

STATEMENT OF
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FOR THE EASTERN DISTRICT OF ARKANSAS
CHAIR, JUDICIAL RESOURCES COMMITTEE
SUBCOMMITTEE ON JUDICIAL STATISTICS
ON BEHALF OF
THE JUDICIAL CONFERENCE OF THE UNITED STATES



BEFORE THE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
“THE JUDICIAL CONFERENCE’S RECOMMENDATION FOR
MORE JUDGESHIPS”

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Chairman Graham, Ranking Member Feinstein and members of the Committee:

Good afternoon, I am Brian Miller, District Judge of the United States District Court for the Eastern District of Arkansas and Chair of the Judicial Conference Committee on Judicial Resources Subcommittee on Judicial Statistics. I appreciate your invitation to appear today to discuss the Article III judgeship needs of the federal Judiciary. The Judicial Resources Committee of the Judicial Conference of the United States is responsible for all issues of human resource administration, including the need for Article III judges and support staff in the federal courts of appeals and district courts. My testimony today has three purposes: (1) to identify the judgeship needs of the district and appellate courts, (2) to explain the process by which the Judicial Conference determines those needs; and (3) to help Congress understand the implications of the Judiciary being understaffed by judicial officers.

Every other year, the Judicial Conference conducts a survey of the judgeship needs of the federal courts of appeals and district courts. The latest survey was completed in March 2019. Consistent with the findings of that survey and the deliberations of my Subcommittee and the full Judicial Resources Committee, the Judicial Conference recommended that Congress establish five new judgeships in one court of appeals and 65 new judgeships in 24 district courts. The Judicial Conference also recommended that eight existing temporary district court judgeships be converted to permanent status. Table 1, below, as well as Appendix 1 which was submitted with this written statement, contains the specific recommendation for each court.

In addition, this Committee has the Judicial Conference recommendation for conversion of 14 temporary bankruptcy judgeships to permanent status. This request was submitted as part of our legislative package addressing the Judiciary's needs in connection with the COVID-19 pandemic.

TABLE 1. ADDITIONAL JUDGESHIPS OR CONVERSION OF EXISTING JUDGESHIPS RECOMMENDED BY THE JUDICIAL CONFERENCE 2019

CIRCUIT/DISTRICT	AUTHORIZED JUDGESHIPS	JUDICIAL CONFERENCE RECOMMENDATION
U.S. COURTS OF APPEALS		5P
NINTH	29	5P
U.S. DISTRICT COURTS		65P, 8T/P
ARIZONA	13	4P, T/P
CALIFORNIA, CENTRAL	28	9P, T/P
CALIFORNIA, EASTERN	6	5P
CALIFORNIA, NORTHERN	14	4P
CALIFORNIA, SOUTHERN	13	4P
COLORADO	7	2P
DELAWARE	4	1P
FLORIDA, MIDDLE	15	6P
FLORIDA, NORTHERN	4	1P
FLORIDA, SOUTHERN	18	3P, T/P
GEORGIA, NORTHERN	11	1P
IDAHO	2	1P
INDIANA, SOUTHERN	5	2P
IOWA, NORTHERN	2	1P
KANSAS	6	T/P
MISSOURI, EASTERN	8	T/P
NEVADA	7	1P
NEW JERSEY	17	4P
NEW MEXICO	7	1P, T/P
NEW YORK, EASTERN	15	2P
NEW YORK, SOUTHERN	28	1P
NEW YORK, WESTERN	4	1P
NORTH CAROLINA, WESTERN	5	T/P
PUERTO RICO	7	1P
TEXAS, EASTERN	8	2P, T/P
TEXAS, SOUTHERN	19	2P
TEXAS, WESTERN	13	6P

P = PERMANENT; T/P = TEMPORARY MADE PERMANENT

The urgent judgeship needs of the Judiciary have become even more apparent in the wake of the COVID-19 pandemic. In April of 2020, the Judicial Conference submitted 17 legislative proposals to Congress to consider for inclusion in supplemental legislation to respond to the COVID-19 pandemic. Included in those proposals were three judgeship-related requests:

- authorization of seven new judgeships for a subset of courts that are in extreme need (IN-S,1; DE,1; NJ, 1; TX-W, 1; AZ, 1; FL-S, 1; CA-E, 1).
- conversion of eight temporary judgeships to permanent status (KS, 1; MO-E, 1; AZ, 1; CA-C, 1; FL-S, 1; NM, 1; NC-W, 1; TX-E, 1); and
- conversion of 14 temporary bankruptcy judgeships to permanent status (DE, 1; PR, 1; MI-E, 2; MD, 1; FL-M, 1; FL-S, 1).

Survey Process

In developing these recommendations for consideration by Congress, the Judicial Conference (through its committee structure) uses a formal process to review and evaluate Article III judgeship needs. The Committee on Judicial Resources and its Subcommittee on Judicial Statistics conduct these reviews, but the Judicial Conference makes the final recommendations on judgeship needs. Before a judgeship recommendation is transmitted to Congress, it undergoes careful consideration and review at six levels within the Judiciary, beginning with the judges of the particular court making a request. If the court does not make a request, the Judicial Conference does not consider recommending a judgeship for that court. Next, the Subcommittee on Judicial Statistics conducts a preliminary review of the request and either affirms the court's request or offers its own reduced recommendation, based on the court's workload and other stated contributing factors. Once this review is complete, the Subcommittee's recommendation and the court's initial request are forwarded to the judicial council of the circuit in which the court is located.

Upon completion of the circuit judicial council's review, the Subcommittee on Judicial Statistics conducts a further and final review of the request and/or recommendation, reconciling any differences that may still exist. The Subcommittee then submits the recommendation to the full Committee on Judicial Resources. Finally, the Judicial Conference considers the full Committee's final determination. In the course of the 2019 survey, the courts

requested 79 additional permanent judgeships. Our review procedure reduced the number of recommended additional judgeships to 70. The request to convert nine temporary judgeships to permanent status was reduced to eight recommended conversions. The recommendations resulting from each successive survey supersede prior judgeship recommendations.

Judicial Conference Standards

The recommendations developed through the review process described above (and in more detail in Appendix 2) are based in large part on standards related to the caseload of the courts, but these standards do not by themselves fully describe each court's needs. They represent the caseload at which the Conference may begin to consider requests for additional judgeships – the starting point in the process, not the end point. The caseload standards used by the Judicial Conference are expressed as filings per authorized Article III judgeship, which assumes that all judicial vacancies are filled.

Caseload statistics must be considered and weighed with other court-specific information to arrive at a sound measurement of each court's judgeship needs. Circumstances that are unique, transitory, or ambiguous are carefully considered so as not to result in an overstatement or understatement of actual burdens. The Conference process therefore takes into account additional factors, including the following:

- the number of senior judges available to a specific court, their ages, and levels of activity;
- available magistrate judge assistance;
- geographical factors, such as the size of the district or circuit and the number of places of holding court;
- unusual caseload complexity;
- temporary or prolonged caseload increases or decreases;
- the use of visiting judges;

- the use of inter-circuit and intra-circuit assignments; and
- any other factors noted by individual courts (or identified by the Statistics Subcommittee) as having an impact on the need for additional judicial resources. (For example, the presence of high-profile financial fraud and bribery prosecutions, the number of multiple defendant cases, and the need to use court interpreters in a high percentage of criminal proceedings).

Courts requesting additional judgeships are specifically asked about their efforts to make use of all available resources. The Judicial Conference also looks at the effort each court has undertaken to manage the workload before requesting additional judgeships, including, but not limited to, use of alternative dispute resolution techniques.

District Court Analysis

When reviewing the judgeship needs of the district courts, the Judicial Conference, after accounting for the additional judgeship(s) requested by the court, initially calculates the number of weighted filings per judgeship to gauge the impact of the additional judgeships on the district. Weighted filings are used as a means of accounting for the varying complexity of different types of civil and criminal filings and differences in the time required for judges to resolve various types of civil and criminal actions. Rather than counting each case as the same, weights are applied based on the nature of cases. The total for "weighted filings per judgeship" is the sum of all weights assigned to civil cases and criminal defendants, divided by the number of authorized judgeships. In 2016, the Judicial Conference approved updated case weights for the district courts. Please note that the caseload and weighted filings data reflected in this testimony is the data used to develop the March 2019 recommendations.

The Judicial Conference uses a benchmark standard of 430 weighted filings per judgeship as a starting point for considering requests. Applying the standard of 430 weighted filings per authorized judgeship, the Judicial Conference recommended 65 new district judgeships. Even with these additional judgeships, weighted filings would be 475 per judgeship

or higher in 14 district courts. Weighted filings would exceed 500 per judgeship in 10 district courts.

Appellate Court Analysis

In the courts of appeals, the Judicial Conference, again after accounting for the additional judgeships requested by the circuit court, uses a standard of 500 adjusted filings per panel as its starting point. Adjusted filings are calculated by removing reopened appeals and counting original pro se appeals as one-third of a case. In the Ninth Circuit Court of Appeals, for which the Conference is recommending five additional judgeships, the caseload levels substantially exceeded the standard. With the additional judgeships recommended by the Judicial Conference, the caseload in this court would exceed 600 adjusted filings per panel.

Caseload Information

During the first part of the last half-century, judgeship bills were considered every few years and were regularly enacted by the Congress. Judgeship bills, addressing an increasing caseload, were enacted in 1966, 1970, 1978, and again in 1984. The last comprehensive judgeship bill for the U.S. courts of appeals and district courts was enacted in 1990. Smaller targeted bills were enacted between 1999 and 2003 when Congress created 34 additional judgeships in the district courts (9 in fiscal year 2000, 10 in fiscal year 2001, and 15 in fiscal year 2003.) It has now been more than 15 years since any judgeships were added.

From the time of enactment of Public Law 101-650 in 1990 (which established 11 additional judgeships for the courts of appeals and 74 additional judgeships for the district courts) to the end of fiscal year 2018, filings in the courts of appeals had grown by 15 percent while district court case filings had risen by 39 percent. As a result, the national average circuit court caseload per three-judge panel reached 885 filings compared to 773 in 1991. In the district courts, even with the 34 additional judgeships, weighted filings were 513 per judgeship as of

September 2018, compared to 386 per judgeship in 1991. Were it not for the assistance provided by senior and visiting judges, the circuit courts of appeals and district courts would not have been able to keep pace. For a more detailed description of the most significant changes in the caseload since 1991, see Appendix 3.

Although the national figures provide a general indication of system-wide needs, the Judicial Conference judgeship recommendations are based on relevant caseload information for each specific court. The judgeship needs of a particular court, however, require a more focused analysis of court-specific data. Indeed, in districts where the Conference has recommended additional judgeship resources, the need is much more dramatic compared to the national figures.

For the 27 district courts where the Judicial Conference is recommending additional judgeships or conversion of existing temporary judgeships, weighted filings averaged 635 per judgeship and 21 courts have caseloads above 500 weighted filings, 13 above 600, seven above 700, and two with more than 1,000 weighted filings. These are well beyond our standard of 430 for considering new judgeships.

For the circuit court where the Judicial Conference is recommending additional judgeships, adjusted filings were 725 per panel compared to the national average of 570 per panel.

Judgeship Legislation

The Judicial Conference judgeships recommendation, which addresses our total needs, was submitted to Congress in May of 2019 and has not yet been introduced in the current Congress as a comprehensive judgeship bill. However, smaller individual judgeship bills have been introduced as follows –

- two additional judgeships for the District of Colorado (S. 2313)
- one additional judgeship for the District of Idaho (S. 103 / H.R. 214)
- ten judgeships in Florida (FL-N,1; FL-M, 6; FL-S, 3) (S.14)
- one additional judgeship for the District of Puerto Rico (H.R. 4522)
- conversion of eight existing temporary district court judgeships to permanent status (KS, 1; MO-E, 1; TX-E, 1; AZ, 1; CA-C, 1; FL-S, 1; NC-W, 1; NM, 1) (S. 3086)
- four additional judgeships and conversion of a temporary judgeships for the District of Arizona (S. 3321)
- bills to divide or split the Ninth Circuit:
 - three new judgeships for the new Ninth Circuit and two for the new Twelfth Circuit and authorizes two additional temporary circuit judgeships for the new Twelfth Circuit (H.R. 215)
 - four additional judgeships for the new Ninth Circuit and one new judgeship for the new Twelfth Circuit. Authorizes 56 additional judgeships for district courts across the country and converts eight temporary judgeships to permanent status. (S. 722)

The Judicial Conference is also concerned about eight existing temporary judgeships which have been recommended for conversion to permanent status. These judgeships are in Arizona; California, Central; Florida, Southern; Kansas; Missouri, Eastern; New Mexico; North Carolina, Western; and Texas, Eastern. The Judicial Conference is appreciative of the Congress for including an extension of these temporary judgeships in the 2020 Consolidated Appropriations Act. Even so, all eight of these judgeships will lapse before the end of fiscal year 2021, and without reauthorization, these on-board resources will be lost, further damaging the Federal Judiciary by diminishing already scarce judicial resources in these districts. In addition, we are supportive of legislation similar to bills introduced in the last Congress, and currently pending in the Senate (S. 3086), to convert temporary judgeships to permanent status.

Implications of Judgeship Shortfalls

The effects of increasing caseloads without a corresponding increase in judges are profound. Increasing caseloads lead to significant delays in the consideration of cases, especially civil cases which may take years to get to trial. Nationally, the average time between filing and trial for a civil case is a little over two years. In many of these overworked courts the average time between filing and trial is much longer, often three or four years

Delays increase expenses for civil litigants and may increase the length of time criminal defendants are held pending trial. Substantial delays lead to lack of respect for the Judiciary and the judicial process. The problem is so severe that potential litigants may be avoiding federal court altogether.

One cannot imagine the situation will improve on its own, without additional judges. Looking at just one area – immigration enforcement – the increase in caseload has been staggering. In addition, some of the immigration bills being considered in Congress would further increase the workload of federal courts along the border by adding additional federal jurisdiction as well as more law enforcement personnel and prosecutors. In enacting additional immigration enforcement resources, it is critical to add additional authorized judgeships to handle the increased workload which will flow into the courts.

The problem cannot be addressed just by adding magistrate judges, or hoping senior and visiting judges will lessen the workload and reduce the need for more judgeships. Magistrate judges, senior judges and visiting judges make valuable contributions to the work of district courts and can sometimes help alleviate workload problems. However, magistrate judges' jurisdiction is limited. Furthermore, the Judicial Conference process for determining the workload needs of the courts already takes into account the contributions that magistrate judges, senior judges, and visiting judges are making.

Conclusion

Over the last three decades, the Judicial Conference has developed, adjusted, and refined the process for evaluating and recommending judgeship needs in response to both Judiciary and congressional concerns. The Judicial Conference does not recommend, need or want, indefinite growth in the number of judges. It recognizes that growth in the Judiciary must be carefully limited to the number of new judgeships that are necessary to exercise federal court jurisdiction. The Judicial Conference attempts to balance the need to control growth with the need to seek resources that are appropriate to the Judiciary's caseload. Therefore, we have requested far fewer judgeships than the caseload increases and other factors would suggest are now required.

As always, the Judicial Conference of the United States is grateful for your consideration of its Article III judgeship recommendations. Thank you for the opportunity to provide testimony on the need for new federal judges and for your continued support of the federal Judiciary. I am happy to respond to your questions.