

Hon. Kimberly J. Mueller
Chief Judge



Eastern District of California U.S. District Court Adopts Interim Emergency Plan for Managing Fresno Caseload Pending Appointment of New District Judge

While the U.S. District Court for the Eastern District of California continues to celebrate Judge Ana I. de Alba’s recent elevation to the U.S. Court of Appeals for the Ninth Circuit, it also is taking steps to address management of the criminal and civil caseload that was assigned to Judge de Alba. As of Dec. 1, 2023, that caseload will be reassigned to “NODJ,” a reflection of the absence of a dedicated presiding district judge pending the President’s appointment of a successor. At the same time, the Eastern District is adopting an interim emergency plan to ensure the best possible coverage under the circumstances, with only one active district judge currently serving in the Fresno courthouse.

“This is the third time in 10 years we have experienced a district judge vacancy in our Fresno courthouse,” said Chief Judge Kimberly J. Mueller. “During that time, one judgeship has sat vacant for a total of 59 months, nearly five years. As a result, on the one hand, we have experience managing through these emergencies. On the other hand, given our limited judicial resources and the large number of cases filed in Fresno, it is difficult if not impossible for us to move cases toward resolution as quickly as the litigants deserve. We are committed to ensuring all litigants in the Eastern District and the public understand what we are doing to fulfill our responsibilities, as we do the best we can.”

Chief Judge Mueller also expressed hope that the Eastern District’s interim emergency plan will be in place for a relatively short period of time. “We are very encouraged by the speed with which California’s U.S. senators have advised the president, the president has nominated a successor to Judge de Alba, and the

Senate Judiciary Committee has held that nominee’s confirmation hearing.” The president’s nominee, Kirk E. Sherriff, appeared before the Senate Judiciary Committee on Nov. 29, 2023.

In the meantime, key elements of the Eastern District’s interim emergency plan are provided below:

Criminal Caseload: The Eastern District recognizes the importance of criminal defendants’ rights under the Speedy Trial Act and the need to ensure criminal cases receive priority attention. Beginning Monday, Nov. 27, 2023, with approval of the U.S. Court of Appeals for the Ninth Circuit, Senior U.S. District Judge Charles R. Breyer (N.D. Cal.) began presiding over changes of plea and sentencings in criminal cases previously assigned to Judge de Alba. Active Eastern District Judges Troy L. Nunley and Dale A. Drozd, who sit in Sacramento, will cover some criminal calendars as their schedules allow. Fresno’s one active district judge, Jennifer L. Thurston, will hear all other matters in criminal cases previously assigned to Judge de Alba, in addition to presiding over her own caseload. If the volume of criminal motions exceeds Judge Thurston’s capacity to handle promptly, she may request that Chief Judge Mueller identify an active district judge in the Eastern District’s Sacramento courthouse to assist. As criminal cases in the NODJ caseload need to be tried, Chief Judge Mueller will take all reasonable steps available to her to assign a district judge to preside over trial. Some criminal trials may proceed in the Sacramento courthouse. Chief Judge Mueller also will handle all case management matters requiring a district judge’s approval, including requests for extension of time and stipulations, for example.

Civil Caseload: At this point in time, most motions in the NODJ civil caseload will likely not be heard either in person or by videoconference and cases likely will not be tried. Chief Judge Mueller will handle all case management matters requiring a district judge’s approval, in these cases as well, including requests for extension of time, stipulations and requests for expedited hearing, for example. If Chief Judge Mueller grants a request for hearing of a matter, the hearing most likely will be set before an active district judge sitting in the Sacramento courthouse. She also will assign active Sacramento district judges to address pending motions in this civil

caseload to the extent their time allows. The Administrative Office of the U.S. Courts and the U.S. Court of Appeals for the Ninth Circuit have approved additive law clerk resources to assist these district judges in resolving pending motions.

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The U.S. District Court for the Eastern District of California is the federal trial court for California's vast Central Valley, serving 34 counties and nearly 8.5 million people.¹ Congress has allocated the district a total of six active judgeships, the same number allocated to the district since 1978 when its population was 4 million. For more than 23 years, the Administrative Office of the U.S. Courts has recommended to Congress the creation of additional district judgeship positions for the Eastern District. In 2023, the Administrative Office confirmed the district's need for additional judgeships, identifying the number of additional judgeships required as four. Active district judges in Sacramento include Chief Judge Kimberly J. Mueller, District Judge Troy L. Nunley, District Judge Dale A. Drozd and District Judge Daniel J. Calabretta. District Judge Jennifer L. Thurston currently is the only active district judge in Fresno. Senior district judges also provide important service to the court. Senior Judges William B. Shubb, Morrison C. England, Jr. and John A. Mendez sit in Sacramento. Since Senior District Judge Anthony W. Ishii's retirement in 2022, there is no senior district judge available to assist in Fresno.

¹ U.S. Census Bureau Data as amalgamated by the California State Data Center, Demographic Research Unit, Department of Finance.