

2021 BIENNIAL SURVEY OF JUDGESHIP NEEDS

U.S. DISTRICT COURTS APPLICATION

Please complete the form even if your court is not requesting additional Article III judgeships, conversion of an existing temporary judgeship to permanent status, or extension of a temporary judgeship. Space provided for answers will expand as needed.

- If your court **is not** requesting any change to the current number of authorized judgeships, you need only complete Question 1 below.
- If your court **is** requesting additional judgeships or conversion/extension of a temporary judgeship, please skip Question 1 and complete the remainder of the survey.

District Eastern District of California

Indicate the number of additional permanent judgeships and/or conversion or extension of temporary judgeships your court is requesting (**include any requested in prior surveys that you believe are still required**):

<u>5</u>	Permanent judgeships
<u>0</u>	Conversion of temporary judgeship to permanent
<u>0</u>	Extension of temporary judgeship

- 1 **If your court is not requesting any change to its current number of authorized judgeships, please indicate what factors, if any, influenced your decision (e.g., weighted filings are below the general standard of 430 per judgeship with an additional judgeship or below the standard of 500 per judgeship for small courts, or significant contributions provided by senior judges).**

N/A

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2 If your court is requesting a change to its current number of authorized judgeships, please explain all factors that justify your request

The Eastern District of California is requesting five (5) permanent judgeships.

The Eastern District of California first exceeded the judicial caseload standard for additional judgeships in 1994. For each of the twenty-five (25) years following that first instance, our weighted caseload has remained among the top ten (10) in the nation and the top three (3) in the circuit. Today, at 730 filings per six (6) authorized judgeships we continue to strain to meet the demands of our caseload. Our situation is exacerbated exponentially by two (2) current vacant judgeships in our district. These vacancies, which have now lasted over a combined four (4) months, have had the effect of increasing our current weighted caseload to 1095 per active judgeship, with no nominations pending to fill our vacancies. Due to our current judgeship situation, our ongoing heavy caseload, our large population base, significant contributions demanded of our decreasing number of senior judges and diminished additional resources, we are requesting five (5) additional judgeships.

In recent years, our weighted filings have been surpassed by districts that have caseloads heavily influenced by influxes of MDL Litigation. MDL cases create a temporary burden on the receiving district as opposed to the continuing burden that has existed in the Eastern District for many years. These Districts include four currently in the top 10, Louisiana Eastern, Indiana Southern, New Jersey and Arizona. Districts such as Texas Western and Arizona have also seen a non-typical influx of immigration litigation over the last few years thus pushing their filings upward. Even though our Eastern District filings have decreased slightly over the last five years, due to a state policy resulting in a decrease in prisoner filings, our combined civil and criminal filings remain significantly above the set judicial standard.

Rank	District	Judges	Weighted Filings ¹
1	LAE	12	1,200
2	INS	5	1,148
3	DE	4	1,127
4	NJ	17	1,044
5	FLN	4	950
6	TXW	13	839
7	AZ	13	800
8	FLS	18	758
9	OHS	8	745
10	CAE	6	730
National Average		7.50	535

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¹*Federal Court Management Statistics - FY2019 and CM/ECF for JPML – JPML Litigation Statistics by MDL – 1/15/2020*

With full utilization of all the current resources available to us, processing times for our civil cases are insurmountable. This is directly attributable to our longstanding need for additional judgeships. Caseload pressure remains so severe that there appears to be no impending respite in the case processing delays of our District. At 13.6%, the number of civil cases over three years old, in our court, ranks seventy fifth (75) in the nation. Over the last 5 years we have maintained rankings between 74 and 81, despite consistently ranking near the top nationwide in terminations per judgeship. When comparing the cases over three years for districts in the top ten weighted filings, we have the second highest percentage of cases waiting to be processed. With such delays and tapped out judicial resources, it's difficult to dispute that we are in dire need of a more permanent solution to repair the long-deferred maintenance of our judicial infrastructure.

CAE National Rank/ Number of Cases over 3 years	2019	2018	2017	2016	2015
	75	74	80	79	81

National Rank Weighted Filings	District	Judges	National Rank Civil Cases over 3 Years
1	LAE	12	88
10	CAE	6	75
3	DE	4	59
2	INS	5	57
7	AZ	13	50
9	OHS	8	40
6	TXW	13	29
8	FLS	18	8
4	NJ	17	3
5	FLN	4	1

Source - Federal Court Management Statistics - FY2019

Based on the Administrative office data, the last Article III Judgeship created in the Eastern District of California was in 1978 when the population of the District was about 2.5 million. Our District encompasses 55% of the geographical size of California. It includes thirty-four (34) counties of the fifty-eight (58) counties in the State. Our Judicial resources are now spread over an excess of 8,000,000 people and is estimated to reach nearly 10,000,000 by 2031. Essentially, we have only one judge serving 1,333,333 people. At six (6) Article III judges, we are working with 57% less judges than the Northern District of California which has fourteen (14) judges at roughly the same population size. (See Attachment).

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The ongoing Judicial Emergency in our District has been exacerbated by two recent judicial vacancies. Our current request for five (5) additional Judges comes while operating under intensified caseload strain following the recent Inactive Senior Status of Judge Lawrence J. O'Neill and Senior Status of Judge Morrison C. England. Judge England took Active Senior Status on December 17, 2019 and Judge O'Neill took Inactive Senior Status on February 2, 2020. Concurrently, Senior Judge Garland E. Burrell assumed Inactive Senior Status effective December 31, 2019. Judge Mendez will become eligible for senior status on April 17, 2022 and has communicated he may assume inactive senior status in 2023.

With no nominations made and no indication of when these two vacancies in our district will be filled, workload stress levels are heightened for our existing judges and the administration of justice in our Court is affected in ways that we can no longer adequately mitigate. Of our six (6) Article III seats, two (2) preside in our Fresno Division. With the departure of Judge O'Neill, who worked in the Fresno Division, this leaves us with a single district judge in that office. Approximately 450 civil cases and 300 criminal defendants that were previously assigned to Judge O'Neill, are currently unassigned while awaiting the appointment and confirmation of a new district judge. Under the current circumstances, our District has been compelled to issue temporary emergency procedures in an attempt to stretch our critically low resources across our heavy caseload, while prioritizing felony criminal cases in an effort to avoid Speedy Trial dismissals. Unassigned civil cases with trial dates through the end of 2021 will most likely be delayed, associated pretrial conferences will be affected and parties will be highly encouraged to consent. While our court is taking steps to encourage consent, our Magistrate Judges already carry a heavy caseload and they will be unable to take on significantly more without an impact on productivity elsewhere.

Our urgent need for five (5) additional judges cannot be more apparent as history appears to be repeating itself. Extended judicial vacancies over the past twelve years have intensified the congestion in our court. The first vacancy, following the resignation of Judge David Levi in 2007, lasted eleven months until the appointment of Judge John A. Mendez in 2008. A second vacancy, lasting nearly two years, occurred when Judge Frank C. Darrell, Jr. took Senior Status in January 2009. Judge Kimberly J. Mueller was appointed in late December 2010 to replace him. Judge Garland E. Burrell, Jr., took senior status in 2012, creating a nine-month vacancy until the appointment of Judge Troy N. Nunley in 2013. Finally, Judge Anthony W. Ishii assumed senior status in November 2012. His vacancy lasted over three years until December 2015, when Judge Dale A. Drozd filled the vacancy. Unfortunately, these long waiting periods between judgeships mean that caseload delays accrue and follow a new judge once they are appointed for significant period of time, as he or she is also receiving an equal share of newly filed cases.

The amount of work that our judges are expected to perform during their active tenure is a deterrent for some when it comes to considering senior status, as an active senior judge

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who takes half a caseload in our district still carries close to the average weighted caseload of an active district judge in other districts. Our District has gone from having the assistance of six (6) senior judges to three (3). In the past, our senior judges carried full caseloads to help alleviate the heavy caseload. Now each carries a half caseload. We currently have only two (2) recalled magistrate judges. We do not anticipate that these judges will continue beyond 2022.

To attempt to compensate for our lack of district judgeships, the Judicial Conference has authorized the appointment of twelve (12) full-time magistrate judges for our district. We continue to maximize the utilization of our magistrate judges by referring prisoner cases, social security cases and civil cases for pretrial proceedings to the greatest extent possible. We also encourage parties in regular civil cases to consent to our magistrate judges. While our consent rate is very high at 16%, the greatest caseload burden continues to fall upon our active district judgeships.

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Our court has maximized the use of our senior judges, magistrate judges and participated in various short-term visiting judges' programs. We have even dealt with past judicial vacancies by redistributing cases to active judges. In those instances, the number of cases to be redistributed came nowhere near the nearly 750 cases that currently remain unassigned in Fresno, following the recent inactive senior status of a couple of judges in our district. In 2014 and 2015, to address the three-year vacancy in our Fresno Office created when Judge Ishii took senior status, we assigned approximately 450 Fresno cases to our Sacramento district judges. When Senior District Judge Burrell reduced his caseload from half a caseload to a quarter, we redistributed approximately 190 cases to our active Sacramento District Judges. In the last 3 years, the 9th Circuit has assisted in finding visiting judges, when possible, to hear trials in both Sacramento and Fresno. To date we have reassigned 71 trials to visiting judges. Prior to our recent efforts, beginning in late 2008, 87 circuit and district judges from the Ninth Circuit volunteered to handle older prisoner habeas and civil rights cases. Although the combined effect of these extraordinary measures has undoubtedly resulted in a modest reduction to our pending caseload, it is unrealistic to assume that a court can continue to bear the burden of supporting visiting judges indefinitely or that their modest contribution would have a significant and meaningful impact. Additionally, as a general rule, the visiting judges we have enjoyed have not come with support staff, meaning that our existing court staff has added to their overburdened duties to provide these judges the support they require. In the long run, temporary assistance is no substitute for having an adequate number of Article III judges in the district.

- 3 **If the caseload of your court could support a request for more judgeships than your court is requesting (based solely on the application of the general standard of 430 weighted filings per judgeship with an additional judgeship or the standard of 500 weighted filings per judgeship for small courts), please identify which factors influenced the court's decision to request fewer additional judgeships than a straight application of the Conference standard would allow.**

N/A

- 4 **Have judgeship vacancies, either current or past, had an impact on your court's request?**
 Yes No

If yes, please explain how.

As noted above, past vacancies have had the effect of increasing the pending caseload of the District. With high caseloads and already critically low judicial resources, our current vacancies magnify the burden of our caseload. It has come to a time where the delivery of justice in the Eastern District is seriously imperiled.

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5 Please provide the following information about magistrate judges in your district:

- a. Are magistrate judges on the district-wide wheel for the direct assignment of civil cases? Yes No

If yes, what percentage of a full draw does each magistrate judge receive?

Magistrate judges are randomly assigned as the presiding judge at the initial filing of all prisoner (non-capital habeas and civil rights) and social security petitions. This figure is approximately 50% of all civil cases. If a party declines, the case is then reassigned to a district judge and the magistrate judge is retained in a referral capacity. On all other civil cases filed in the Eastern District, magistrate judges are randomly assigned as the referral judge and cases are distributed equally among the magistrate judges of each office. When cases are opened, consent forms are provided to the parties, as well as a letter from the Chief Judge explaining the opportunity and benefit of consent. In FY 2019, magistrate judges were assigned as the presider in 2115 cases.

Does the direct assignment of civil cases vary by court division? Yes No

If yes, please specify how.

N/A

- b. Are any special types of cases routinely referred to magistrate judges for disposition? Yes No

If yes, please specify.

Criminal petty offense and misdemeanor criminal actions are routinely assigned to magistrate judges for disposition

- c. Do magistrate judges regularly participate in other alternative dispute resolution (ADR) proceedings in addition to settlement conferences? Yes No

Our magistrate judges have taken a very proactive approach to settlement. Our magistrate judges hold a yearly settlement week that routinely results in the settlement of over 50 cases and they travel to prisons throughout or district to hold multiple settlement conferences during a settlement day.

- d. Are magistrate judges routinely assigned pretrial duties in civil cases? Yes No

If yes, what types of duties and in what types of cases?

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The magistrate judges in Sacramento and Fresno perform a wide range of duties, with an emphasis on prisoner cases, civil discovery motions, settlement conferences, social security appeals, and preliminary felony proceedings. They are responsible for the progress and management of all prisoner petitions (civil rights and habeas corpus) and social security cases filed in the district up to trial. Sacramento Division Magistrate Judges also have full pretrial responsibility in non-prisoner pro se cases. Fresno Division Magistrate Judges do all scheduling in regular civil actions up to pretrial. Magistrate judges are also responsible for the management of three quarters (3/4) of the death penalty cases in the district.

If applicable, do these assignments vary by court division? Yes No

If yes, please specify how.

The magistrate judges in Sacramento rotate the handling of all preliminary felony criminal actions, misdemeanor actions and petty offenses arising in the Sacramento Division. In the Sacramento Division magistrate judges are responsible for all pretrial proceedings in non-prisoner pro se cases and death penalty habeas cases.

The magistrate judges in Fresno rotate the handling all preliminary felony criminal actions, misdemeanor actions and petty offenses arising in the Fresno Division. In the Fresno Division, magistrate judges are assigned all non-dispositive motions in civil cases and handle civil status conferences for the district judges. In the Fresno Division, magistrate judges conduct all status hearings in Felony Criminal actions and conduct all pretrial proceedings in 50% of the death penalty habeas cases.

The magistrate judge at Yosemite National Park handles all preliminary felony criminal actions, misdemeanor actions and petty offenses arising in the Park and a full share of Fresno's prisoner petitions, social security actions and non-dispositive motions and status conferences in regular civil cases.

The magistrate judge at Bakersfield handles all preliminary felony criminal actions, misdemeanor actions and petty offenses in the southern portion of the district as well as a full share of habeas corpus cases, prisoner civil rights cases, social security appeals filed in Fresno. She also handles all motions and pretrial case management duties in regular civil cases filed in the southern portion of the district.

The magistrate judge at Redding handles all preliminary felony criminal actions, misdemeanor actions and petty offenses in the northern counties of the district. In civil cases he handles a full share of the prisoner cases filed in Sacramento, a full share of social security cases and all motions and pretrial case management duties in civil cases filed in the northern counties of the district. He also conducts all pretrial scheduling in civil cases for one of our district judges.

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- e. **Are magistrate judges routinely assigned pretrial duties in felony cases?** Yes No

If yes, what types of duties and in what types of cases?

Magistrate judges conduct arraignments, detention hearings, bail hearings, status hearings and hear non-dispositive discovery motions. In Fresno, magistrate judges hear all status conferences in felony cases.

- f. **If applicable, do these assignments vary by court division?** Yes No

If yes, please specify how.

In Fresno magistrate judges hear all status conferences in felony cases.

- g. **Please indicate why the need for additional judicial resources cannot be met by the authorization of additional magistrate judges rather than Article III judges?**

Our magistrate judges are at full, legal utilization. While magistrate judges are prohibited by the Constitution from performing Article III functions, we utilize our magistrate judges at full capacity and have a 2 to 1 ration of magistrate judges to district judges so they may do as much as possible given our lack of Article III judges. The magistrate judges in this district have already been tasked with a great many assignments, more so than in most districts (See Eastern District Local Rules 302 and 305 attached). Even if more magistrate judges were appointed, there is not an additional category of work that could be assigned or referred to magistrate judges that is appropriately taken, at this juncture, from Article III judges.

- h. **Has the court considered a change in the utilization of magistrate judges as a possible alternative to requesting additional Article III judgeships?**

No. Our magistrate judges are at full, legal utilization.

6. Please provide the following information about senior judges in your district:

- a. How many senior judges regularly take cases? 3

Of those judges, please indicate the number that take:

- 1) a partial caseload 3

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2) a full caseload **0**

b. **Do any of the senior judges limit the types of cases they will take?** Yes No

If yes, please indicate which case types.

Judge Shubb (Sacramento) is assigned a 50% civil and 50% criminal case draw.

Judge Ishii (Fresno) is assigned a 50% civil and 0% criminal case draw.

Judge England (Sacramento) is assigned a 50% civil and 50% criminal case draw.

NOTE: Judge England is currently not receiving assignments from December 2019 until at least April 2020 due to medical issues.

c. **Do any of the senior judges routinely help other courts?** Yes No

d. **Do you anticipate any change in the number or contribution (either an increase or? decrease) of senior judges over the next two years?** Yes No

If yes, please explain.

Judge Mendez will become eligible for senior status on April 17, 2022 and may assume inactive senior status in 2023. Judge Ishii has evinced his desire to assume inactive senior status in 2023.

e. **Have you requested fewer additional judgeships because of the contributions of senior judges?** Yes No

7. **During fiscal year 2019, did any visiting judges help your court:**

a. from within the circuit Yes No

b. from outside the circuit Yes No

c. If yes to either 7a or 7b:

1) For what purpose did you seek assistance (e.g., specific types of cases, temporary influx in filings, reduce backlog);

Visiting judges help us by conducting civil and criminal trials in cases where a judge has two trials scheduled to begin at the same time. In these cases, final pre-trial conferences have been held and they are then assigned to a visiting judge for trial. One visiting judge continues to help our district by taking prisoner habeas case assignments.

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2) What types of cases were handled by the visiting judges;

Civil and criminal cases (trials only) and Prisoner Habeas cases.

3) How were the visiting judges used (please check all that apply); and

- Motions Pretrial Conferences Settlement Procedures
 Civil Trials Sentencing Hearings Arraignment Hearings
 Criminal Trials Plea Proceedings
 Others: [Click here to enter response.](#)

4) What factors, if any, restricted the use of visiting judges (e.g., lack of space, insufficient support staff)?

Judges who are willing to assist often prefer to preside over trials. However, the need in this district is to recruit the assistance of judges who are willing to take a substantial number of cases and handle the case from start to finish. Specifically, through experience, we have come to the conclusion that the only form of meaningful help would be in the form of five (5) resident visiting judges with their own support staff, who could take a meaningful share of our caseload, and handle the cases to conclusion. Because we only have one (1) district judge in Fresno and over 600 pending felony defendants, we have a process to check internally to see if a judge in district can help with a trial. While we don't rule out seeking assistance from the Circuit on an emergency basis, we often cannot predict that we will need coverage soon enough to find a visiting judge to cover. While visiting judges have solved some short-term problems with trial conflicts, in the long-term this temporary assistance is no substitute for having additional Article III judges in the district.

d. If no to either 7a or 7b above:

1) what factors prevented the use of visiting judge to relieve workload problems; and

From past experience we have found that the overall size and complexity of our caseload does not promote the use of visiting judges. As stated above, generally visiting judges prefer to take a trial or limited number of cases. Our pending caseloads are so great that this type of assistance has minimal impact and we have come to the conclusion that the only form of meaningful help would be in the form of five (5) resident visiting judges with their own support staff, who could take a meaningful share of our caseload, and handle the cases to conclusion.

2) what would facilitate your court's use of visiting judges?

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NA

8. During fiscal year 2019, did any of your court's active judges provide visiting judge assistance:

a. to other courts within the circuit Yes No

b. to other courts outside the circuit Yes No

c. **If yes to either 8a or 8b above, please explain the purpose of that assistance (e.g., specific types of cases, temporary influx in filings, recusal situation).**

Senior Judge Shubb presided over a trial conducted in Boise, Idaho in 2019. The district had a desperate need for assistance as its two Judges were already presiding over other trials. Judge Shubb was able to arrange his schedule to assist in that instance.

9. a. What types of alternative dispute resolution (ADR) techniques does your court use?

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From the very first hearing in district court (generally the Rule 16 scheduling conference), settlement discussions begin. Our judges evaluate the legal and/or factual complexities of the case to determine the best method of ADR that has the highest possibility of early resolution.

Settlement conferences are conducted before magistrate judges in all non-prisoner cases unless parties elect private mediation.

We have adopted a Voluntary Dispute Resolution Program (VDRP) as an alternative to litigation in the court. Under this program, civil cases (non-prisoner) which are appropriate for VDRP and with consent of all parties are assigned a neutral volunteer evaluator to narrow the focus of the dispute and/or to assist in settlement.

An ADR staff attorney has been designated to build on our existing in-house programs and implement new programs to enhance ADR within the district, with an emphasis on prisoner actions. Our ADR staff attorney works closely with our ADR judge who is dedicated to maximizing settlement opportunities. ADR efforts have resulted in:

- A significant expansion of the Pro Bono Prisoner Civil Rights Panel. Volunteer lawyers are assigned to represent prisoners in the litigation process. For those prisoners who proceed on merit, legal representation aids in maximizing the use of court resources because most prisoners are ill-equipped to represent themselves effectively in court proceedings.
- The expanded use of ADR to provide prisoners with settlement alternatives in civil rights actions. Several magistrate judges regularly conduct settlement conferences with prisoners, either at the prison, at the courthouse, or via video conferencing. Judges traveling to the prisons frequently hold multiple conferences in one day, thereby saving collateral resources of travel (U.S. Marshal's office) and appearances and travel for counsel (U.S. Attorney's office).
- The establishment of a prisoner mediation clinic at a local law school where law students assist the settlement judge in preparing for and conducting settlement proceedings at prisons or the courthouse.

b. What impact has ADR had on the workload of the judges in your court?

The ADR program is a valuable complement to other strategies adopted by the district to reduce the extreme workload of the court. Even when parties are not able to settle as the result of ADR sessions, the process enables litigants to narrow the focus of contested issues which promotes more efficient use of court time.

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- c. **Please estimate the number of cases assigned to ADR and disposed of without significant district judge involvement in 2019.**

In 2019, the Eastern District of California held settlement conferences in 255 prisoner civil rights cases. 158 of these prisoner cases settled. 80 cases were assigned to the Voluntary Dispute Resolution Program (VDRP) and 12 of those were settled. 35 VDRP cases from 2019 are still pending, 15 did not settle and 18 cases were removed from the process.

This request represents the views of the majority of the active members of the court.

Chief Judge responding: Kimberly J. Mueller
Print Name


CHIEF UNITED STATES DISTRICT JUDGE

Date: 3/6/2020 Telephone Number: 916-930-4260

Please e-mail your signed, dated response as a Portable Document Format (PDF) file to [Article III Judges - Judicial Services Office/DCA/AO/USCOURTS](#) by March 6, 2020. You may also send your response by fax to (202) 502-1888.

BIENNIAL JUDGESHIP SURVEY

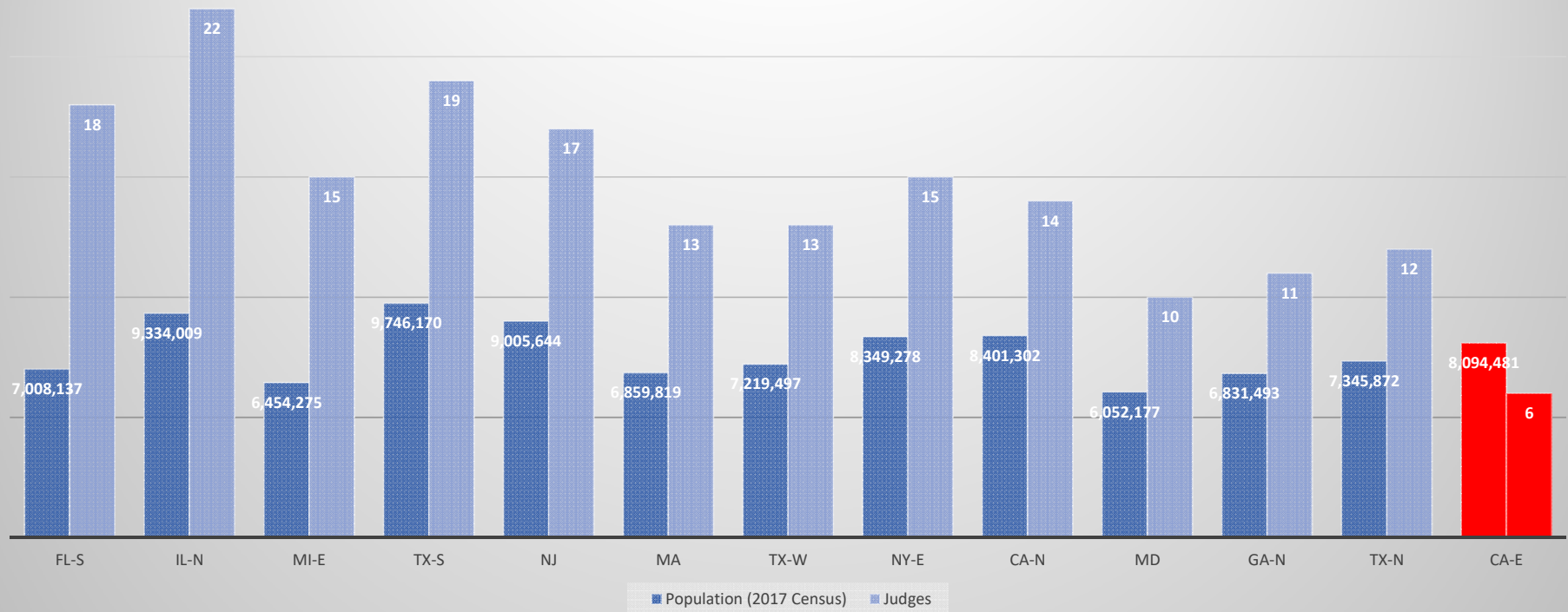
2000 – 2019

TOP 11 COURTS

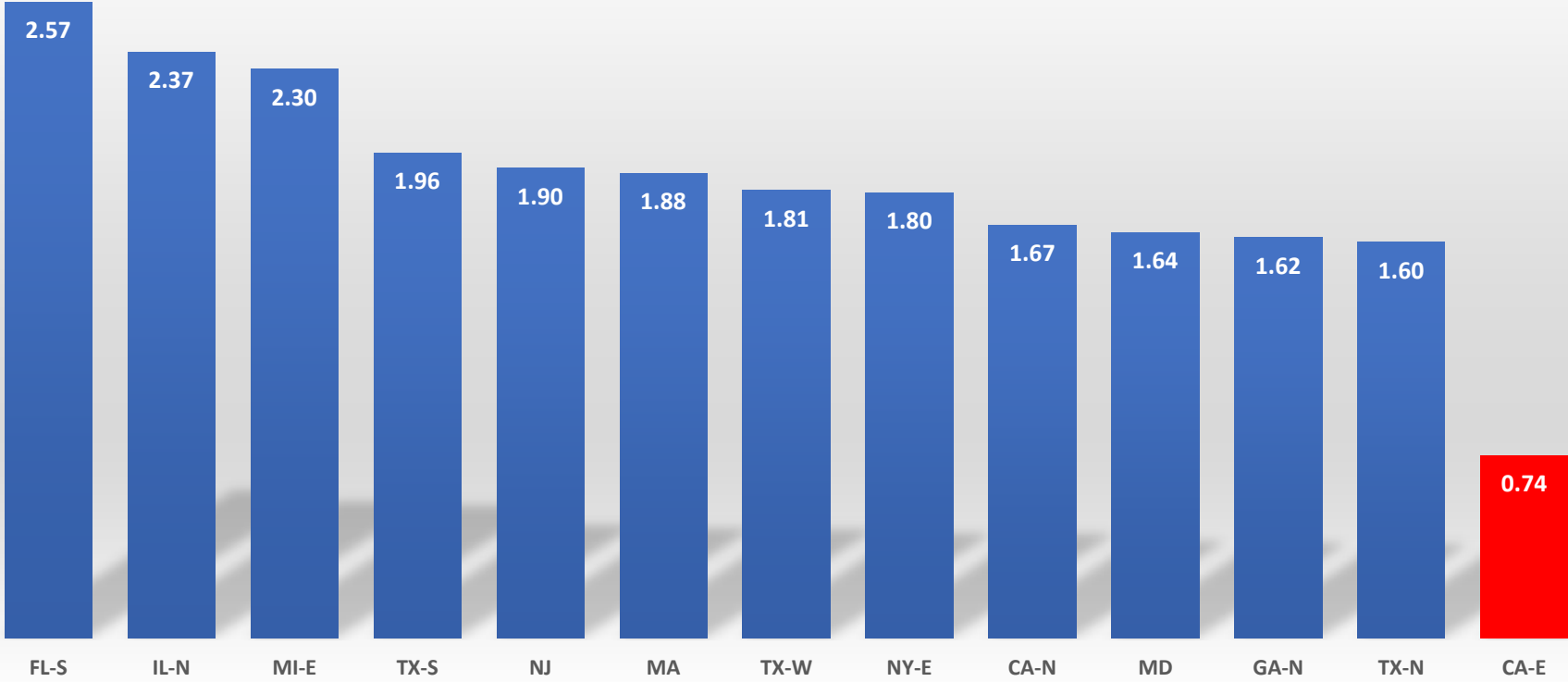
RECOMMENDATION and PERCENT OF BENCH

Rank	District	Authorized Judgeships	Judicial Conference Recommendation										
			2000	2003	2005	2007	2009	2011	2013	2015	2017	2019	AVG
1	CAED	6	2 33%	3 50%	4 67%	4 67%	5 83%	7 117%	7 117%	6 100%	5 83%	5 83%	4.8 80%
2	AZD	8	5 63%	3 38%	5 63%	5 63%	2 25%	5 63%	10 125%	4 50%	0 0%	4 50%	4.3 54%
3	ARWD	1	0 0%	1 100%	1 100%	1 100%	1 100%	0 0%	0 0%	0 0%	0 0%	1 100%	0.5 50%
4	FLMD	11	2 18%	3 27%	5 45%	5 45%	5 45%	6 55%	6 55%	6 55%	6 55%	6 55%	5 45%
5	IDD	2	0 0%	1 50%	1 50%	1 50%	1 50%	1 50%	1 50%	1 50%	1 50%	1 50%	0.9 45%
6	NM	5	3 60%	3 60%	2 40%	2 40%	1 20%	2 40%	1 20%	2 40%	2 40%	1 20%	1.9 38%
7	CASD	8	8 100%	5 63%	1 13%	0 0%	0 0%	3 38%	4 50%	2 25%	3 38%	4 50%	3 38%
8	TXWD	10	4 40%	0 0%	0 0%	1 10%	4 40%	5 50%	5 50%	4 40%	4 40%	6 60%	3.3 33%
9	NYWD	4	1 25%	1 25%	1 25%	1 25%	1 25%	2 50%	1 25%	1 25%	1 25%	1 25%	1.1 28%
10	CAND	14	1 7%	2 15%	4 29%	3 21%	5 36%	5 36%	6 43%	5 36%	2 15%	4 28%	3.7 26%
11	CACD	27	2 7%	3 11%	4 15%	5 19%	5 19%	9 33%	12 44%	13 48%	7 26%	9 33%	6.9 26%

Equivalent Districts Nationwide Population and Authorized Judgeships



Equivalent Districts Nationwide Judges per 1 Million Population



RULE 302 (Fed. R. Civ. P. 72)

DUTIES TO BE PERFORMED BY MAGISTRATE JUDGES

(a) General. It is the intent of this Rule that Magistrate Judges perform all duties permitted by 28 U.S.C. § 636(a), (b)(1)(A), or other law where the standard of review of the Magistrate Judge's decision is clearly erroneous or contrary to law. Specific duties are enumerated in (b) and (c); however, those described duties are not to be considered a limitation of this general grant.

Magistrate Judges will perform the duties described in 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 53 upon specific designation of a District Judge or by designation in (b) and (c).

(b) Duties to Be Performed in Criminal Matters by a Magistrate Judge Pursuant to 28 U.S.C. § 636(a), (b)(1)(A), (b)(1)(B), (b)(3), or Other Law.

(1) All pretrial matters in felony criminal actions except motions to suppress evidence, motions to quash or dismiss an indictment or information, motions to discover the identity of an informant, motions for severance, and entry of pleas of guilty;

(2) Preliminary proceedings in felony probation or supervised release revocation actions;

(3) All pretrial, trial, and post-trial matters in any misdemeanor action (including petty offenses and infractions), see Fed. R. Crim. P. 58; L.R. 421;

(4) Supervision of proceedings conducted pursuant to letters rogatory or letters of request;

(5) Receipt of indictments returned by the grand jury in accordance with Fed. R. Crim. P. 6(e)(4), 6(f);

(6) Conduct of all proceedings contemplated by Fed. R. Crim. P. 1, 3, 4, 5, 5.1, 9, 40, 41, except Rule 41(e) post-indictment/information motions and Rule 41(f) motions in felony actions made at any time; included within this grant are applications for mobile tracking devices (18 U.S.C. § 3117), pen registers or trap and trace devices (18 U.S.C. § 3121 et seq.), applications for retrieval of electronic communications records (18 U.S.C. § 2701 et seq.), and applications for disclosure of tax return information (26 U.S.C. § 6103);

(7) Motions to exonerate bail;

(8) Extradition proceedings, 18 U.S.C. § 3181 et seq.;

(9) Upon specific designation of a Judge and consent of the parties, jury voir dire in criminal actions.

(c) Duties to Be Performed in Civil Matters by a Magistrate Judge Pursuant to 28 U.S.C. § 636(a), (b)(1)(A), (b)(1)(B), (b)(3), or Other Law.

(1) All discovery motions, including Fed. R. Civ. P. 37 motions, and supervision of proceedings conducted pursuant to letters rogatory or letters of request; all stipulations and motions relating to protective orders and sealing documents submitted or filed for hearing before discovery cutoff;

(2) Supervision of proceedings conducted pursuant to letters rogatory or letters of request;

(3) All pretrial motions pursuant to the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss for failure to state a claim upon which relief can be granted, and to dismiss an action involuntarily;

(4) Review of petitions in civil commitment proceedings under Title III of the Narcotic Addict Rehabilitation Act;

(5) Proceedings under 46 U.S.C. §§ 2302, 4311(d), and 12309(c);

(6) All motions for specific leave of court for the making of deposits into the registry of the Court, and all motions for orders providing for special placement of deposits, see L.R. 150;

(7) All motions brought pursuant to the Federal Debt Collections Procedures Act of 1990, 28 U.S.C. § 3001 et seq.;

(8) Applications for writs of entry in connection with the enforcement of Internal Revenue Service tax liens;

(9) Petitions to enforce Internal Revenue Service summonses filed pursuant to 26 U.S.C. §§ 7402(b) and 7604(a);

(10) Petitions to quash administrative summonses filed pursuant to 26 U.S.C. § 7609(b)(2);

(11) Examinations of judgment debtors in accordance with Fed. R. Civ. P. 69;

(12) Settlement conferences as may be calendared;

(13) In Fresno, all pretrial scheduling conferences and the final pretrial conference;

(14) All applications for interim disbursement under L.R. 202(f);

(15) Actions brought under Title 42 of the United States Code to review a final decision of the Commissioner of Social Security, including dispositive and non-dispositive motions and matters;

(16) Actions involving federally insured student loans, 20 U.S.C. § 1071 et seq., including dispositive and non-dispositive motions and matters;

(17) Actions brought by a person in custody who is seeking habeas corpus relief (28 U.S.C. § 2241 et seq.), or any relief authorized by 42 U.S.C. § 1981 et seq., *Bivens* or the Federal Tort Claims Act including dispositive and non-dispositive motions and matters;

(18) Upon specific designation of a Judge, jury verdicts in civil actions;

(19) Motions for entry of default judgment under Fed. R. Civ. P. 55(b)(2);

(20) Enforcement of L.R. 271 as provided in L.R. 271(i);

(21) In Sacramento, all actions in which all the plaintiffs or defendants are proceeding in propria persona, including dispositive and non-dispositive motions and matters. Actions initially assigned to a Magistrate Judge under this paragraph shall be referred back to the assigned Judge if a party appearing in propria persona is later represented by an attorney appearing in accordance with L.R. 180.

(d) Retention by a District Judge. Notwithstanding any other provision of this Rule, a Judge may retain any matter otherwise routinely referred to a Magistrate Judge. Applications for retention of such matters, however, are looked upon with disfavor and granted only in unusual and compelling circumstances.

RULE 305 (Fed. R. Civ. P. 73)

PROCEDURES FOR THE DISPOSITION OF CIVIL ACTIONS ON CONSENT OF THE PARTIES

(a) Notice of Option. The Clerk shall notify the parties in all civil actions that they may consent to have a Magistrate Judge conduct any and all proceedings in the action and order the entry of a final judgment. Such notice shall be handed or transmitted by the Clerk to the plaintiff at the time the action is filed, and to the removing defendant at the time of removal, and the plaintiff or defendant shall transmit the notice to all other parties as an attachment to copies of the complaint and summons, or the removal documents, when served. See also 28 U.S.C. § 636(c). The Court may, at appropriate times, inform the parties of the options available under section 636(c). All such communication shall comply with the requirement of section 636(c)(2).

(b) Reference to Magistrate Judge. After all necessary consents have been obtained, the Clerk shall transmit the file in the action to the assigned Judge, for review, approval by the Judge and Magistrate Judge, and referral. Notwithstanding the consent of all parties, the Judge or Magistrate Judge may reject the referral. Once an action has been referred to a Magistrate Judge, that Magistrate Judge shall have authority to conduct all proceedings referred to the Magistrate Judge, including, if appropriate, authority to enter a final judgment in the action. See Fed. R. Civ. P. 73(a).

(c) Appeal to the Court of Appeals. Upon the entry of final judgment in any action disposed of by a Magistrate Judge on consent of the parties under the authority of 28 U.S.C. § 636(c) and these Rules, an aggrieved party may appeal directly to the United States Court of Appeals for the Ninth Circuit in the same manner as governs appeals from any other final judgment of the Court. See Fed. R. Civ. P. 73(c).