

**POLICIES AND PROCEDURES**  
**Division Pilot Project**

**1. Divisional Nature of the Court.** Nine of the Court’s ten judges shall be assigned to a division of the Court. There shall be three divisions each comprised of three judges. Each division shall be comprised of a presiding judge and two additional judges.

The tenth judge shall not be assigned to a division and will be designated as the calendaring judge for the term of the division. While calendaring, the calendaring judge shall receive twelve (12) authorship assignments during the division term, which assignments will be circulated and filed within the division term. The Clerk of the Court shall assign participants to the calendaring judge’s authorships as set out below.

**2. Commencement and Term of Divisions.** Divisions shall be formed effective September 1, 2019. The term of each division shall be four months.

**3. Assignment to Divisions.** Prior to the commencement of a term, the judge with the most seniority shall be the calendaring judge and the three next senior judges shall be assigned to preside over each division, the remaining judges shall be randomly assigned to divisions as follows.

**Division Term #1**  
(Sep. to Dec. 2019)

*\*Calendaring Judge = A*

	Division 1	Division 2	Division 3
Presiding Judge	B	C	D
Panelist 1	E	F	G
Panelist 2	H	I	J

**Constitution of Division Term #1.** Judge A (the most senior judge) will not be placed in a division but, instead, will act as the calendaring judge, as well as author

GC opinions, during Division Term #1. (See below for discussion of participant assignments for the Calendaring Judge GC opinions.) The Presiding Judges (Judges B, C, and D) are the second, third, and fourth most senior judges, respectively. If the chief judge falls into the presiding judge category, at his/her election, s/he may designate the next most senior judge to act as a presiding judge in his/her stead; in which case, the chief judge will be a panelist judge. The Panelist Judges (E through J) are the remainder of the judges on the Court and will be assigned to a division by random draw.

**Division Term #2**  
(Jan. to Apr. 2020)

*\*Calendaring Judge = B or chief judge*  
*Table below reflects Judge B as calendaring judge*

	Division 1	Division 2	Division 3
Presiding Judge	A	C	D
Panelist 1	G	E	F
Panelist 2	I	J	H

**Constitution of Division Term #2.** The next most senior judge after Judge A (i.e., Judge B or the chief judge if s/he is not a presiding judge), shall be substituted out of his/her division and will act as the calendaring judge, as well as author GC opinions, during Division Term #2. Judge A will be substituted into Division 1 (where Judge B previously sat if Judge B is calendars) or for the least senior presiding judge if the chief judge calendars (in which case the least senior presiding judge will move to the panelist slot previously occupied by the chief judge). The Panelists Judges in the Panelist 1 row will all shift over one slot to the right, and the Panelists Judges in the Panelist 2 row will all shift over one slot to the left, as depicted above. This shifting will ensure as much as possible that each judge will have an the opportunity to work with as many different judges as possible.

**Division Term #3**  
(May to Aug. 2020)

*\*Calendaring Judge = C or B*  
*Table below reflects Judge C as calendaring judge*

	Division 1	Division 2	Division 3
Presiding Judge	A	B	D
Panelist 1	F	G	E
Panelist 2	J	H	I

**Constitution of Division Term #3.** The next most senior judge after the calendaring judge during Division Term #2 will be substituted out of his/her division and will act as the calendaring judge, as well as author GC opinions, during Division Term #3. The Division Term #2 calendaring judge will be substituted into the division of the new calendaring judge. As before, the Panelists Judges in the Panelist 1 row will all shift over one slot to the right, and the Panelists Judges in the Panelist 2 row will all shift over one slot to the left, as depicted above.

**Participant Judges for Calendaring Judges**

**With Pro Tem Judges**

As long as funds are available and pro tem judges are being used, one participant shall be a pro tem judge and the second participant shall be a sitting judge on each GC opinion authored by the Calendaring Judges.

**Without Pro Tem Judges**

Upon the Court ceasing the use of pro tem judges, participants for the GC opinions authored by the Calendaring Judge will proceed as follows. The Clerk of the Court shall ensure as much as possible the equal distribution of participations among the nine non-calendaring judges. In the event certain judges receive more participations during one division term, the Clerk shall ensure as much as possible that those judges

receive fewer participations during the next division term. Unless impracticable due to recusals, the Clerk shall select no more than one participant per division for each GC opinion—this will ensure the least amount of disruption to the work of the division. In addition, the Clerk shall ensure as much as possible that participations for the non-calendar judges are spread out through the division term (i.e., one judge should not receive successive participations unless the cases are related). Using the division chart template below and assuming the Calendar Judge authors 12 GC opinions during the division term, below is an example of how the Clerk of the Court should proceed with assigning participations when we are not utilizing pro tems.

### Division Chart Template

*\*Calendar Judge is not assigned to a division*

	Division 1	Division 2	Division 3
Presiding Judge	[position i]	[position ii]	[position iii]
Panelist 1	[position iv]	[position v]	[position vi]
Panelist 2	[position vii]	[position viii]	[position ix]

GC Op. 1 Participants = i, v  
 GC Op. 2 Participants = ix, iv  
 GC Op. 3 Participants = ii, vi  
 GC Op. 4 Participants = vii, iii  
 GC Op. 5 Participants = viii, i  
 GC Op. 6 Participants = ii, ix

GC Op. 7 Participants = v, iii  
 GC Op. 8 Participants = iv, viii  
 GC Op. 9 Participants = vii, vi  
 GC Op. 10 Participants = i, ix  
 GC Op. 11 Participants = ii, iv  
 GC Op. 12 Participants = iii, viii

In this example, all non-calendar judges (except the judge in position vi) received three participations during the division term. Position v, vi and vii judges only received two participations and, accordingly, should receive three during the next division term. Also, in this example, each of the 12 GC opinions authored by the calendar judge has a unique set of participants.

#### **4. Assignment of Cases.**

**a. First Term.** The first term under this pilot project commences September 1, 2019, and ends December 31, 2019. Effective September 1, 2019, any case that has not been circulated or conferenced (discussed with the current panel) will be reassigned to the author judge's division. Authorship shall remain with the assigned author judge, but the other members of the division shall be substituted as the participants on cases transferred to the division. In the event a member of the division has recused from a case brought to the division, the Clerk shall either appoint a pro tem judge or an out-of-division sitting judge to substitute for the previously-recused division member. Cases that have been circulated or conferenced shall remain with the original panel until filed. Cases that have been stayed will only be reassigned to the author judge's division if the stay is lifted during the first three months of the first term; otherwise, the author judge will take the stayed case to his / her next division. The Clerk of the Court shall assign cases to the division 45 days before the term begins in the manner described below. It is expected that no judge will bring more than 13 cases to each division at the beginning of the first term. Judges shall complete work on those cases they bring into the division before receiving additional case assignments; provided, however, that any judge who has four cases or less at the commencement of the division term shall receive additional cases. By the end of the first term, judges are expected to have circulated and filed sixteen (16) opinions transferred or assigned to the division during the First Term.

**b. Manner of Assignment of Cases.** The Clerk of the Court shall assign cases to divisions as follows. The Clerk shall assign cases to divisions no less than forty-five (45) days prior to the start of each month. The Clerk shall assign a total of forty-eight (48) cases to each division, all of which are expected to be circulated and filed during the division term. Each division shall have the discretion to determine how it would like to receive its cases (i.e., all at once or in smaller periodic increments over the term of the division). The judges in each division shall meet and confer to assign cases to panel members for authorship, ensuring as much as possible, equal distribution of workload. If the judges within a division are unable to reach a consensus regarding authorship assignments, the presiding judge shall assign cases to panel members for authorship. Absent good cause, judges are expected to circulate and file opinions for all cases during the term in which the cases are assigned; provided, however, that the author and division members shall remain assigned to any unfinished cases and will complete those cases notwithstanding the judges' placements in new divisions.

**5. Administration of Divisions.** Prior to the commencement of a division's four-month term, the members of the division may agree to the time for at least one meeting per month to discuss matters such as: deadlines for circulation of draft opinions, authorship assignment, proposed dispositions of cases, finalization of opinions, agreement on a framework for shortened memorandum opinions, and any other matter pertinent to division business. Authorship of cases shall be assigned at least seven days prior to the beginning of each month.

**6. Presiding Judge Responsibilities.** The responsibilities of the presiding judge of a division shall be primarily administrative and shall include, prior to the assignment of authorship, distributing cases for triage/evaluation for the number of issues presented on appeal, the complexity of the issues, whether the issues present questions of first impression and whether the opinion will more likely be formal or memorandum. The presiding judge shall also arrange conferences to discuss and agree upon the assignment of cases, as well as the schedule to circulate cases. The presiding judge may also schedule conferences to discuss the resolution of cases, to track the progress of authorship assignments, and to address any other business of the division. The presiding judge will be responsible for ensuring cases remain on track so that opinions are completed before the division term ends. In those instances when the members of the division cannot agree on the assignment of authorship of a particular case, the presiding judge shall make the assignment.

**7. Ideas to triage cases / assign authorship at the beginning of each month.** Below is a *non-exhaustive* list of ideas on how to triage new cases assigned to each division and to assigned authorship.

- The presiding judge might split up review/discussion of criminal and civil cases into separate meetings.
- The presiding judge might give primary responsibility to one judge on more difficult cases to do a deep dive and possibly prepare a bench memo for discussion with the division.
- When the Clerk assigns cases to the division, the presiding judge might distribute an equal number of cases to each panel member to be triaged/evaluated with each panel member identifying the straightforward cases and directing the panel's attention to the more difficult cases.
  - o Panel members who triage difficult cases will identify/share the difficult issues with the panel via email and perhaps

circulate/identify a couple of the key cases and the district court's ruling for the panel's review before the panel meets.

- Following the meeting to assign authorship, the presiding judge might prepare and circulate a short memo setting out authorship assignments and possibly a short note about the panel's initial impression(s) of the outcome of each case.
- Conferencing straightforward cases could occur by short telephone call or email.