in those instances where the transfer of cases to other districts is being considered by the Panel for Multi-District Litigation, the cases shall not be transferred until such time as the Panel has made its determination.

Cases reassigned under this procedure that require trial following the completion of the consolidated discovery shall be transferred to the Executive Committee for reassignment to the judge from whose calendar they were initially transferred. If that judge is no longer sitting, the cases shall be reassigned by lot.

(b) FUGITIVE CALENDAR. The Executive Committee shall maintain a calendar called the Fugitive Calendar. Defendants in criminal cases shall be assigned to that calendar in accordance with the procedures set out in this section. Where appropriate, the term "judge" used in this section shall mean both district judge and magistrate judge.

(1) *Reassignment of cases to the Fugitive Calendar.* Whenever a defendant in a criminal case is fugitive for more than 30 consecutive days or whenever short of said 30 days the judge determines that a defendant is fugitive, the judge to whom the case is assigned shall transfer the defendant to the Fugitive Calendar. Such transfer shall be made even in those instances where other defendants in the case are not fugitive and the case is proceeding as to them, provided that where the judge determines that the presence of the fugitive defendant in such multiple defendant case is required for the trial of the non-fugitive defendants, and an order is entered to that effect, the fugitive defendant shall remain on the calendar of the judge.

(2) *Procedures for removing cases from the Fugitive Calendar.* Where a defendant on the Fugitive Calendar is arrested or appears and the judge to whom the case was assigned is still sitting and hearing criminal cases, the clerk shall promptly transfer the defendant from the Fugitive Calendar to the calendar of that judge. If the judge is either no longer sitting or is no longer receiving assignment of criminal cases, the following procedures shall be followed:

(A) Where the defendant is to be brought before a judge immediately following arrest or appearance, the United States Attorney shall have the defendant brought before the emergency judge who shall order the clerk to notify the Executive Committee of the need to have the defendant reassigned from the Fugitive Calendar.

(B) On being informed of the arrest or appearance of the defendant either as provided in (2)(A) or through other notification, the clerk shall promptly notify the Executive Committee of the need for an order directing the reassignment of the defendant.

(3) *Deferred Prosecution and the Fugitive Calendar.* Whenever subsequent to the filing of an indictment or information the judge approves a deferred prosecution for one or more of the defendants in the case and the case is not to be dismissed until the completion of the period covered by the deferred prosecution, the judge shall transfer the case to the Executive Committee for reassignment to the Fugitive Calendar. Following successful completion of the conditions of deferred prosecution or where the United States Attorney indicates that the conditions have not been met and prosecution should be continued, the judge from whose calendar the case was reassigned shall notify the clerk of the need for an order of the Executive Committee reassigning the case from the Fugitive Calendar to the calendar of that judge.

(4) *Calendar call of the Fugitive Calendar.* The Executive Committee may assign one or more judges for the purpose of making a periodic call of the cases on the Fugitive Calendar. The judge or judges assigned shall from time to time consult with the United States Attorney and the Attorney General to ascertain whether dismissals of particular criminal actions shall be deemed advisable.

(c) REASSIGNMENTS AND ASSIGNMENTS OF CASES TO THE CHIEF JUDGE AND SENIOR JUDGES. From time to time the Executive Committee may assign cases to the chief judge or to any senior judge. Such assignment may be performed in any of the following ways:

(1) The Executive Committee may direct the clerk to assign cases to the chief judge or to a senior judge in the same manner as cases are assigned to a regular active judge but limit the number of categories so assigned.

(2) The Executive Committee may direct the clerk to include the name of the chief judge or a senior judge in the assignment process of one or more assignment categories. In any order directing the assignment of new filings to the chief judge or a senior judge, the Executive Committee shall fix the frequency with which the name of the chief judge or senior judge shall appear in the process for the assignment category specified. The order shall also direct the clerk to assign cases in the assignment categories specified whenever that judge's name appears.

(3) The Executive Committee may, with the consent of the judge to whom such case or cases is assigned, direct that one or more cases be reassigned to the chief judge or to any senior judge.

(d) REASSIGNMENT BY AGREEMENT. Where two or more judges agree that the reassignment of one or more cases to one of them will enable the case or cases to be more efficiently administered and will serve to save judicial time, the cases involved may be transferred to the Executive Committee with a request for such reassignment. The request shall indicate briefly the reasons for such reassignment and specify whether or not the judge receiving the case is to return any case or cases to the Committee for reassignment to the transferring judge. If the Committee finds that the reassignment will enable a more efficient administration of the cases, it may then order the reassignment.

(e) COORDINATED PRETRIALS IN COMPLEX CASES NOT INVOLVING MULTI-DISTRICT LITIGATION.

The Executive Committee may determine that it would be in the best interests of efficient judicial administration to hold a coordinated pretrial proceeding in a group of cases which either (1) are not related within the meaning of LR40.4(a) or (2) are related within the meaning of LR40.4(a) but reassignment is not appropriate under LR40.4(b). Where such a determination is made, the Committee will designate a judge to hold such a proceeding. The cases shall remain on the calendars of the judges to whom they were assigned at the start of the coordinated proceeding and only matters specified in the order of coordination shall be brought before the designated judge. All judges affected by such a coordinated pretrial proceeding shall be notified by the clerk.

(f) RECUSALS. (Amended July 7, 2000)

(1) *General Procedures.* Except as otherwise provided in this section, whenever a case is transferred to the Executive Committee for reassignment following a recusal, the Committee shall direct the clerk to reassign the case by lot to a judge other than the judge who entered the recusal. A judge receiving a case on reassignment following a recusal shall promptly determine whether or not to enter a recusal. Where a recusal is entered, the judge shall promptly transfer the case back to the Committee which shall thereupon direct the clerk to reassign the case by lot to a judge other than those previously entering recusals. Where a recusal is not entered, the judge may transfer to the Committee for reassignment to the judge entering the initial recusal a case requiring a like amount of judicial effort for disposition. The Committee will reassign that case subject to verification that it will require like judicial effort.

(2) *Recusals with Equalization.* Where the reason for the recusal is included in one of the categories specified in this subsection, the judge entering the recusal may request that in lieu of receiving a like case from the receiving judge, the recusal be made part of the calendar equalization set out in IOP11(b). The categories of recusals for which this procedure may be used are as follows:

(A) cases in which a recusal is entered because a relative of the judge works for a law firm, or the U.S. Attorney's Office, which represents or is one of the parties to the case; and

(B) cases in which one of the parties is or is represented by a law firm with which the judge was associated within the previous five years.

(g) CALENDAR OF SHORT CIVIL TRIALS. The calendar of short civil trials is a program intended to provide a list of cases that are ready for trial and where the trial is expected to take no more than five days. Cases on the list can be handled by visiting judges or by judges of the Court who as a result of unanticipated settlements find that they have available time to try a case.

(1) The following definitions shall apply to section (g):

(A) *Judge:* Any district judge of this Court on whose calendar there are civil cases pending.

(B) *Listing form:* A form approved by the Executive Committee to be used by the assigned judge to effect the addition or removal of a case to or from the short civil trial calendar.

(C) *Ready for trial:* A short civil trial case is ready for trial if (i) the final pretrial order has been entered and (ii) there are no unresolved pending motions other than motions *in limine* reserved for ruling at trial.

(D) *Requesting judge:* A judge who requests a case from the short civil trial calendar or to whom such a case has been transferred but not reassigned.

(E) *Short civil trial case*: A short civil trial case is a civil case that is ready for trial and it is estimated by the assigned judge at the time of entering the pretrial order that the trial will last no more than five days, including jury selection.

(F) *Short civil trial calendar*: All cases in which a listing form has been received by the clerk that are still pending and available for reassignment to a requesting judge.

(G) *Short civil trial calendar judge*: The chief judge, or a judge designated by the chief judge, will be the short civil trial calendar judge. The short civil trial calendar judge will be responsible for coordinating the trial of cases on the short civil trial calendar.

(2) Any judge may place a short civil trial case on the short civil trial calendar by sending a completed listing form to the clerk. In order to assist the court in determining whether or not placing a case on the short civil trial calendar might be inappropriate, counsel will include in the final pretrial order form information concerning the anticipated circumstances of the trial that might impact scheduling.

(3) On receiving the listing form, the clerk shall forthwith docket the form and notify counsel and parties of the docketing in the manner provided by Fed.R.Civ.P. 77(d) for notice of orders or judgments. The clerk will include with the notice a reminder to parties of their right to consent to a reassignment of the case to the designated magistrate judge pursuant to 28 U.S.C. §636(c) and LR73.1(b).

(4) Any judge, including any senior district judge or visiting judge designated to hold court in this District, who is available to try a short civil case may request such a trial from the short civil trial calendar judge. The short civil trial calendar judge will forward the earliest filed case on the short civil trial calendar that fits the available trial time of the requesting judge. Any case so selected will be transferred to the requesting judge for pretrial review. Such transfer will serve as authority for the requesting judge to act in the case as if the case had been reassigned, although the case will remain on the docket of the assigned judge. The case will be reassigned to the requesting judge for all purposes if it is settled by that judge, or if that judge starts a trial in the case.

(5) If the requesting judge determines that a transferred case is not ready for trial, that judge will so inform the short civil trial calendar judge. The short civil trial calendar judge will so notify the assigned judge and may thereupon remove the case from the short civil trial calendar.

(6) Nothing in this rule shall preclude the assigned judge from settling or trying a case the judge has listed on the short civil trial calendar. If the assigned judge is able to resolve the case, the judge will forward a completed listing form to the clerk. The clerk will notify the short civil trial calendar judge that the case is to be removed from the short civil trial calendar.

(7) Motions brought in cases listed on the short civil trial calendar prior to its transfer to a requesting judge shall be heard by the assigned judge. Motions brought after the transfer but before the reassignment of the case to the requesting judge will be brought before the requesting judge. The requesting judge may thereupon send the motions to the assigned judge.

(8) When a case is disposed of following a trial conducted by a requesting judge who routinely participates in the assignment of civil cases filed in the Eastern Division, then that judge shall receive equalization in the form of one skip in the assignment deck of the same category as that of the case closed.

(h) TRANSFER OF MOTIONS BY AGREEMENT. A judge may with the agreement of the receiving

judge transfer one or more pending motions to be ruled upon by the receiving judge without transferring the case. The transferring judge shall notify the Executive Committee of any transfer made under this rule. Such notice will be on a form approved by the Committee.

Notice of any transfer under this rule shall be sent to the parties. The notice shall indicate the name of the receiving judge. Any motion challenging the transfer on grounds other than the recusal of the receiving judge will not be entertained. Any such motion shall be filed with the receiving judge. Any motion for rehearing of a ruling by the receiving judge shall be presented to the receiving judge.

(i) OTHER REASSIGNMENTS AND TRANSFERS. If a case is transferred to the Executive Committee for any reason not otherwise provided for in local rules or the internal operating procedures and the Committee agrees that the case should be reassigned, it shall cause the case to be reassigned by lot. If the name of the transferring judge is drawn, another drawing shall be made. The judge who receives the case may transfer to the Committee a case or cases requiring a like amount of judicial effort to dispose of it or them, with the recommendation that it or they be reassigned to the calendar of the transferring judge.

(j) ORDER OF REASSIGNMENT. Where one or more cases are to be reassigned pursuant to LR40.4, LR40.5, or sections (a), (b), (c), (d), (f), or (i) of this IOP, the assigned judge shall complete the appropriate reassignment transfer form. If the assigned judge is no longer sitting, the clerk shall complete the form. The transfer form will be given to the clerk who shall promptly transmit it to the chief judge. The chief judge may on receipt of the form enter an order on behalf of the Executive Committee directing that the case or cases be reassigned or may ask the full Committee to review the requested reassignment at the next meeting.

A case will be deemed reassigned following the docketing of the order of the Executive Committee directing its reassignment.

#### **IOP14. Magistrate Judges: Referrals & Recusals**

(a) REFERRALS. These procedures govern referrals to magistrate judges in the Eastern Division made pursuant to LR72.1 and LCrR50.3(d).

(1) Except as provided for in section (2) below, referrals shall be made using a form approved by the Executive Committee. The form shall include the case caption, a form order of transfer to be signed by the transferring judge, a section in which the transferring judge indicates the nature of the referral, and a form order of referral to be signed by the chief judge on behalf of the Executive Committee. A judge wishing to refer a matter will send a completed form to the clerk. The clerk shall promptly submit it to the chief judge. After reviewing the form the chief judge may either sign the referral order or place the form on the agenda of the next meeting of the Executive Committee for consideration by the full Committee. On receipt of a referral order signed by the chief judge the clerk shall cause it to be docketed and notices of the referral sent to the magistrate judge and the parties of record.

This procedure will be followed for each referral within a case made under this section, regardless of whether or not an earlier referral remains pending.

(2) A judge may refer a civil case to the designated magistrate judge for discovery supervision, the

handling of one or more discovery motions, or for a settlement conference without transferring the case to the Executive Committee. In such instances, the referral shall be made following procedures approved by the Executive Committee. The clerk will prepare a report to the chief judge on a monthly basis that lists referrals made under this section. After reviewing this report the Chief Judge will sign an Executive Committee order ratifying the referrals. The Chief Judge may cause individual referrals listed in the report to be placed on the agenda of the next meeting of the Executive Committee for consideration by the full Committee.

(b) **RECUSALS.** These procedures govern recusals by magistrate judges in the Eastern Division. Where the recusal is entered in a case reassigned on consent pursuant to LR73.1 it shall be reassigned to another magistrate judge using the procedures for handling recusals by district judges set out in IOP13(f). Where the recusal is entered in a matter assigned to the magistrate judge pursuant to LCrR5.1, or in a matter referred to the magistrate judge pursuant to LR72.1, or in a case where a consent to enter judgment or other limited consent was entered pursuant to LR73.1(b) and (c), the case or matter will be reassigned as provided by IOP13(f), but no case or matter will be sent to the recusing magistrate judge by the magistrate judge to whom the case or matter is reassigned.

In addition to the assignment categories specified in IOP11(b) and the designation cycle for magistrate judge in IOP11(c), the clerk shall maintain a separate assignment category for reassigning matters between magistrate judges pursuant to this section. The computerized assignment system shall provide a separate process for reassigning magistrate judge recusals. The name of each magistrate judge in the Eastern Division shall appear in that process an equal number of times. The process shall be used to reassign cases or matters where a magistrate judge enters a recusal.

Where the magistrate judge recuses with equalization as provided by IOP13(f)(2), or where pursuant to this section the magistrate judge recuses in a case or matter and the magistrate judge to whom the case or matter is reassigned is precluded from sending a case or referral requiring similar judicial effort to the recusing magistrate judge, the reassignment process will equalize the magistrate judge recusal category in the manner set out in IOP11(b).

The clerk will include an analysis of recusals by magistrate judges in the periodic report required by IOP11(b).

(c) **OTHER REASSIGNMENTS OR REFERRALS.** Where a local rule specifies that a case is to be referred or reassigned to the designated magistrate judge and no magistrate judge has been designated in accordance with IOP11(c), the case will be referred or reassigned by lot using the assignment process provided for reassigning magistrate judge recusals.

## **IOP15. Bankruptcy Matters**

(a) **REFERRAL TO BANKRUPTCY JUDGES.** Pursuant to 28 U.S.C. §157(a), any and all cases under Title 11 U.S.C. and any and all proceedings arising under Title 11 U.S.C. or arising in or related to any case under Title 11 U.S.C. are referred to the bankruptcy judges of this District.

(b) **ASSIGNMENT BY LOT.** Except as provided by sections C, D, E and F of this rule, each of the following shall be assigned by lot to a district judge:

- (1) any motion (including a recommendation by a bankruptcy judge) for the withdrawal of the reference of a bankruptcy (“B”) case or proceeding pursuant to 28 U.S.C. §157(d);
- (2) any motion (including a recommendation by a bankruptcy judge) for the withdrawal of the reference of an adversary (“A”) proceeding pursuant to 28 U.S.C. §157(d);
- (3) any report and recommendation of a bankruptcy judge in a non-core proceeding filed pursuant to 28 U.S.C. §157(c)(1); and

Where assigned by lot, petitions for withdrawal of reference, appeals, motions for



leave to appeal, and applications for writs shall be assigned using the Civil II assignment category and reports and recommendations using the Civil III assignment category.

(c) **DIRECT ASSIGNMENT IN BANKRUPTCY (“B”) CASES.** If in a bankruptcy (“B”) case or set of related bankruptcy (“B”) cases a report and recommendation referred to in (b)(3) is filed pursuant to the prior direction of a district judge, the report shall be assigned directly to the calendar of that judge.

If in a contested matter within a bankruptcy (“B”) case a motion for withdrawal of reference, or a report and recommendation, or an appeal, or a motion for leave to file an interlocutory appeal, or an application for a writ referred to in (b)(1) or (b)(2), respectively, is filed and a motion, report, appeal, motion for leave to file an interlocutory appeal, or application for a writ referred to in (b)(1) or (b)(2), was previously filed in the same contested matter and assigned by lot to a district judge, then the subsequent motion, report, appeal, motion for leave to file an interlocutory appeal, or application for a writ shall be assigned directly to the calendar of that judge.

(d) **DIRECT ASSIGNMENT IN ADVERSARY (“A”) PROCEEDING.** If in an adversary (“A”) proceeding a motion for withdrawal of reference, or a report and recommendation, or an appeal or a motion for leave to file an interlocutory appeal, or application for a writ referred to in (b)(1) or (b)(2), respectively, is filed and a motion, report, appeal, motion for leave to file an interlocutory appeal, or application for a writ referred to in (b)(1) or (b)(2) was previously filed in the same adversary (“A”) proceeding and assigned by lot to a district judge, then the subsequent motion, report, appeal or motion for leave to file an interlocutory appeal, or application for a writ to be assigned shall be assigned directly to the calendar of that judge.

(e) **DIRECT ASSIGNMENT FOLLOWING REMAND.** If in any bankruptcy (“B”) case or in any adversary (“A”) proceeding a district judge enters an order, opinion, or memorandum remanding a matter before that judge to the bankruptcy court for further proceedings, then any subsequent motion, report, motion for leave to file an interlocutory appeal, or application for a writ with respect to the matter remanded shall be assigned directly to the calendar of that judge.

(f) **RELATEDNESS.** Where matters in the underlying bankruptcy case, or adversary proceedings associated with the underlying proceedings, or non-core proceedings associated with the underlying proceedings are pending on the calendars of two or more district judges, motions for relatedness may be filed to have the matters assigned to the calendar of one judge. The standards and procedures established by LR40.4 shall apply to such motions. For the purpose of determining the judge before whom such motion for relatedness should be filed, the term “lowest-numbered pending case” as used in LR40.4 shall refer to the petition initiating the bankruptcy case, the adversary proceeding, or the non-core proceeding with the earliest date and time of the filing with the bankruptcy clerk. The motion for relatedness shall include a listing of the dates and times of filing of each of the matters which movant is asking to be found related. Where a case is reassigned as related, it shall be treated on the same manner as a reassignment for relatedness pursuant to LR40.4 for the purposes of the equalization provisions of IOP11(b).

(g) **DESIGNATION SHEET.** The person filing the petition for withdrawal of reference, report and recommendation, appeal, motion for leave to appeal, or application for a writ shall complete the designation sheet required by LR3.1 and shall include on the sheet a list of any associated bankruptcy cases, adversary proceedings, non-core proceedings, appeals or motions for leave to appeal, or application for a writ from such proceedings previously assigned to one or more district judges.

## **IOP16. 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.

(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 target 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 Integrated Case Management System (“ICMS”) 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 target 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 target 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 to form an initial calendar 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, S<sub>1</sub>, is randomly selected from the set of numbers 1,2,3,...,(I-2),(I-1),I. The random number generator used to select S<sub>1</sub> is such that each number in the

set has an equal chance of being selected.

(7) The primary lists consists of the  $S_1$ th case, the  $(S_1 + I)$ th case, the  $(S_1 + 2I)$ th case, the  $(S_1 + 3I)$ th case, ..., and the  $[S_1 + (R-1)I]$ 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,  $S_2$ , 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 ICMS 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  $\frac{1}{2}$  of a participating judge equivalent. The 20 judges thus total 19 participating judge equivalencies, *i.e.*,  $17+1+\frac{1}{2}+\frac{1}{2}$ .

(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 cases 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  $\frac{1}{2}$  each for the chief judge and senior judge B, plus 1 for senior judge A, plus 2 for the new judges. The target 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 target 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 reassigning 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 11<sup>th</sup> and every 19<sup>th</sup> case thereafter will be picked from the calendar list. The last case will be the 277<sup>th</sup>.

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 286<sup>th</sup> through the 293<sup>rd</sup> cases on the list have no 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.

### **IOP17. Initial Calendar for New Magistrate Judge**

(a) **GENERAL; APPLICABILITY OF IOP16.** An initial calendar shall be prepared under the direction of the Executive Committee for any newly-appointed magistrate judge. The calendar shall consist of referrals in civil cases made pursuant to LR72.1 and IOP14 and civil cases reassigned on consent pursuant to LR73.1. No referrals in criminal cases or criminal cases assigned to a magistrate judge shall be included in an initial calendar.

Except as provided in section (b), the provisions of IOP16 shall be followed in preparing the initial calendar for a magistrate judge. Referrals and cases reassigned on consent shall be treated as two separate categories and separate target numbers and primary and secondary lists shall be prepared for each category. For the purpose of preparing the initial calendar for a magistrate judge, references to a regular active judge in IOP16 shall be taken to mean sitting magistrate judge. Referrals in criminal cases shall be included in the count of cases used to determine the target value for the number of civil referrals to be reassigned to form the initial calendar. Similarly, criminal cases assigned to magistrate judges will be included in the count used to determine the target value for the number of consent cases to be reassigned to form the initial calendar.

(b) **EQUALIZATION AND INITIAL CALENDAR FORMATION.** The Executive Committee may use the formation of an initial calendar to equalize disparities in the calendars of magistrate judges. In the order directing the formation of an initial calendar for a magistrate judge the Executive Committee may direct that any of the following methods of determining the extent to which sitting magistrate judges may participate in the reassignment be used in lieu of the equal share participation rate established by IOP16:

- (1) the participation may be limited to the magistrate judges most in need of equalization; or
- (2) the participation may be based on the proportions of pending referrals or reassignments on consent rather than equal shares; or
- (3) the participation may be based on the proportion of referrals or reassignments on consent received over a specified time period rather than pending numbers; or
- (4) the participation may be based on such other method as the Executive Committee directs in order to achieve equalization of calendars among the magistrate judges.

Regardless of the method used, the referrals and cases to be reassigned will be selected from the calendars of the participating magistrate judges by lot in accordance with the procedures set out in IOP16.

*Committee Comment.* IOP17 applies only to the formation of the initial calendar of a magistrate judge assigned to the Eastern Division. Currently there is only one full-time magistrate judge assigned to the Western Division, so any new magistrate judge would simply replace a sitting judge and take over the latter's calendar. Section (a) of IOP17 provides that the procedures of IOP16 are, to the extent applicable, to be used in forming the initial calendar of a magistrate judge in the Eastern Division.

The calendar of a magistrate judge differs from that of a district judge in an important way. The calendar of a magistrate judge includes both referrals and cases reassigned on consent. The jurisdictional status of the latter is like that of the cases on the calendars of the district judges. The referrals, however, are simultaneously on the calendars of both a district and a magistrate judge. Accordingly, for the purpose of forming an initial calendar for a magistrate judge, the Court requires that referrals and reassignments on consent be kept separate. The initial calendar for the new magistrate judge will, therefore, involve two reassignment processes: one to select the referrals and the other to select the cases reassigned on consent.

There is another area in which the assignment of cases and referral of matters to magistrate judges differs from the assignment of new cases to regular active district judges. The system of assigning cases to district judges is designed to assure that each regular active judge receives the same number of new cases over time as each of the other regular active judges. Each magistrate judge in the Eastern Division is designated an equal number of times. However, a designation is a potential referral or reassignment on consent, not an actual referral or reassignment. Whether or not a case is referred is a result of many factors, case complexity and the calendar management style of the referring district judge, being just two of the more obvious. As a result, there often arises a significant variance among the magistrate judges in the numbers of referrals they receive. As civil consent cases frequently arise out of referrals, a similar variance occurs in the reassignment of cases on consent.

The formation of an initial calendar for a newly appointed magistrate judge provides and opportunity for the Court to address any calendar imbalances that have arisen among the magistrate judges because of variances in referral and reassignment rates. The default method of preparing an initial calendar is to use the procedures of IOP16, *i.e.*, the same system as that used to create the initial calendar of a new district judge. Under that system each magistrate judge would participate equally in the formation of the initial calendar. However, section (b) provides that the Executive Committee may depart from the equal participation approach of IOP16 and use the process of forming the initial calendar to equalize existing calendars. This may be done in one of four ways: (i) the participation may be limited to the magistrate judges most in need of equalization; or (ii) the participation may be based on the proportions of pending referrals or reassignments on consent rather than equal shares; or (iii) the participation may be based on the proportion of referrals or reassignments on consent received over a specified time period rather than pending numbers. The fourth alternative is simply a catch-all: “or by such other method as the Executive Committee directs in order to achieve equalization of calendars among the magistrate judges.”

#### **IOP18. Periodic Calendar Adjustment Program (District Judges) (Amended 7/7/00)**

(a) PARTICIPATION. In order to participate in the program, a judge of the District must meet the following criteria:

- (1) The judge is a regular active judge.
- (2) The official duty station of the judge is Chicago.
- (3) The judge entered on duty a minimum of 60 months preceding the months during which the judge is to be removed from the assignment process as part of the program. (amended September 10, 2001)
- (4) Where 2 or more judges are eligible to be removed from the assignment process under these procedures, they may agree to exchange scheduled adjustment periods for which they have been scheduled provided each of the judges is eligible to serve in the

exchanged period.

(b) ORDER OF JUDGES WITHIN A CYCLE. Each year the Executive Committee will enter an order directing the clerk to remove judges from the assignment process for periods of 3 months. Each such order will establish a cycle of four periods. The order of participation in each cycle will be based on the following criteria:

- (1) Judges who have not previously participated in the calendar adjustment program shall be scheduled for the first period after they have met the eligibility criteria established in section (a) above.
- (2) If two or more judges who have not previously participated are eligible for the same period, the order of their participation shall be based on seniority.
- (3) The order of judges' names for any remaining periods in a cycle will be based on the length of time since their last participation in the calendar adjustment program; *i.e.*, the judge with the longest such interval will be assigned to the first available period.

(c) SEQUENCE OF NAME CONFIDENTIAL. In order to permit the judges to plan to take best advantage of the opportunities offered by the program, a tentative list for 3 years will be issued to each judge at the time a copy of the order implementing the current periods is adopted. However, because knowledge that a judge may be removed from the assignment process might be used to permit judge shopping, the sequence should not be publicized.

(d) EXCHANGES OF PERIODS. If 2 or more judges tentatively scheduled for the next year agree to change periods with other eligible judges as provided by subsection (a)(4), those involved should notify the chief judge so that the Executive Committee order can incorporate the agreement.

(e) EMERGENCY JUDGE SCHEDULE. Where a judge's emergency judge period would fall in a period during which the judge is scheduled to be removed from the assignment process under these procedures, the emergency judge assignment will be delayed to the next emergency judge period that falls outside of the non-assignment period.

*Committee Comment.* The essence of the periodic calendar readjustment program is that a judge is taken off the assignment wheel for a period of three months after having an aggregate of at least four years on the assignment wheel. The program is designed to give each judge a three month period approximately every four years where the judge can schedule matters without the pressure of monitoring new cases and the work associated with new cases such as petitions for preliminary injunctions.

The program only applies to the Eastern Division. In general, it has the effect of having one fewer judge on assignment at any point in time. Given that there are 21 judgeships authorized for that Division plus the active senior judges, the share of new cases of one judge divided among the remaining judges results in several additional cases per month for each of the others. The judges have agreed that the scheduling convenience permitted by the program outweighs the small increase in new assignments each receives when not off the wheel.

The program was initially adopted at the judges' meeting of 13 April 1989. It was subsequently amended at the judge's meetings of 17 April 1995 and June 29, 2000.

### **IOP19. Periodic Calendar Adjustment Program (Magistrate Judges)**

(a) INTRODUCTION. The periodic calendar adjustment program for magistrate judges provides for a magistrate judge not to receive new referrals in civil or criminal cases, new civil cases reassigned on consent of the parties, or new criminal misdemeanor cases for a period of three months after five years of service.

(b) PARTICIPATION. In order to participate in the program, a magistrate judge of the District must meet the following criteria:

- (1) The magistrate judge is a full-time magistrate judge.
- (2) The official duty station of the magistrate judge is Chicago.
- (3) The magistrate judge has not previously participated in the program and entered on duty sixty months preceding the months during which the magistrate judge is to be removed from the assignment process as part of the program.
- (4) The magistrate judge has previously participated in the program and an aggregate of fifty-one months (forty-eight months plus the three months of the previous adjustment period) has elapsed from the date the magistrate judge was last eligible to participate in the program.
- (5) Where two or more magistrate judges are eligible to be removed from the assignment process under these procedures, the magistrate judge who has previously been removed the fewest times under this program will be scheduled first. Where two or more magistrate judges are eligible to be removed from the assignment process under these procedures and each was previously removed the same number of times, the most senior magistrate judge will be scheduled first.
- (6) Where two or more magistrate judges are eligible to be removed from the assignment process under these procedures, they may agree to exchange scheduled adjustment periods for which they have been scheduled in accordance with (5) above provided each of the magistrate judges is eligible to serve in the exchanged period.
- (7) A magistrate judge may request to be removed from the assignment process during a period later than that for which the magistrate judge would be scheduled under these procedures provided that no magistrate judge is eligible for that later period.

(c) ORDER OF MAGISTRATE JUDGES WITHIN CYCLE. From time to time, the Executive Committee will enter an order directing the clerk to remove magistrate judges from the assignment process for periods of three months. The first magistrate judge to be removed shall be the most senior magistrate judge who meets the criteria set out in (b) above. The second magistrate judge to be removed shall be the next most senior magistrate judge meeting the criteria, etc.

(d) SEQUENCE OF MAGISTRATE JUDGE NAME CONFIDENTIAL. In order to permit the magistrate judges to plan to take best advantage of the opportunities offered by the program, a tentative list for three years will be issued to each magistrate judge at the time a copy of the order implementing the current periods is adopted. However, because knowledge that a magistrate judge may be removed from the assignment process might be used to permit magistrate judge shopping, the sequence should not be publicized.

(e) ORDER OF EXECUTIVE COMMITTEE. The Executive Committee will enter an order annually covering the next four periods. If two or more magistrate judges tentatively scheduled for the next year agree to change periods with other eligible magistrate judges as provided by (b)(6) above, those involved should notify the Chief Judge so that the order can incorporate the agreement.

(f) CONFLICTS BETWEEN SABBATICAL AND MAGISTRATE JUDGE ASSIGNMENT CYCLES. A magistrate judge shall not serve as emergency magistrate judge, duty magistrate judge or federal enclave magistrate judge during a period when he or she is participating in the calendar adjustment program.

(g) REFERRALS AND REASSIGNMENTS ON CONSENT WHERE THE DESIGNATED MAGISTRATE JUDGE IS ON SABBATICAL. Except as provided for in section (h) below, during periods when a magistrate judge is participating in the calendar adjustment program, referrals and reassignments in cases where the magistrate judges has been designated pursuant to LR72.1 shall be randomly referred or

reassigned to another magistrate judge.

The magistrate judge who receives a referral or case as provided for by this section shall become the designated magistrate judge in that case.

(h) **SUBSEQUENT REFERRALS AND REFERRALS IN RELATED CASES.** Where a designated magistrate judge previously received a referral in a case and a subsequent referral is to be made in that case during the period when the magistrate judge is participating in the calendar adjustment program, the referral shall be made to that magistrate judge. Similarly, where a designated magistrate judge previously received a referral in one or more cases in a related set of cases and a referral is to be made in another case that is part of the related set during the period when the magistrate judge is participating in the calendar adjustment program, the referral shall be made to that magistrate judge.

(i) **CONTINUATION OF DESIGNATION AT FILING.** A magistrate judge who is participating in the periodic calendar adjustment program shall not be removed from the designation cycle provided for by LR72.1.

## **IOP20. Consents to Proceed Before a Magistrate Judge**

(a) **NOTICE OF AVAILABILITY.** Whenever a civil action is filed in this District, the clerk shall notify the parties of the availability of a magistrate judge to exercise jurisdiction. The form of such notice shall be approved by the Executive Committee. The clerk shall notify the parties in the following manner:

(1) *Plaintiffs:* Where there is only one plaintiff or where all of the plaintiffs are represented by the same attorney or firm of attorneys, by providing the person filing the complaint with one copy of the form for each plaintiff. Where there is more than one plaintiff and the same attorney does not represent all of the plaintiffs, by mailing a copy of the notice to each of the plaintiffs listed in the complaints at the address indicated, or where the complaint is filed by counsel, to the attorney or attorneys.

(2) *Defendants:* The clerk will provide the plaintiff with a sufficient number of copies of the notice in order that the plaintiff can comply with this rule. The plaintiff shall attach a copy of such notice to the copy of the complaint and summons that are to be served on each defendant.

(b) **NOTICE TO NEWLY JOINED PARTY.** Whenever a party is added to a case the district judge or magistrate judge to whom the case is assigned will direct the clerk to mail to the additional party a notice of the availability of a magistrate judge to exercise jurisdiction. The direction to the clerk will specify a time limit by which the clerk is to notify the district judge or magistrate judge that the consent has or has not been filed. Where the consent is not filed within that time, the magistrate judge will promptly send the case to the Executive Committee for reassignment to the calendar of the district judge to whom the case was previously assigned.

(c) **CONSENTS; NOTICE TO JUDGE.** Consents filed by parties following notification under sections (a) and (b) will be maintained by the clerk in a separate file until such time as consents have been filed by all parties or their counsel. Parties or attorneys representing parties in a given case may see only the consent filed by them or on their behalf. The clerk shall not reveal the contents of any consent form to any district judge or magistrate judge, unless all parties have consented to the reassignment to a magistrate judge. At such time as consents are filed by all of the parties, the clerk will notify the district judge to whom the case is assigned. The notice to the judge and the consents will be docketed and made part of the case file.

## **IOP21 through IOP24. Reserved**

## **IOP25. Emergency District Judge**

(a) **DESIGNATION OF THE EMERGENCY JUDGE.** At all times there shall be at least one judge of the Court assigned to act as emergency judge and perform the duties specified in LR77.2. The emergency judge shall be a regular active judge of the Court other than the chief judge or a judge whose duty station is outside the Eastern Division, provided that the chief judge may designate a senior judge to serve as emergency judge if such senior judge consents. No judge shall serve as emergency judge within the six months immediately after taking the oath of office. The chief judge may also serve as emergency judge.

There shall be two cycles for designating emergency judges: one for service during the summer sessions and the other for the balance of the year. Judges shall serve as emergency judge in order of seniority. No judge shall serve a second monthly term until all eligible judges have served a monthly term, nor shall any judge serve a second two week term until all eligible judges have served a two week term. The clerk shall maintain a record of the emergency judge periods served by each judge.

(b) **TERMS OF SERVICE.** The term of service of an emergency judge shall start at 12:01 A.M. on Monday and end at midnight on the Sunday immediately preceding the Monday starting the next term of service. The length of service shall be as follows:

(1) during the summer sessions, *i.e.*, the ten week period beginning the first Monday in July, the term shall be two weeks; and

(2) during the balance of the year, the term shall be for one month starting with the first Monday of each month, provided that if the first Monday in September falls in the summer session, the September terms of service shall start with the second Monday in September.

(c) **PRELIMINARY ASSIGNMENT SCHEDULES.** By 1 May of each year the clerk shall prepare and circulate among the judges preliminary schedules of emergency judges: one for the summer sessions of that year and one covering the service periods from the end of those summer sessions to the start of the next summer sessions. In preparing a preliminary schedule the clerk shall list for the first service period the most senior of the eligible judges who have not yet served in the current service cycle, for the next service period, the next most senior judge, etc. The clerk shall, where appropriate, modify this initial listing, to take into account the following:

(1) *New judge exception:* The clerk shall schedule any newly appointed judge who has never served as an emergency judge for the first service period starting not less than 6 months after that judge takes the oath of office. Where there are two or more such judges, the clerk shall schedule them in order of seniority. For the purpose of the records of service in emergency judge cycles kept by the clerk, each judge will be required to serve for a period in the emergency judge cycle in effect at the time the judge took the oath of office.

(2) *Recent service exception:* Even though the judge is otherwise eligible, the clerk shall not include a judge in the preliminary schedule who served as emergency judge in the previous period for which the lists are being prepared, *i.e.*, served as emergency judge in the last summer sessions where a schedule for the summer sessions is being prepared, or served as an emergency judge in the last regular set of service periods where a schedule for those periods is being prepared. The clerk shall re-schedule any judge covered by this exception to the first service in the preliminary lists for the next year.

(3) *IOP18(e) exception:* If the service period for which a judge is initially scheduled falls within the period during which pursuant to IOP18 the judge is not receiving new assignments, the clerk shall list the judge in the first service period that starts after the IOP18 period ends.

Within 14 days of the date on which the preliminary lists were circulated, any judges agreeing to

switch with all or part of a service period for which the judges were scheduled shall so inform the clerk. The clerk shall modify the preliminary schedules accordingly. Within 21 days of the date on which the preliminary lists were circulated, the clerk will prepare and forward to the chief judge a draft of a general order setting out the modified preliminary schedule for emergency judges for the next summer sessions and for the next period between the end of that summer sessions and the start of the next summer sessions.

(d) FORMAL SCHEDULE NOT PUBLISHED. The order signed by the chief judge constitutes the formal schedule of emergency judge assignments for the period covered by the order. To minimize the potential for judge shopping, the formal schedule is not made public. At the beginning of each week the name of the emergency judge is made available for that week.

(e) ADJUSTMENTS TO SCHEDULE. Should two or more judges agree to change all or part of their service periods after the order fixing the schedule has been entered, they must notify both the chief judge and the clerk. Where the change involves more than a few days, an amended order will be entered incorporating the change.

(f) ABSENCE OF EMERGENCY JUDGE. In the event that the emergency judge will be out of town or otherwise unavailable, the emergency judge will arrange for another judge to act as emergency judge. Where such an arrangement is made, the emergency judge will promptly inform the chief judge and the clerk of the substitution. The chief judge may make such substitution if for any reason it has not been made and the scheduled emergency judge is unavailable.

Where the designated emergency judge is unable to serve as emergency judge due to illness and an order is entered removing the judge from the assignment system due to the same illness, for the purpose of subsequent designations as emergency judge, the designated judge will be considered to have served as emergency judge during the designated period regardless of the amount of time, if any, the judge actually served. The judge or judges assuming the judge's duties will not normally receive any additional credit for the service unless one judge served for the entire period and the chief judge instructs the clerk to credit both the originally designated judge and the serving judge with the period.

## **IOP26. Emergency Magistrate Judge**

(a) DESIGNATION OF THE EMERGENCY MAGISTRATE JUDGE. At all times there shall be at least one magistrate judge of the Court assigned to act as emergency magistrate judge and perform the duties specified in LR77.2. Only a magistrate judge whose duty station is in the Eastern Division shall be assigned the duties of emergency magistrate judge. No magistrate judge shall serve as emergency magistrate judge within the six months immediately after taking the oath of office.

(b) TERMS OF SERVICE. The term of service of an emergency magistrate judge shall be two weeks. It shall start at 12:01 A.M. on Monday and end at midnight on the Sunday immediately preceding the Monday starting the next term of service.

(c) PRELIMINARY ASSIGNMENT SCHEDULES. The presiding magistrate judge in consultation with the other magistrate judges whose duty stations are in the Eastern Division shall be responsible for preparing a preliminary schedule of the assignments of emergency magistrate judge and federal enclave magistrate judge. These shall be prepared semi-annually in the form of an order to be signed by the chief judge on behalf of the Executive Committee. A copy of the schedule covering the period from the first Monday in July through the Sunday before the first Monday in January shall be delivered to the clerk by 1 May. A copy of the schedule covering the period from the first Monday in January through the Sunday before the first Monday in July shall be delivered to the clerk by 1 November. The clerk will place the preliminary schedule on the agenda of the next meeting of the Executive Committee scheduled after receipt of the preliminary schedules.

(d) FORMAL SCHEDULE NOT PUBLISHED. With the approval of the Executive Committee the chief judge shall sign an order establishing assignment of emergency and federal enclave magistrate judges. The order signed by the chief judge constitutes the formal schedule of emergency and federal enclave magistrate judge assignments for the period covered by the order. To minimize the potential for judge shopping, the formal schedule is not made public. At the beginning of each week the name of the emergency magistrate judge is made available for that week.

(e) ADJUSTMENTS TO SCHEDULE. Should two or more magistrate judges agree to change all or part of their service periods after the order fixing the schedule has been entered, they must notify the chief judge, the presiding magistrate judge, and the clerk. Where the change involves more than a few days, an amended order will be entered incorporating the change.

(f) ABSENCE OF EMERGENCY MAGISTRATE JUDGE. In the event that the emergency magistrate judge will be out of town or otherwise unavailable, the emergency magistrate judge will arrange for another magistrate judge to act as emergency magistrate judge. Where such an arrangement is made, the emergency magistrate judge will promptly inform the chief judge, the presiding magistrate judge, and the clerk of the substitution. The presiding magistrate judge with the approval of the chief judge may make such substitution if for any reason it has not been made and the scheduled emergency judge is unavailable.

#### **IOP27. Absence of Assigned Judge**

Any judge who plans to be absent from court on a regular business day, during the regular sessions of the Court, should arrange for a judge other than the emergency judge to hear non-emergency matters arising from cases on the judge's calendar. Where such arrangements are made, the judge should instruct the minute clerk to inform the Law Bulletin, so that the designation can be published in that periodical. A copy of the notice for the Law Bulletin should be given to the clerk so that inquiries directed to the clerk's office can be answered. The minute clerk should also post a notice on the door to the courtroom indicating the name of the judge who will hear non-emergency matters and the room number of that judge's courtroom.

#### **IOP28 through IOP29 are reserved**

#### **IOP30. Restricted Documents**

(a) SEPARATE FILING AREA FOR RESTRICTED DOCUMENTS. The clerk shall maintain restricted documents, sealed documents, and documents awaiting expunction as defined by LR26.2(a) separately from the files of documents to which access has not been restricted. Any area used to store documents to which access has been restricted shall be secure from entry by any persons other than the clerk or those designated in writing by the clerk as authorized to have access.

The clerk shall designate in writing deputies authorized to accept restricted documents either from chambers or for filing pursuant to protective orders.

Materials accepted for filing as restricted shall be maintained in a secure area until collected by one of the designated deputies. Where the materials so accepted are being filed pursuant to a protective order, the deputy accepting them will stamp the cover of the document with a FILED stamp indicating the date of filing.

(b) HANDLING SEALED DOCUMENTS. Where a document is ordered to be sealed, it is to be delivered for filing pursuant to LR5.9 with the seal on the enclosure intact. If the document is sent from chambers or returned from an appellate court with the seal broken, one of the deputies authorized to handle restricted materials pursuant to section (a) will forthwith deliver the document to the courtroom



deputy assigned to the judicial officer to whose calendar the proceedings in which the sealed document was filed is assigned. If that judicial officer is no longer sitting, the deputy will forthwith deliver the document to the courtroom deputy assigned to the emergency judge. The courtroom deputy will promptly bring the document to the attention of the judge. The judicial officer will either order that the document be re-sealed, or order that it continue to be handled as a restricted document, but not as a sealed document, or enter such other order as required to indicate the status of the document. Where the document is to be re-sealed, the judicial officer or courtroom deputy will re-seal the document and transmit it to the appropriate deputy in the clerk's office.

Where under the terms of a protective order a party is permitted to inspect a sealed document and that party appears in the clerk's office and requests the document, one of the deputies authorized to handle restricted materials pursuant to section (a) will obtain the document and provide an area where the person may inspect the document other than in the public area of the clerk's office. The deputy will complete a form showing the date, description of the document, the name of the person requesting access to the document, a statement indicating that the deputy has checked the protective order and it does indeed authorize the person to inspect the document, and a statement that the deputy requested of and was shown identification by the person requesting access to the document. Any person wishing to break the seal and inspect the document must sign the form completed by the deputy to indicate that they are authorized to inspect the document and have broken the seal. After the person has completed the inspection, the deputy will follow the procedures set out in the previous paragraph for handling the re-sealing of the document.

(c) GRAND JURY RECORDS; DISPOSITION. The clerk shall maintain documents arising out of or connected with grand jury proceedings separately from other restricted documents. The clerk shall designate in writing deputies authorized to accept grand jury documents for filing and authorized access to the area in which the documents are stored.

Such documents shall be maintained for not less than ten years following the date of filing or entry if not related to a specific grand jury proceeding. Documents in proceedings assigned a grand jury number shall be maintained for at least ten years following the commencement of the proceeding as indicated by the GJ number.

From time to time the clerk may petition the chief judge for leave to destroy documents arising out of or connected with grand jury proceedings. The petition shall contain a list of the GJ numbers for documents arising out of specific proceedings and a reasonable description of any documents other than those arising out of specific proceedings for which permission to destroy is sought. The clerk shall provide the United States attorney with a copy of the petition. If the United States attorney wishes to defer the destruction of some or all of the documents referred to in the petition, a written response to the petition setting forth the reasons for the requested deferral must be filed with the chief judge within 14 days of the date the copy of the clerk's petition was transmitted to the United States attorney. The chief judge may grant the petition for destruction, or direct that consideration of the destruction of some or all of the items specified in the petition be deferred for an additional year at the end of which the clerk may again petition for authority to destroy the documents.

The petition for leave to destroy the documents, the response of the United States attorney, and any order of the chief judge dealing with the petition and response are, except as otherwise ordered, restricted documents.

(d) SANCTIONS. Employees of the court are expressly forbidden to perform any of the following acts:

- (1) entering an area designated for the storage of restricted documents without the appropriate written authorization required by sections (a) or (c);

(2) assisting any person who is not authorized access pursuant to sections (a) or (c) to an area designated for the storage of restricted documents to gain or to attempt to gain access to such an area;

(3) accepting for filing any restricted document when not specifically authorized to do so pursuant to section (a);

(4) permitting any person who is not specifically authorized to have access to a restricted document to examine such a document, or to provide such a person with a copy of such a document; and

(5) leaving a restricted document unattended in an area other than one specified by this procedure such that persons not authorized access to the document could readily gain access to it.

Employees of the court who knowingly perform any of these acts shall be subject to disciplinary action, including dismissal. Persons who are not employees of the court who seek to coerce or induce any employee of the Court to perform any of these acts shall be punished by contempt of court.

### **IOP31. Registry Account**

Fed.R.Civ.P. 67 requires the clerk to maintain an interest bearing registry account. The conditions and terms of the agreement between the clerk and the bank maintaining the registry account shall be approved by and be subject to the supervision of the Executive Committee. The relationship of the Court to these funds is custodial in nature, and the United States acts as a trustee for the rightful owners of such funds. The clerk, as the custodial agent for the United States, has no obligation to preserve and keep safe such funds for the depositor and the Court.

Any claimant entitled to any such money may, upon petition to the Court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him pursuant to 28 U.S.C. §2042.

Payment of a registry fee is due and payable on funds held in the Courts' registry and invested in interest-bearing accounts. The fee is equal to the amount prescribed by the Judicial Conference based on the income earned on the invested funds throughout the life of the investments.

### **IOP32. District Court Fund**

The clerk shall be the trustee of the District Court Fund. Monies deposited in the Fund shall be used only for the benefit of the bench and bar in the administration of justice. All withdrawals from the fund shall require the approval of the chief judge or a judge designated by the chief judge.