

Eastern District of California Judicial Emergency
Answers to Frequently Asked Questions

QUESTION: Why does the Eastern District of California need at least 5 new district judgeships?

RESPONSE: Population drives case filings. The Eastern District has had 6 authorized permanent district judgeships since 1978, when the population we served was 4 million. Today, with that population approaching 8.5 million, our caseloads per judgeship average almost double the national average. We've had 2 vacancies for more than a year, so our actual caseload right now is almost triple the national average. We've been in judicial emergency status for 20 years.

We are second in our Circuit and eighth nationwide in terms of productivity, measured in terms of cases closed each year. And yet we are second worst on the list — 93 of 94 — for time to close criminal cases. Many criminal defendants wait in jail for their trials. Civil cases languish, at times for 5 years or more. Our numbers support authorizing at least 5 new district judgeships.

QUESTION: Why does it matter?

RESPONSE: Federal district courts are the foundation of the federal judicial system. We are the courts where almost all cases are filed first. District judges are the faces of the federal justice system for criminal defendants and their families, and for the parties to civil lawsuits. Our courtrooms are where the public is most likely to see a court in action. For all these reasons we are essential infrastructure for maintaining public trust in the third branch of our government. Without enough judgeships, too many pretrial motions are decided without a hearing in a courtroom, and trials happen many years after the events that prompted the case. While parties wait and wait for judicial decisions and trials, we fear they think the court has forgotten them or doesn't care, but the opposite is true.

QUESTION: What are the costs associated with authorizing new judgeships the Eastern District needs?

RESPONSE: The benefits of at least 5 new permanent district judgeships in the Eastern District far outweigh the costs. District judgeships are essential infrastructure. The cost of adding judges is also lower in our District because we have at least 5 district judge chambers sitting vacant, ready for new judges and staff. Because new judgeships would require no construction costs, the cost per new judgeship in our District includes only the judge's compensation and the typical allocation of staff.

The true net staffing costs are also lower for our District. We have been receiving emergency help for our excessive caseloads, including, for example, funding for extra temporary law clerks. Many if not all of these positions could, in effect, be reassigned to new judges without any additional net cost. We would also reduce our reliance on visiting judges. And our time to

decide and close cases would increase dramatically. There is great value to be gained from a relatively small public expense.

We expect the Congressional Budget Office would confirm our assessment if it examined our situation carefully.

QUESTION: Why can't the Eastern District meet its needs by using visiting judges?

RESPONSE: We have welcomed the help of many judges from other districts and from the Ninth Circuit who “sit by designation” in the Eastern District. We greatly appreciate their willingness and availability. Although visiting judges have undoubtedly helped reduce our caseload in some ways, we still have more cases than we have the capacity to hear.

Even the most capable and generous visiting judges cannot correct the structural deficiencies in our District. A visiting judge does not take up residence in our district. Full-time resident judges manage their cases from start to finish. They understand each case's history, context, and future needs. California state law and local circumstances are reflected in almost every case we hear, so visiting judges from other states arrive at a double disadvantage: they might come to a case at its middle or near its end, and they must take time to understand the state law and context. Moreover, most visiting judges do not bring support staff with them, so we must spread our already lean staff thinly among many visiting judges. Visiting judges do not save costs or achieve the benefits that permanent, resident judges will.

QUESTION: Can district judgeships be moved to the Eastern District from elsewhere in the country?

RESPONSE: Nationally, the 94 district courts today have *fewer* judgeships than they did 17 years ago because temporary judgeships have not renewed—including in our court. The Judicial Conference of the United States most recently has recommended creating 65 new district judgeships and converting 8 temporary judgeships to permanent judgeships. This recommendation confirms our impression that no spare judges are available and that when judges in other courts do have capacity, they are already assisting struggling districts like ours or serving in administrative and other capacities.

The Judicial Conference most recent recommendations also show the Eastern District of California's needs are unusually pressing. Its recommendation would nearly double our authorized judgeships, a greater relative change than any other court.

QUESTION: Can senior judges help meet the Eastern District's needs?

RESPONSE: Senior judges are certainly a “force multiplier” in the Federal Judiciary and in our court, but even with their assistance, we cannot keep pace with our District's needs.

Some background about senior status helps to see why this is so. When a judge becomes eligible to retire—such as on turning age 65 with 15 years of judicial service or age 70 with 10 years of judicial service—he or she may elect to assume senior status rather than retiring under 28 USC

§ 371(b)(1). A judge in senior status holds the same office and full powers to hear and decide cases. In addition, when a judge assumes senior status, a vacancy opens on the same court for the President to fill with the Senate's advice and consent. If a new judge is appointed and takes on a full workload while his or her predecessor continues working as a senior judge, the court's capacity increases. The U.S. Courts estimate senior judges carry about 20 percent of the nation's caseload.

Former Chief Judge William B. Shubb, for example, took senior status in 2004 after 14 years as an active judge, and has continued to hear cases in senior status over the last 17 years and counting. We celebrate Judge Shubb along with our two other senior-status colleagues, former Chief Judges Anthony W. Ishii and Morrison C. England, Jr.

Unfortunately, because our workload is so heavy, more judges have decided not to assume senior status in recent years, and fewer of our senior judges have continued working for as long as they once did. Some colleagues have fully retired rather than taking senior status because our caseload is so crushing. Their departures are a loss of significant investment and experience.

Senior judges therefore cannot meet our needs. The Judicial Conference recognizes this fact. Its recommendations for more judgeships take the efforts of our senior judges into account.