



Federal Bar Association

**STATEMENT OF
CHRISTIAN K. ADAMS, NATIONAL PRESIDENT
FEDERAL BAR ASSOCIATION
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

JUNE 30, 2020

Chairman Graham, Ranking Member Feinstein and Distinguished Members of the Committee:

Thank you for convening today's hearing and giving me the opportunity to discuss the urgent need to establish additional judgeships in our federal courts.

I serve as National President of the Federal Bar Association, the premier national bar association devoted to the practice of federal law and the administration of justice through the federal court system. The FBA is non-partisan and politically neutral, guided in its beliefs by the principles of the Constitution and the Rule of Law.

I am a litigator based in Honolulu, Hawai'i and appear before you on behalf of the thousands of attorneys in our association who practice in the federal district and appellate courts. We appear on both sides of the courtroom, as advocates for plaintiffs and defendants or as prosecutors and defenders, seeking prompt adjudication and justice for our clients.

The need for additional federal judgeships represents an urgent priority. The authorization of additional judgeships in our federal courts is critical to the assurance of timely and efficient administration of justice. It is not trite to underscore the refrain that "justice delayed is justice denied."

While our members admire and respect the diligence and hard work of federal judges to decide cases in a timely manner, limits exist on how much the bench can accomplish with present resources. Even with the incredible backstop of senior judges and the invaluable assistance they lend, there simply are not enough judges, especially in emergency districts with high caseloads. For this reason, the Federal Bar Association asks Congress to promptly exercise its authority to create additional circuit, district, and bankruptcy judgeships consistent with the recommendations of the Judicial Conference.

The last comprehensive federal judgeships bill was enacted by Congress in 1990 and provided most, if not all, of the judgeships requested by the Judicial Conference. The Federal Judgeship Act of 1990 (Public Law 101-650) established 11 additional judgeships for the courts of appeals and 74 additional judgeships (including 13 temporary) for the district courts. Since that time, no judgeship has been created for the courts of appeals, and 34 district judgeships have been added to respond to particular challenges in certain districts.¹ Yet caseloads in both the appellate courts and district courts have continued to increase. According to the Administrative Office of the U.S. Courts, by the end of fiscal year 2019, filings in the courts of appeals had grown by 13 percent while district court case filings had risen by 47 percent (civil cases were up 41 percent and criminal felony defendants were higher by 72 percent).

The Judicial Conference of the United States reviews biennially the judgeship needs of all U.S. Courts of Appeals and U.S. District Courts to determine if any of the courts require additional judges to administer civil and criminal justice in the federal court system. The Judicial Conference completed its last review in March 2019 and recommended that Congress establish five new judgeships in the Ninth Circuit Court of Appeals and 65 new judgeships in 27 district courts. The Judicial Conference also recommended the conversion of eight temporary district court judgeships to permanent positions.

More recently, on April 28, 2020, in connection with its supplemental appropriations request, the Judiciary repeated its request for the conversion of eight temporary judgeships to permanent status. The eight temporary judgeships are in the following judicial districts: Kansas, Eastern Missouri, Arizona, Central California, Southern Florida, New Mexico, Western North Carolina and Eastern Texas. In addition, the Judiciary requested the authorization of seven additional judgeships that were included in the Judicial Conference's larger judgeships request last year. The seven requested district judgeships are in the following districts: Southern Indiana, Delaware, New Jersey, Western Texas, Arizona, Southern Florida, and Eastern California.

Today, the federal court system is in greater need of these judgeships than even a year ago. As the Judicial Conference noted in its supplemental funding request, a backlog of cases incapable of adjudication during the pandemic is building in many courts. One of the districts in urgent need of additional judgeships, the Eastern District of California, has declared a judicial emergency (under 18 U.S.C. § 3714) due to the effects of the pandemic. This declaration was issued because the Eastern District of California has a calendar so congested that it is unable to meet certain statutory time limits to hear cases.

The Judicial Conference review in 2019 showed that filings in the circuit courts of appeals since 1991 have grown by 15 percent. While total criminal appeals have declined moderately since 1991, due to fewer appeals of drug cases, the number of immigration appeals increased significantly from 145 in 1991 to 920 in 2018, and firearms appeals similarly increased, from 717 in 1991 to 1,913 in 2018. The most dramatic growth in civil appeals,

¹ Congress has created 34 new district court judgeships since fiscal year 2000. As part of the Judiciary's appropriations for fiscal years 2000 and 2001, and as part of the Department of Justice's authorization legislation in fiscal year 2003, Congress created 9, 10 and 15 judgeships respectively. However, five temporary judgeships have lapsed, including two in 2004.

according to the Judiciary, has been in prisoner appeals where case filings rose 23 percent since 1991, primarily due to appeals involving motions to vacate sentences, which have more than doubled. Appeals involving administrative agency decisions more than doubled, from 2,859 in 1991 to 6,089 in 2018. These increases resulted primarily from appeals of decisions by the Board of Immigration Appeals, with the largest increase occurring in the Ninth Circuit. Original proceedings rose from 609 in 1991 to 5,041 in 2018, partially as a result of the Antiterrorism and Effective Death Penalty Act which requires prisoners to seek permission from courts of appeals for certain petitions.

In the district courts, the Judicial Conference review found that total filings grew by over 100,000 cases over the past three decades, a 39 percent increase. The number of criminal felony defendants rose 60 percent since 1991, with the largest increase in immigration cases, which rose exponentially from 2,448 in 1991 to 27,812 in 2018. Defendants charged with firearms offenses more than doubled between 1991 and 2018, an increase of nearly 7,500 defendants.

The civil caseload in the district courts also increased markedly, 34 percent overall since 1991. The most dramatic growth in civil filings occurred in cases related to personal injury and product liability which have grown from 10,952 filings in 1991 to 45,863 in 2018. Many of these filings are part of multidistrict litigation (MDL) actions comprising large numbers of pharmaceutical cases. Civil rights filings more than doubled since 1991, with growth primarily from increases in cases related to the Americans with Disabilities Act. Prisoner petitions increased 24 percent between 1991 and 2018, due to significantly higher numbers of motions to vacate sentence filings and habeas corpus petitions. Intellectual property rights cases increased from 5,186 in 1991 to 12,690 in 2018, with copyright and patent filings more than tripling during the period. The number of social security cases filed more than doubled between 1991 and 2018. Fair Debt Collection Practices Act cases, first categorized separately in 2008, rose from 4,239 in 2008 to 10,764 in 2018, more than a two-fold increase.

This national data helps to put the need for additional judgeships into perspective. However, the Judicial Conference's recommendations for circuit, district, and bankruptcy judgeships are not premised on national trends and aggregate data. The recommendations are based on the specific needs of each judicial district on a court-by-court basis. The situation in courts where the Judicial Conference has recommended additional judgeships, in fact, is much more dramatic than indicated by national statistics. A review of the seven judgeships requested by the Judicial Conference in the Judiciary's supplemental request earlier this spring, bears this out.

The Judiciary's Seven Requested Judgeships

Southern District of Indiana. The pending caseload in the Southern District of Indiana has more than doubled since 2013 and last year stood at 1,242 cases per judgeship, the fifth highest in the nation. More than 50 percent of the pending civil caseload is comprised of MDL-related personal injury product liability cases. The median time from filing to disposition for criminal prosecutions has risen by more than two months since 2013 and last year was nearly six months above the national average.

District of Delaware. Overall filings in Delaware have risen 26 percent. Given the comparatively higher weight for patent cases, weighted civil filings rose 43 percent, due to an increase in patent litigation resulting from the May 2017 Supreme Court decision in *TC Heartland LLC v. Kraft Foods Group Brands LLC*, which modified the venue standards for patent infringement lawsuits. Civil filings are currently well above the national average at 480 per judgeship.

District of New Jersey. The pending caseload has increased 53 percent since 2013 and is now above the national average, at 770 per judgeship, primarily as a result of the large volume of MDL-related cases. Overall filings have risen 46 percent since 2013 due to a substantial increase in the number of personal injury product liability filings related to MDL actions, with the vast majority of these actions in which the District of New Jersey serves as the transferee court.

Western District of Texas. The court's criminal filings are the second highest in the nation at 505 per judgeship. The number of supervised release hearings has risen nine percent since 2015 and is the fifth highest in the nation, at 123 per judgeship. Since 2015, overall filings have continued to rise as a result of increases in both civil and criminal filings.

District of Arizona. The Judicial Conference's 2019 recommendation included four additional district judgeships and the conversion of the existing temporary judgeship to a permanent position, given the consistently high level of weighted filings and the extremely heavy criminal docket due to immigration cases.

Southern District of Florida. The Judicial Conference has recommended at least two additional judgeships for the Southern District of Florida in each of the past 11 surveys over the last 22 years, based on weighted filings that have consistently remained above 600 per judgeship. In the most recent review, the Judicial Conference recommended three additional permanent judgeships and that the existing temporary judgeship be converted to a permanent position. Weighted filings have remained above 600 per judgeship for several years and were the 11th highest in the nation in 2019.

Eastern District of California. The Judicial Conference has recommended at least three additional judgeships for the Eastern District of California in each survey since 2003, and has recommended five additional permanent judgeships in 2019, based primarily on weighted filings per judgeship that consistently rank among the highest in the nation. Civil filings are the sixth highest in the nation at 739 per judgeship.

Without Congressional authorization of judgeships in these districts, caseloads are likely to increase to even higher levels, creating further delay in the delivery of justice. These growing delays are principally due to inadequate capacity in the number of judges available to address the growing size of court dockets. The significant increase in criminal cases undoubtedly has increased the workload burdens of judges in the adjudication of criminal motions, trials, and sentencing. Civil practitioners understand that criminal cases must take priority over the hearing of civil cases, yet that alone does not alleviate the ongoing frustration related to growing criminal dockets contributing to the extended period of time it can take to have civil motions

decided and civil cases tried. I cannot overstate the detrimental impact that these delays have on all federal practitioners and litigants in all cases.

The increased costs incurred by litigants due to delay are often incalculable and insurmountable. Delay can be tactically used by defendants to unfairly extract settlements and avoid blame in meritorious cases. For example, in an industrial trade secrets case in federal court, as recently recounted to me by an FBA member, well-funded defendants, in this case a Chinese manufacturing company and an American citizen, were able to exploit the federal court's case backlog, along with frivolous motions and obstreperous discovery delays, to avoid prosecution. The plaintiff, a Canadian multinational corporation, faced significant financial losses and the taking of its technology because delay effectively undermined any timely and just federal court prosecution. When delay in the case reached several years, the corporation's once-secret industrial process became readily available through illegitimate sources. The defendants, having exploited their intellectual property misappropriation, were able to spend or transfer their ill-gained profits for several years, all the while preparing to claim bankruptcy, if necessary, to avoid actual legal liability and damages. It is a sad day when a Canadian citizen rightly tells an American lawyer how broken the United States federal judicial system is. This is only one of countless examples of the costs of delay in our federal court system, compounded by insufficient numbers of judges to promptly administer justice.

I, along with my colleagues who practice in the federal courts, respect the diligence and hard work of federal judges in attempting to hear and decide cases in a timely manner. But there are limits on how much the bench can accomplish with existing resources. Simply stated, there are not enough judges. We urge Congress to promptly exercise its authority to create additional judgeships consistent with the recommendations of the Judicial Conference.

The Federal Bar Association supports the creation of new judgeships necessary to exercise federal court jurisdiction with the full understanding that there are associated costs. We are as interested as Congress in assuring that the federal courts maximize the use of their resources to avoid the creation of additional judgeships as much as possible. We also believe that the federal courts must continue to increase their productivity and create efficiencies through a range of measures, including: shared judgeships, inter- and intra-circuit assignment of judges, alternative dispute resolution, and technological advances to give judges in other districts or circuits the ability to offer assistance without the need to travel.

But the bottom line is that even with those increased efficiencies, more judgeships are necessary. The authorization of additional judgeships is crucial to curbing the delay of justice that practitioners and litigants increasingly experience in our federal system. Justice delayed is justice denied. The authorization of additional judgeships is crucial to ensuring that justice is not delayed. Only the Congress and the President can make it happen and help to ensure that justice is not denied.

Thank you, Mr. Chairman, for the opportunity to appear before you today. I will be pleased to answer your questions.