

**JOINT STATEMENT OF JUDGE LAWRENCE F. STENGEL
CHAIR, COMMITTEE ON JUDICIAL RESOURCES OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES**

**JUDGE ROSLYNN MAUSKOPF
CHAIR, SUBCOMMITTEE ON JUDICIAL STATISTICS**

**AND
JUDGE DANA M. SABRAW
UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT
OF CALIFORNIA**

**BEFORE THE SUBCOMMITTEE ON COURTS, INTELLECTUAL
PROPERTY, AND THE INTERNET
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

“Examining The Need for New Federal Judges”

June 21, 2018

Chairman Issa, Ranking Member Johnson and members of the Subcommittee, I am Lawrence Stengel, Chief Judge of the United States District Court for the Eastern District of Pennsylvania and Chair of the Judicial Conference Committee on Judicial Resources. Joining me as a witness at this hearing is Judge Roslynn Mauskopf, United States District Judge for the Eastern District of New York and chair of our Subcommittee on Judicial Statistics. Also testifying today is Judge Dana Sabraw, United States District Judge for the Southern District of California. We 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 U.S. courts of appeals and district courts. Our 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. I will address our judgeship request and the justification for that request. Judge Mauskopf will address in more detail our process. Judge Sabraw will be able to provide details of how a district with judgeship needs is affected and the consequences of unmet judgeship requirements.

Every other year, the Judicial Conference conducts a survey of the judgeship needs of the U.S. courts of appeals and U.S. district courts. The latest survey was completed in March 2017. Consistent with the findings of that survey and the deliberations of my Committee, the Conference recommended that Congress establish five new judgeships in one court of appeals and 52 new judgeships in 23 district courts. The Conference also recommended that eight existing temporary district court judgeships be converted to as permanent status. Appendix 1 contains the specific recommendation for each court. For many of the courts, the recommendations reflect needs developed since the last omnibus judgeship bill was enacted in 1990.

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 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 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 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 product. In the course of the 2017 survey, the courts requested 66 additional permanent judgeships. Our review procedure reduced the number of recommended additional judgeships to 57. The courts' 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. These standards are not by themselves fully indicative of 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 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 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

Reviewing the judgeship needs of the district courts, the Conference, after accounting for the additional judgeship(s) requested by the court, initially applies a standard of 430 weighted filings per judgeship to gauge the impact 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 a single case, 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 2017 recommendations.

Applying the standard of 430 weighted filings per authorized judgeship, the Judicial Conference recommended 52 new district judgeships. Even with these additional judgeships, weighted filings would be over 430 per judgeship in 19 of the 27 district courts in which the Conference is recommending either additional judgeships or conversion of an existing temporary judgeship to permanent status. Weighted filings would exceed 500 per judgeship in eight district courts.

Appellate Court Analysis

In the courts of appeals, the 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, in 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 nearly 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 2016, filings in the courts of appeals had grown by 40 percent while district court case filings had risen by 38 percent. As a result, the national average circuit court caseload per three-judge panel reached 1,084 filings compared to 773 in 1991. Were it not for the assistance provided by senior and visiting judges, the circuit courts of appeals would not have been able to keep pace. In the district courts, even with the 34 additional judgeships, weighted filings were 489 per judgeship as of September 2016, compared to 386 per judgeship in 1991. 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 577 per judgeship and 20 courts have caseloads above 500 weighted filings, eight above 600, six above 700, and one 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 773 per panel compared to the national average of 688 per panel.

The lack of additional judgeships, combined with the growth in caseload, has created enormous difficulties for many courts across the nation, but it has reached urgent levels in five district courts that are struggling with extraordinarily high and sustained workloads. The severity of conditions in the Eastern District of California, the District of Delaware, the Southern District of Florida, the Southern District of Indiana, and the Western District of Texas requires immediate action. The Judicial Conference urges Congress to establish new judgeships in these districts as soon as possible.

Judgeship Legislation

The Judicial Conference recommendation, which addresses our total needs, has not yet been introduced in the current Congress as a comprehensive judgeship bill. However, smaller

individual judgeship bills have been introduced, some of which are not consistent with our request. Bills which have been introduced are as follows –

- Immigration bills have been introduced which include 12 new judgeships – AZ, 4; CA-S, 2; TX-S, 2; and TX-W, 4. In addition, the bills convert the existing temporary judgeship in AZ and CA-C to permanent status. (S. 1757, S. 2192)
- two additional judgeships for the District of Colorado (H.R. 2844 / S. 1924)
- one additional judgeship for the District of Idaho (H.R. 197, H.R. 503 / S. 209)
- ten judgeships in Florida (FL-N,1; FL-M, 6; FL-S, 3) (S.1249)

The 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 2018 Consolidated Appropriations Act. Even so, all eight of these judgeships will lapse before the end of fiscal year 2019, 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. 1302), to convert temporary judgeships to permanent status.

California case study

Federal court management statistics, comparing the close of fiscal year 2003, the last year any judgeships were created, to March 31, 2018, show the number of total cases filed in the nation increased by 15.5 percent. California, with more than 10 percent of the nation's caseload, saw a 13.5 percent increase in cases filed over that same period. In the Southern District of

California the increase was 21.1 percent. Weighted filings have risen 33 percent since FY 2003. Based on the most recent data we expect weighted filings in the Southern District to continue to rise, making the need for additional judgeships even greater

The effects of this kind of caseload increase 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. For example, in the Eastern District of California, civil cases can average over 40 months between filing and trial. In the Southern District, that delay is approximately three 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.

The workload situation in each of the four California district courts is severe. Weighted caseload filings are well beyond the national average and exceed 500 per judgeship in each district. The weighted caseload exceeds 700 in the Eastern district which has had among the highest weighted filings per judgeship in the nation for many years. Unfortunately, the situation in the Eastern District of California was made worse when the district lost a temporary judgeship. This contributed to a significant increase in pending cases.

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.

Considering just the present workload, the Judicial Conference requested 17 additional judgeships for California – seven in the Central district, five in the Eastern, three in the Southern, and two in the Northern. In addition, the Conference recommended the conversion of the existing temporary judgeship in the Central district. While border states may be the focus of more targeted judgeship legislation, judgeships should be addressed comprehensively to meet pressing needs across the nation.

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 are making.

Conclusion

Over the last 25 years, 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 Conference does not recommend, or wish, 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

Conference attempts to balance the need to control growth and the need to seek resources that are appropriate to the Judiciary's caseload. In an effort to implement that policy, we have requested far fewer judgeships than the caseload increases and other factors would suggest are now required. Furthermore, the Conference, mindful of the dire fiscal realities that our federal government is currently facing, acknowledges the possibility that not all of the requested judgeships may be created and that some prioritization may have to occur.

Again, 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.