

MEMORANDUM

Date: August 1, 2022

To: Ninth Circuit Judicial Council

From: Honorable Kimberly J. Mueller
Chief Judge, United States District Court for the Eastern District of California

RE: RESPONSE TO 2023 BIENNIAL SURVEY OF ARTICLE III JUDGESHIP NEEDS
PRELIMINARY RECOMMENDATION

The United States District Court for the Eastern District of California (Eastern District) submits this Response to the 2023 Biennial Survey of Article III Judgeship Needs Preliminary Recommendation for the Eastern District dated July 5, 2022 (Preliminary Recommendation - attached). The Eastern District respectfully requests the Recommendation for the Eastern District be changed from four (4) permanent judgeships to five (5) permanent judgeships based on our previously submitted Biennial Survey of Judgeship Needs (2023 BJS – attached) and:

- (1) The ongoing caseload crisis in the Eastern District which has existed for 22 years, and has only been exacerbated by the COVID-19 pandemic,
- (2) The persistent effects of longstanding and persistent judicial vacancies in the Eastern District, which continue to impact caseloads even after vacancies are filled, and
- (3) The continued growth in the Eastern District, measured in both population and caseload, which is projected to trend upward in the upcoming years.

As stated in our 2023 BJS and the Preliminary Recommendation, the Judicial Conference has recommended at least two (2) and as many as seven (7) additional judgeships for the Eastern District for the last 22 years. Over this period the Judicial Conference's average recommendation for the Eastern District has been 4.7 additional judgeships, which equates to nearly 80 percent of our current bench of six (6) active district judges. This is the highest average of any district in the United States over the last 22 years. While the current Preliminary Recommendation correctly analyzes in narrow mathematical terms the current need of the Eastern District based on last year's filings alone, it does not take into account the cumulative effect of our increasingly burdensome caseloads that have been growing for 22 years, the impact of these caseloads on the judges of the court and the certainty that caseloads will continue rising in the future. In short the current recommendation does not reflect what is required to bring the Eastern District of California closer to the average caseload carried by district judges nationally, allowing us to achieve long overdue parity.

Ongoing Caseload Crisis

Over the last 22 years, the pending caseload per judgeship for the Eastern District has averaged nearly 200 percent of the national average. For the same time period, we have had the highest pending caseload in the Ninth Circuit, every year. We also have ranked in the top 10

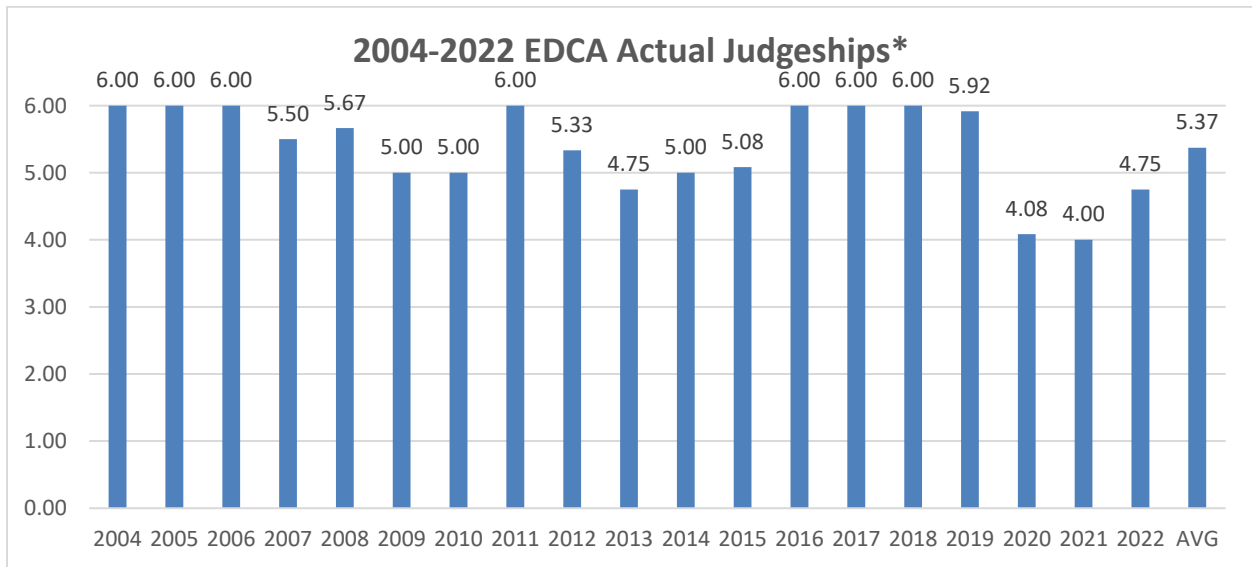
districts nationwide, every year, averaging the third highest pending caseload anywhere. These rankings are particularly stark given that we have declined MDL referrals, to the detriment of litigants in our district and loss of professional satisfaction for our judges; it is an unhappy consequence of our heavy caseloads that we are an MDL “sender” district.

U.S. District Court - Judicial Caseload Profile					
California Eastern					
Actions Per Judgeship					
12 month Period Ending Sep 30	Pending Cases	All Districts Average Pending	% of National Average	Numerical Standing Within	
				U.S.	Circuit
2021	1322	1094	121%	6	1
2020	1262	970	130%	6	1
2019	1209	675	179%	6	1
2018	1239	688	180%	7	1
2017	1216	628	194%	6	1
2016	1274	659	193%	3	1
2015	1263	629	201%	2	1
2014	1306	625	209%	3	1
2013	1351	579	233%	3	1
2012	1427	540	264%	2	1
2011	1319	542	243%	3	1
2010	1427	557	256%	3	1
2009	1357	587	231%	3	1
2008	1305	570	229%	3	1
2007	1247	479	260%	2	1
2006	1176	456	258%	2	1
2005	1060	478	222%	4	1
2004	895	503	178%	3	1
2003	869	459	189%	4	1
2002	806	471	171%	5	1
2001	803	447	180%	3	1
2000	835	443	188%	3	1
22 YEAR AVG	1180	594.5	198%	3.7	1

The relentlessness of our caseload dynamic creates enormous pressure for our active judges. Our cases reflect the range of issues arising from our 34 counties, spanning Redding to Bakersfield, embracing the state capital, the California Water Project, thousands of acres of national parks, federal grazing lands and forests, huge expanses of agricultural operations, and many state prison facilities. On the merits, five (5) additional judgeships are necessary to bring a measure of long-term stability to the vast Central Valley’s federal trial court, and allow our bench to dig out from our caseload avalanche, which will take a significantly long period of time – even as we expect the population of our 34 inland counties, and correspondingly our caseload, to grow exponentially. Our caseload management burden has been exacerbated by long periods during which our small bench has endured multiple judicial vacancies, and most recently by the backing up of trials delayed due to the COVID-19 pandemic.

Effect of Judicial Vacancies and COVID-19 Pandemic

It is rare for the Eastern District of California to enjoy a full bench of active district judges. Most recently, for most of the last two and a half years, we have been performing our essential duties with two (2) Article III vacancies at any given time. While this small number may seem insignificant at first glance, on close inspection it illustrates our serious infrastructure problem: with only six (6) authorized Article III judgeships, two vacancies account for 33 percent of our entire bench.



*In only 7 of the last 19 years has the EDCA had a full complement of judges.

Vacant district judgeship months in 2020, 2021 and 2022 have had a direct impact on our court’s actual caseload per judge, a challenge that cost-effective staffing resources can help address only in part. In February 2020, former Chief Judge Lawrence J. O’Neill assumed inactive senior status. Judge Morrison C. England, Jr. took active senior status on December 17, 2019, and Judge John A. Mendez assumed active senior status on April 17, 2022. Additionally, Senior Judge Garland E. Burrell assumed inactive senior status effective January 1, 2020. Due to these departures and status changes, in 2020 we experienced a total of 22.19 vacant judgeship months; in 2021, we experienced 24 vacant judgeship months; and year to date 2022, 11 vacant judgeship months. Given our 6 active district judgeships to begin with, our long-term vacancies effectively

eviscerated one-third of our district court bench, with one full civil caseload in our Fresno courthouse placed on a minimal maintenance status. Every day a judicial position goes unfilled, our actual pending caseload per judgeship continues to rise. While we are thrilled to finally have two new district judges as of this writing, one appointed only very recently, we still have one to fill and cannot say our crippling cycle of vacancies has ceased given that two members of our Article III bench will attain senior status within the next two and three years, respectively.

The most recent March 2022 statistics from the Administrative Office help demonstrate our dire circumstances, showing the Pending Cases per authorized Judgeship at 1,317 for our district. Even without accounting for vacancies, our caseload put us first in the Ninth Circuit and seventh in the country – and we are the only district in the top 7 currently not accepting MDL cases. Taking account of our effective two vacancies as of this writing, given that Judge Mendez’s successor has not been appointed (only just nominated) and Judge England’s successor while appointed will not receive her case assignments for several weeks yet, our actual circumstances on the ground mean our average caseload for each of our four current active judges, including our Chief Judge who takes no reduction in case assignments, is 1,976 per judge. On their face, our numbers continue to be simply jaw-dropping.

As the Judicial Council knows, our staggering pending caseloads have been exacerbated by the effects of the COVID-19 pandemic. While our filings have slightly decreased, temporarily, they are reasonably expected to rise. Our active judges are in back-to-back-to-back trials since our reopening for jury proceedings, with most trials affected and often extended by COVID-19 exposures that lead to delays. While trials help resolve cases they are of course time consuming, especially now, and other case resolutions are pushed out as a result. California in general, and the Eastern District in particular, continue to be severely impacted by COVID-19 virus, impeding our ability to meaningfully whittle down our massive backlogs.

Continued Growth of the Eastern District in Population and Caseload

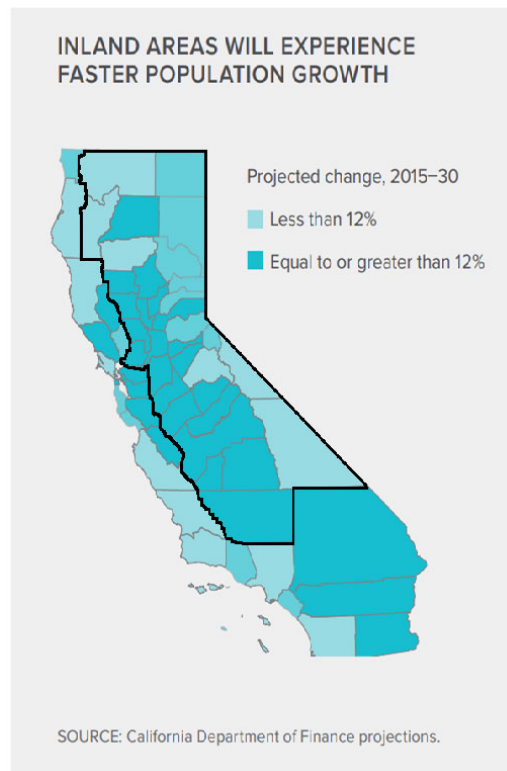
While the current population figures and caseloads for all the District Courts in California are profound, the Eastern District stands out as an anomaly. Current populations charts show the Eastern District is growing at the fastest rate in California, with by far the lowest number of judges per population. Population figures provide a meaningful way of assessing access to justice, given that demography as well as geography drive caseloads.

2020 US Census Citizen*			
California Districts’ Population and Judgeships			
District	Population	Authorized Judgeships	Judgeships per Population
California Southern	3,504,550	13	1 DJ per 269,581
California Northern	8,351,845	14	1 DJ per 596,560
California Central	19,284,434	28	1 DJ per 688,730
California Eastern	8,105,194**	6	1 DJ per 1,358,366

* Source – AO Census Citizen Population Tables <https://jnet.ao.dcn/court-services/district-clerks-offices/jury-management/juror-usage-and-statistics/census-2020-citizen-population-tables>

** California Department of Finance Projections indicate the Eastern District will surpass the Northern District by 2023.

In light of U.S. Census Citizen Data, nationally the average is 1 District Judge per 489,500 population. The Eastern District's ratio is nearly three (3) times the national average, with the highest population per judge in the nation. As noted, the population in the Eastern District is only expected to grow, at a rate much higher than the other California Districts and the nation. According to the California Department of Finance, the population of the inland areas in the State of California, most of which the Eastern District comprises, will grow at higher rates



than the rest of the State, continuing a decades-long trend. Specifically, the Inland Empire, the Sacramento region, and the San Joaquin Valley will outpace other areas of the state with no end in sight. To fulfill our burgeoning population's expectation of access to justice in the federal trial court, it is paramount that there be an adequate number of district judgeships created to hear federal cases in the first instance. That minimally adequate number, we respectfully submit, is 5 if the size of our bench is to be equal to our current task and also prepared to handle the inevitable upward caseload trends.

Conclusion

The pending and future caseloads in the Eastern District of California demand minimally adequate judicial resources so that our judges can fulfill their solemn constitutional responsibilities and do their part in maintaining the rule of law. We respectfully request the Recommendation for the Eastern District be changed from four (4) permanent judgeships to five (5) permanent judgeships. If those 5 judgeships are created and filled any time soon, our district will undoubtedly by then have attained the caseload numbers to justify more as well.