

# United States District Court

EASTERN DISTRICT OF CALIFORNIA  
U.S. COURTHOUSE  
2500 TULARE STREET  
FRESNO, CA. 93721

September 28, 2009

## Statement in Support of Five Additional Judgeships Eastern District of California

### Summary

Despite the best efforts of the judges and staff of the Eastern District of California, assistance within the Judiciary, and cooperation with the State of California, five additional judgeships are clearly necessary to alleviate the workload of the District, which carries the heaviest caseload burden in the country.

### Judgeship History

The Eastern District of California was created in 1966, when it was authorized three judgeships. It received three additional judgeships in 1978, and one temporary judgeship in 1990 that expired in 2004. Currently, the Eastern District has six district court judgeships. During most of fiscal year 2007, one of its six judgeships was vacant due to an unanticipated resignation and illness. Due to a District Judge's taking senior status in January, 2009, there remains a vacancy.

Number of Judges	
Active District Judges	6
Senior District Judges	5
Magistrate Judges	12

In December, the Senate passed S. 1327, which would have reinstated the temporary judgeship that expired in 2004. The House did not act on the bill. S. 1653 (the Federal Judgeship Act of 2009), introduced in September 2009, reflects the 2009 Judicial Conference of the United States comprehensive Article III judgeship request. It includes four new judgeships for the Eastern District and the reinstatement of one temporary judgeship.

Since 1990, Congress has authorized 14 additional temporary and permanent judgeships for the four California districts. Of the 14 judgeships, Congress authorized only one judgeship for the Eastern District; this temporary judgeship expired in 2004.

The period from 2000 to 2008 has been a time of rapid growth for the Eastern District. Already by 2003, census data shows that 18 of the top 25 fastest growing counties in California are located in the Eastern District.

The population of the Eastern District currently stands at 6.375 million, an increase of 1% during the past 12 months (Refer to Attachment A).

Overall Caseload

The Eastern District has long had one of the highest caseloads in the country based on weighted filings per judgeships. The Eastern District has the highest weighted filings per judgeship in the country.

U.S. DISTRICT COURTS WEIGHTED AND UNWEIGHTED FILINGS PER AUTHORIZED JUDGESHIP DURING THE 12-MONTH PERIOD ENDING JUNE 30, 2009										
Ranked by Total Weighted Filings Per Authorized Judgeship										
National Rank	District	Authorized Judges	WEIGHTED FILINGS PER JUDGESHIP				UNWEIGHTED FILINGS PER JUDGESHIP			
			Civil	Criminal	Supervision Hearings	TOTAL	Civil	Criminal	Supervision Hearings	TOTAL
N/A	Nation	674	355	111	4.92	471	321	143	33.66	497
<b>Top Ten Weighted Districts</b>										
1	CA,E	6	899	188	8.15	1095	896	233	57.83	1187
2	NY,W	4	452	224	18.38	694	429	240	130.25	799
3	TX,W	13	228	438	14.58	681	228	685	100.38	1013
4	NC,E	4	374	239	4.71	617	364	373	31.50	769
5	FL,M	15	511	101	3.93	616	472	111	27.47	611
6	CA,C	28	521	84	6.24	611	455	95	44.36	595
7	MN	7	529	77	3.87	610	532	78	27.00	636
8	IN,S	5	541	63	1.41	605	506	62	7.00	575
9	CA,N	14	515	69	6.29	591	394	91	44.86	530
10	MS,S	6	512	68	3.53	584	515	77	22.17	614
<b>Other Ninth Circuit Courts</b>										
18	AZ	13	274	259	16.72	549	259	403	119.00	780
21	NV	7	455	70	6.52	532	407	93	43.14	533
22	CA,S	13	250	264	13.38	527	208	426	94.77	728
23	ID	2	344	174	5.95	524	305	201	40.50	546
24	WA,W	7	406	113	5.17	524	344	164	35.43	543
36	OR	6	371	93	7.09	471	339	118	50.33	508
66	MT	3	215	138	6.99	360	197	139	46.67	382
81	HI	4	191	85	6.66	283	146	141	46.00	332
84	WA,E	4	152	102	16.56	270	153	122	116.75	391
91	AK	3	145	61	.71	207	122	70	4.67	197
<p><b>NOTE:</b> Case weights are based on the 2003-2004 district court case weighting study conducted by the Federal Judicial Center. This table excludes civil cases arising by reopening, remand, or transfer to the district by the order of the judicial panel on multidistrict litigation. This table includes defendants in all felony and class a misdemeanor cases, but includes only those petty offense defendants whose cases have been assigned to district judges. Remands and reopens for criminal defendants are excluded. Data reported for supervised release and probation hearings (both evidentiary and non-evidentiary) are obtained from the monthly reports of trials and other court activities conducted by resident and visiting judges.</p>										

Within the Ninth Circuit, it has consistently ranked first among the fifteen districts. In fiscal year ending June 30, 2009, the Eastern District had 1095 weighted filings per judgeship. The second highest district was New York Western with 694 weighted filings per judgeship.

This substantial caseload is matched by a substantial level of productivity. District Judges in the Eastern District terminated 1041 cases per judge during the 12 months ending June 30, 2009, which ranked the district first in the circuit and second in the nation for terminations. This compares to the national average of 503 terminations.

Four of its five senior District Judges maintain caseloads that exceed those of many of the nation's active judges. The fifth senior judge is in his 80's and maintains a 40% caseload. A recent independent assessment by the Ninth Circuit confirmed that all of the judicial officers, even the senior judges who are technically retired, and the staff regularly work long hours, from early in the morning, through the lunch hour and into the evenings, and frequently forego vacations in order to keep from falling further behind.

The magistrate judges are at full, legal utilization. The magistrate judges at Sacramento and Fresno perform a wide range of duties, with an emphasis on prisoner cases, civil discovery motions, settlement conferences, social security appeals, and felony preliminary proceedings. The magistrate judge at Yosemite National Park handles a full share of Fresno's prisoner petitions, as well as felony preliminary proceedings and misdemeanor and petty offense cases arising in the Park. The magistrate judge at Bakersfield handles a share of the state habeas corpus cases and social security appeals filed in Fresno, handles motions and pretrial case management duties in civil cases filed in the southern portion of the district, conducts preliminary proceedings in felony cases arising in the Bakersfield area, and disposes of petty offense and Class A misdemeanor cases at several locations. The magistrate judge at Redding handles a half share of the prisoner cases filed at Sacramento, including death penalty cases, and all motions and pretrial case management duties in civil cases filed in the northern counties of the district. He also disposes of petty offense and Class A misdemeanor cases at several locations in the northern portions of the district, and he conducts felony preliminary proceedings in felony cases in the vicinity of Redding.

Despite their hard work and amazingly high termination rate, the judges are falling behind because filings continue to exceed terminations. On the most recent Civil Justice Reform Act (case backlog) report, the court had 591 civil cases pending for more than three years. This backlog is the result of the woefully insufficient number of judgeships for the Eastern District. The judges must bear the burden of this caseload, but it is the citizens in the Eastern District who must suffer the delayed administration of justice as a result of the lack of adequate judgeships for the court.

### Pro Se Prisoner Litigation

Adding to the caseload burden, the Eastern District of California has the second highest number of prisoner petitions in California.

The district's prisoner and felony caseloads have grown significantly in the past five years. Prisoner cases accounted for 55% of the court's civil filings in 2008. The district ranked 1<sup>st</sup> nationally in weighted caseload, 2<sup>nd</sup> in total cases terminated, 3<sup>rd</sup> in total case filings and total cases pending per judgeship, 4<sup>th</sup> in civil cases filed, and 10<sup>th</sup> in felony filings in 2008. The court is one of ten district courts that have been declared courts with judicial emergencies due to vacant district judgeships. On January 1, 2009, in response to a request for volunteers made by an ad hoc resource committee formed by the chief judge of the Ninth Circuit Court of Appeals to

examine the caseload backlog in the Eastern District of California, approximately 1,000 of the district's pending prisoner cases were re-assigned to district judges in other district courts in the Ninth Circuit who agreed to take these cases. For the 2009 biennial judgeship survey, the court is requesting four new judgeships and re-authorization of a temporary judgeship that was lost when a district judge took senior status in 2003.

There are a total of 33 state and federal prisons within the State of California, with a total prison population of approximately 167,000 prisoners as of FY2008. Nineteen of these prisons, with roughly 100,000 prisoners, reside within the boundaries of the Eastern District.

#### Internal Judiciary Efforts to Alleviate Caseload

The Judiciary is bringing to bear all additional resources it can muster to assist the District. Six district judges have been designated to sit on Eastern California cases; three of these judges have come from outside of California, but within the Ninth Circuit. Chief Circuit Judge Alex Kozinski is mobilizing additional district judges assistance from within the Ninth Circuit and throughout the Federal Judiciary to meet this caseload crisis. The Judicial Council of the Ninth Circuit has also authorized \$290,000 for temporary law clerks.

Additionally, Chief Judge Kozinski appointed a special "resources committee" to assist the district with research on improving internal case processing, information technology, the establishment of pro bono panels for pro se cases, and case reporting procedures. Chief Judge Anthony Ishii and the judges of the Eastern District have acted upon these recommendations.

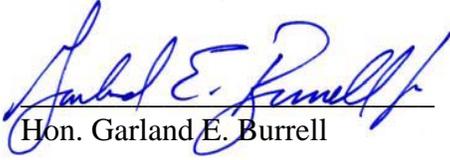
Prisoner litigation in federal court is extremely expensive. Case backlog caused by insufficient judicial resources results in costly delays in litigation.

#### Request for Additional Judgeships

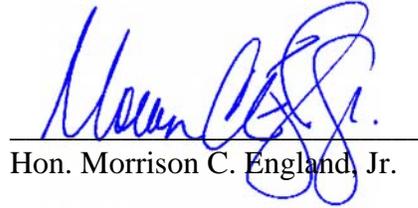
While these various strategies for assisting the Eastern District will alleviate the caseload burden to some extent, there is no way the combined effort can mitigate the need for the five additional judgeships, as endorsed by the Judicial Conference of the United States. It is unrealistic to expect the judges and staff of the Eastern District to maintain the pace of productivity indefinitely. It is worth noting that using the Judiciary's weighted caseload standard, the Eastern District could be authorized six additional judgeships. As the Judicial Conference of the United States has approved five additional judgeships, the Article III judges of the Eastern District of California request Congressional action to authorize those additional judgeships.



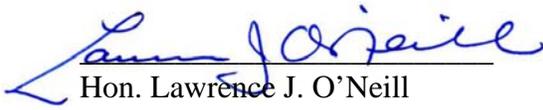
Honorable Anthony W. Ishii  
Chief Judge



Hon. Garland E. Burrell



Hon. Morrison C. England, Jr.



Hon. Lawrence J. O'Neill



Hon. John A. Mendez

**State/County Population Estimates with Annual Percent Change  
January 1, 2008 and 2009**

State/County	Total Population		Percent Change
	1/1/2008	1/1/2009	
California	37,883,992	38,292,687	1.1
<b>Fresno Division:</b>	<b>2,467,087</b>	<b>2,497,238</b>	<b>1.2</b>
Calaveras	45,885	45,987	0.2
Inyo	18,106	18,049	-0.3
Kern	814,995	827,173	1.5
Kings	153,572	154,743	0.8
Madera	150,249	152,331	1.4
Mariposa	18,297	18,306	0.0
Merced	253,471	256,450	1.2
Stanislaus	522,313	526,383	0.8
Tulare	433,764	441,481	1.8
Tuolumne	56,435	56,335	-0.2
<b>Sacramento Division:</b>	<b>4,198,865</b>	<b>4,237,837</b>	<b>0.9</b>
Placer	333,766	339,577	1.7
Alpine	1,227	1,201	-2.1
Amador	38,035	38,080	0.1
Butte	219,427	220,748	0.6
Colusa	21,811	21,997	0.9
El Dorado	178,860	180,185	0.7
Glenn	29,070	29,239	0.6
Lassen	35,956	35,550	-1.1
Modoc	9,668	9,698	0.3
Mono	13,653	13,504	-1.1
Nevada	98,874	98,718	-0.2
Plumas	20,786	20,632	-0.7
Sacramento	1,418,763	1,433,187	1.0
San Joaquin	682,316	689,480	1.0
Shasta	181,622	183,023	0.8
Sierra	3,363	3,358	-0.1
Siskiyou	45,725	45,973	0.5
Solano	424,397	426,729	0.5
Sutter	95,306	96,554	1.3
Tehama	62,179	62,836	1.1
Trinity	13,932	13,959	0.2
Yolo	198,326	200,709	1.2
Yuba	71,803	72,900	1.5
<b>Eastern District of California</b>	<b>6,665,952</b>	<b>6,735,075</b>	<b>1.0</b>