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Recent Recommendations by the Judicial Conference for New U.S. Circuit and District Court Judgeships: Overview and Analysis

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SUMMARY

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Recent Recommendations by the Judicial Conference for New U.S. Circuit and District Court Judgeships: Overview and Analysis

Congress determines through legislative action both the size and structure of the federal judiciary. Consequently, the creation of any new permanent or temporary U.S. circuit and district court judgeships must be authorized by Congress. A *permanent judgeship*, as the term suggests, permanently increases the number of judgeships in a district or circuit, while a *temporary judgeship* increases the number of judgeships for a limited period of time.

Congress last enacted comprehensive judgeship legislation in 1990. Since then, there have been a relatively smaller number of district court judgeships created using appropriations or authorization bills.

The Judicial Conference of the United States, the policymaking body of the federal courts, makes biennial recommendations to Congress that identify any circuit and district courts that, according to the Conference, require new permanent judgeships to appropriately administer civil and criminal justice in the federal court system. In evaluating whether a court might need additional judgeships, the Judicial Conference examines whether certain caseload levels have been met, as well as court-specific information that might uniquely affect a particular court. The caseload level of a court is expressed as filings per authorized judgeship, assuming all vacancies on the court are filled.

The Judicial Conference's most recent recommendation, released in March 2019, calls for the creation of five permanent judgeships for the U.S. Court of Appeals for the Ninth Circuit (composed of California, eight other western states, and two U.S. territories). The Conference also recommends creating 65 permanent U.S. district court judgeships, as well as converting 8 temporary district court judgeships to permanent status.

In making its recommendations to Congress, the Judicial Conference also identifies any courts that might have the most urgent need for new judgeships. These courts are considered, by the Conference, to have extraordinarily high and sustained workloads. In its most recent recommendations, the Conference identified six U.S. district courts it considers to have the most urgent need for new judgeships to be authorized by Congress.

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Introduction

Article III, Section I of the Constitution provides that the "judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Consequently, Congress determines through legislative action both the size and structure of the federal judiciary. For example, the size of the federal judiciary is determined, in part, by the number of U.S. circuit and district court judgeships authorized by Congress.[1] Congress has, at numerous times over the years, authorized an increase in the number of such judgeships in order to meet the workload-based needs of the federal court system.

The Judicial Conference of the United States, the national policymaking body of the federal courts,[2] makes biennial recommendations to Congress to assist it in identifying any U.S. circuit and district courts that may be in need of additional judgeships. The most recent recommendations for new U.S. circuit and district court judgeships were released by the Judicial Conference in March 2019.[3]

U.S. Circuit Courts

U.S. courts of appeals, or circuit courts, take appeals from U.S. district court decisions and are also empowered to review the decisions of many administrative agencies. When hearing a challenge to a district court decision from a court located within its geographic circuit, the task of a court of appeals is to determine whether or not the law was applied correctly by the district court.[4] Cases presented to U.S. circuit courts are generally considered by judges sitting in three-member panels (circuit courts do not use juries).

The nation is divided into 12 geographic circuits, each with a U.S. court of appeals. There is also one nationwide circuit, the U.S. Court of Appeals for the Federal Circuit, which has specialized subject matter jurisdiction.[5]

Altogether, 179 judgeships for these 13 circuit courts are currently authorized by law (167 for the 12 regional circuits and 12 for the Federal Circuit). The First Circuit (comprising Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico) has the fewest number of

[1] Other types of federal judgeship are also authorized by Congress, including judgeships for the U.S. Supreme Court, U.S. Court of International Trade, territorial district courts, and the U.S. Court of Federal Claims. Judgeships for these particular courts are outside the scope of this report.

[2] The Chief Justice of the United States is the presiding officer of the Judicial Conference. According to the Administrative Office of U.S. Courts, the "Conference operates through a network of committees created to address and advise on a wide variety of subjects such as information technology, personnel, probation and pretrial services, space and facilities, security, judicial salaries and benefits, budget, defender services, court administration, and rules of practice and procedure." See Administrative Office of U.S. Courts, "About the Judicial Conference," at https://www.uscourts.gov/about-federal-courts/governance-judicial-conference/about-judicial-conference.

[3] The most recent recommendations are available at Administrative Office of U.S. Courts, "Authorized Judgeships," at https://www.uscourts.gov/judges-judgeships/authorized-judgeships (see hypertext link available at bottom of source page).

[4] Administrative Office of U.S. Courts, "Court Role and Structure," at https://www.uscourts.gov/about-federal-courts/court-role-and-structure.

[5] The Federal Circuit (which was created in its modern form in 1982 by the Federal Courts Improvement Act, 96 Stat. 25), has nationwide jurisdiction and hears certain specialized legal claims related to international trade, government contracts, patents, trademarks, certain money claims against the U.S. government, federal personnel, veterans' benefits, and public safety officers' benefits claims.

authorized judgeships, 6, while the Ninth Circuit (comprising Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington) has the most, 29.[6]

U.S. District Courts

U.S. district courts are the federal trial courts of general jurisdiction. These trial courts determine facts and apply legal principles to resolve disputes.[7] Trials are conducted by a district court judge (although a U.S. magistrate judge may also conduct a trial involving a misdemeanor).

Each state has at least one district court (there is also one district court in each of the District of Columbia and Puerto Rico). States with more than one district court are divided into judicial districts, with each district having one district court. For example, California is divided into four judicial districts—each with its own district court. Altogether there are 91 U.S. district courts.[8]

There are 673 Article III U.S. district court judgeships currently authorized by law.[9] Congress has authorized between 1 and 28 judgeships for each U.S. district court. Specifically, the district court for the Eastern District of Oklahoma (Muskogee) has 1 authorized judgeship, the smallest number among U.S. district courts. The district courts located in the Southern District of New York (Manhattan) and the Central District of California (Los Angeles) each have 28 authorized judgeships, the most among U.S. district courts.

The Role of Congress in Creating New Judgeships

Congress first exercised its constitutional power to determine the size and structure of the federal judiciary with passage of the Judiciary Act of 1789.[10] The act authorized 19 judgeships, 13 for district courts and 6 for the Supreme Court.[11] Congress, however, began expanding the size of the

[6] The Ninth Circuit also includes two U.S. territories, Guam and the Northern Mariana Islands.

[7] Administrative Office of U.S. Courts, "Court Role and Structure," at https://www.uscourts.gov/about-federal-courts/court-role-and-structure.

[8] This does not include three district courts located in several U.S. territories. Specifically, there is one district court each in Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. These courts were established by Congress under its authority to govern the territories granted by Article IV of the Constitution. Judges confirmed to these courts serve 10-year terms (unlike Article III district court judges who are appointed for life unless they voluntarily leave office or are removed from office by Congress). As with Article III courts, territorial courts hear cases arising out of federal law, their decisions may be appealed to a U.S. circuit court of appeals, and their judicial nominations are referred to the Senate Judiciary Committee.

[9] This total includes 10 temporary judgeships. See the U.S. Courts website at http://www.uscourts.gov/JudgesAndJudgeships/AuthorizedJudgeships.aspx.

[10] 1 Stat. 73, September 24, 1789. The act established a three-tiered federal judiciary composed of district and circuit courts, as well as a Supreme Court. Note, however, that the initial functions of the circuit and district courts created by the act were different from their current roles in the modern judiciary. District courts, for example, handled all maritime and admiralty cases but heard only minor criminal and civil cases. Circuit courts were the "principal trial courts in the federal system and exercises limited appellate jurisdiction." Sessions of circuit court were conducted by district court judges and Supreme Court Justices, who "rode circuit." In other words, there were not separate circuit court judgeships as there are today (those judgeships were created in 1869). Finally, while the role of the Supreme Court during this early period was largely the same as the modern Court, it had far less discretion regarding the cases it could hear than the modern Court. For more information about the act, see Federal Judicial Center, "Landmark Judicial Legislation: The Judiciary Act of 1789, 1 Stat. 73," at https://www.fjc.gov/history/legislation/landmark-legislation-judiciary-act-1789. For additional information about the historical development of the Supreme Court, see, for example, Kevin T. McGuire, "The Institutionalization of the U.S. Supreme Court," *Political Analysis*, vol. 12, no. 2 (2004), pp. 128-142.

[11] The act specified that there would be one Chief Justice and five Associate Justices.

judiciary almost immediately—adding two additional district court judgeships in 1790 and another in 1791.[12]

Changes in the Number of U.S. Circuit and District Court Judgeships from 1891 through 2018

As the population of the country increased, its geographic boundaries expanded, and federal case law became more complex, the number of judgeships authorized by Congress continued to increase during the 19th and 20th centuries. By the end of 1900 Congress had, under Article III, authorized a total of 28 U.S. circuit court judgeships and 67 district court judgeships.[13]

By the end of 1950, there were an additional 37 circuit court judgeships authorized (for a total of 65) and 145 additional district court judgeships (for a total of 212). By the end of 2000, there were a total of 179 circuit court judgeships and 661 district court judgeships.[14] At present, there remain 179 circuit court judgeships, while the number of district court judgeships has increased to 673.[15]

Figure 1 shows the change, over time, in the number of U.S. circuit and district court judgeships authorized by Congress from 1891 through 2018.

U.S. Circuit Court Judgeships

The largest increase in the number of circuit court judgeships occurred in 1978 during the 95th Congress when the number of judgeships increased by 35, from 97 to 132. The second-largest increase occurred in 1984 during the 98th Congress when the number of judgeships increased by 24, from 144 to 168. The next-largest increase in circuit court judgeships also occurred during the 97th Congress—in 1982 the number of circuit court judgeships increased by 12, from 132 to 144.[16] The 12 judgeships authorized by Congress in 1982 were for the newly established U.S. Court of Appeals for the Federal Circuit.[17]

The number of circuit court judgeships increased to 179 in 1990 during the 101st Congress and has remained at that number to the present day. This represents the longest period of time since

[12] In 1790, Congress created two new judicial districts—one for North Carolina and one for Rhode Island (the other 11 original states each had its own judicial district established previously by the Judiciary Act of 1789). Vermont, which became a state on December 5, 1790, was given its own judicial district on March 2, 1791 (1 Cong. Ch. 12). See Administrative Office of U.S. Courts, "Chronological History of Authorized Judgeships—District Courts," at https://www.uscourts.gov/federal-court-finder/search.

[13] The Judiciary Act of 1891 (26 Stat. 826), commonly referred to the Evarts Act, established nine regional courts of appeals. The act "gave the U.S. courts of appeals jurisdiction over the great majority of appeals from the U.S. district courts ... [and] the Act sharply limited the categories of cases that could be routinely appealed to the Supreme Court." The act created a newly-authorized judge for each circuit (as well as made the existing circuit judgeships, established by Congress in 1869, judgeships for the various new regional courts of appeals). Additionally, in 1893, Congress established a court of appeals for the District of Columbia. The Tenth Circuit was created in 1929, while the Eleventh Circuit was created in 1980. See Administrative Office of U.S. Courts, "The U.S. Courts of Appeals and the Federal Judiciary," at https://www.fjc.gov/history/courts/u.s.-courts-appeals-and-federal-judiciary.

[14] This included, at the time, 10 temporary U.S. district court judgeships.

[15] The current total includes 10 temporary district court judgeships.

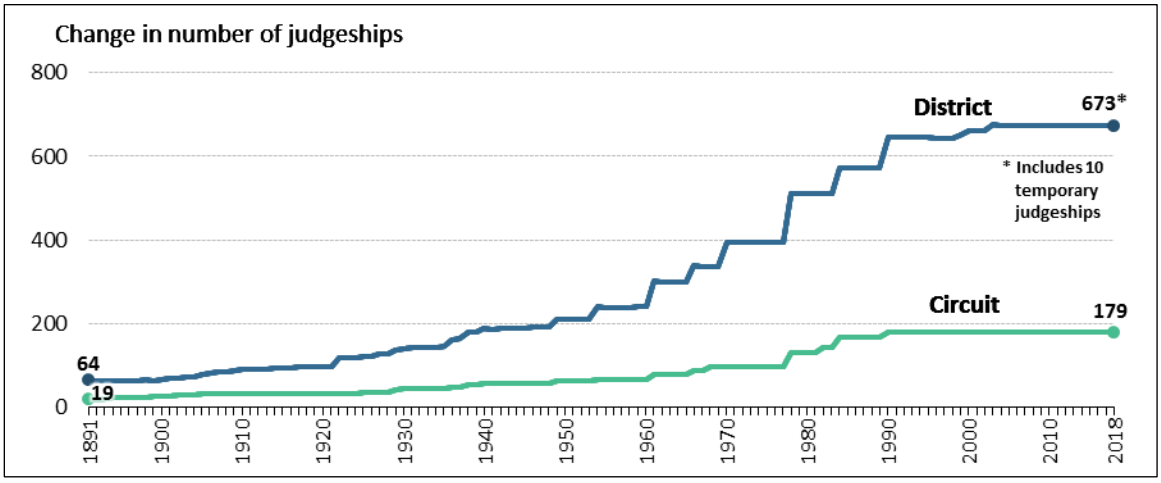
[16] This number is followed closely by the increase in circuit court judgeships in 1990 during the 101st Congress when the number of judgeships increased by 11, from 168 to 179.

[17] As mentioned previously, the Federal Circuit has nationwide jurisdiction and hears certain specialized legal claims related to international trade, government contracts, patents, trademarks, certain money claims against the U.S. government, federal personnel, veterans' benefits, and public safety officers' benefits claims.

the creation of the U.S. courts of appeals in 1891 that Congress has not authorized any new circuit court judgeships.[18]

Figure 1. Congressional Authorization of U.S. Circuit and District Court Judgeships

(1891 through 2018)



Source: Congressional Research Service based on public data provided by the Administrative Office of U.S. Courts.

Note: This figure shows the change in the number of U.S. circuit and district court judgeships authorized by Congress from 1891 through 2018.

U.S. District Court Judgeships

The largest increase in the number of district court judgeships occurred in 1978 during the 95th Congress when the number of judgeships increased by 117, from 394 to 511.[19] The next-largest increase in district court judgeships occurred in 1990 during the 101st Congress when the number of judgeships increased by 74, from 571 to 645. The third-largest increase in the number of district court judgeships occurred in 1961 during the 87th Congress when the number of judgeships increased by 62, from 241 to 303.[20]

The number of permanent[21] district court judgeships increased to 663 in 2003 during the 108th Congress and has remained at that number to the present day.[22] This represents the longest period of time since district courts were established in 1789 that Congress has not authorized any new permanent district court judgeships.[23]

[18] The second-longest period during which Congress did not authorize any new U.S. circuit court judgeships was the 17-year period from 1905 through 1921 (when there were 32 circuit court judgeships).

[19] This included congressional authorization of one temporary district court judgeship.

[20] This included authorization of two temporary district court judgeships. The increase in 1961 is followed closely by the increase in district court judgeships in 1984 during the 98th Congress when the number of judgeships increased by 61, from 510 to 571 (which included the authorization of 8 temporary district court judgeships).

[21] The distinction between permanent and temporary judgeships is discussed in the text of the report.

[22] During this same period the number of temporary district court judgeships has, depending on the year, ranged from 10 to 13 judgeships. Consequently, the total number of district court judgeships (including both permanent and temporary judgeships) has ranged from 673 to 676 from 2003 through 2018.

[23] The second-longest period during which Congress did not authorize any new permanent U.S. district court judgeships was the 14-year period from 1822 through 1835 (when there were 27 district court judgeships).

Ratio of District Court Judgeships to Circuit Court Judgeships

The ratio of the number of authorized district court judgeships to circuit court judgeships has also varied during this period. In 1899 there were 2.3 district court judgeships authorized for every circuit court judgeship (this was the lowest value in the ratio of district to circuit court judgeships). In contrast, in 1970 there were 4.1 district court judgeships authorized for every circuit court judgeship (this was the highest value in the ratio of district to circuit court judgeships).

The median ratio of district court judgeships to circuit court judgeships during the entire period (from 1891 through 2018) was 3.5. Most recently, for each year from 2010 through 2018, there were 3.8 district court judgeships for every circuit court judgeship authorized by Congress.

Temporary Judgeships

In some instances, Congress has authorized the creation of temporary judgeships rather than permanent judgeships.[24] A *permanent judgeship*, as the term suggests, permanently increases the number of judgeships in a district or circuit, while a *temporary judgeship* increases the number of judgeships in a district or circuit for a limited period of time.[25]

Temporary judgeships are sometimes considered preferable by Congress if a court is dealing with an increased workload deemed to be temporary in nature (e.g., when workload increases as a result of new federal legislation or a recent Supreme Court ruling) or if Congress is uncertain about whether a recent workload increase is temporary or permanent in nature.

Once a temporary judgeship is created, Congress may later choose to extend the existence of a temporary judgeship beyond the date it was initially set to lapse or expire.[26] When extending a

[24] Temporary judgeships are authorized by the same sections of the U.S. Code that authorize permanent circuit and district court judgeships. See 28 U.S.C. §44 and 28 U.S.C. §133, respectively. Temporary judgeships are created by statutory language stipulating that the first vacancy occurring in a judicial district after a specified period of time shall not be filled. For example, in 2002, Congress created seven new temporary district court judgeships (as well as eight new permanent district court judgeships). In creating the temporary judgeships, the statutory languages specified that "the first vacancy in the office of district judge in each of the offices of district judge authorized by this subsection, occurring 10 years or more after the confirmation date of the judge named to fill the temporary vacancy ... shall not be filled." See P.L. 107-273, §312 (c).

Judges appointed to temporary judgeships are Article III judges who, as is the case with their peers appointed to permanent judgeships, "hold their Office during good behavior" (U.S. Constitution, Art. II, §2)—which, for practical purposes, means that their appointments are for life unless removed from office by Congress through the process of impeachment. In other words, a judge appointed to a temporary judgeship can continue to serve even after a temporary judgeship lapses given that, as specified by the statutory language that created the temporary judgeship, it is a *vacancy* occurring after a congressionally-specified date that is not filled (in order to account for the lapsed judgeship). That vacancy might be for any of the judgeships authorized for the court, not just for the temporary judgeship. This issue is discussed further in the text.

[25] The creation of a temporary U.S. circuit court judgeship has been a rare occurrence. Specifically, from 1960 through 2018, Congress created temporary circuit court judgeships on only one occasion. In 1966, four temporary circuit judgeships were created for the U.S. Court of Appeals for the Fifth Circuit. Two years later, Congress converted these judgeships to permanent positions. See P.L. 89-372, March 18, 1966, and P.L. 90-347, June 18, 1968, respectively. In contrast, Congress has more frequently created temporary judgeships for U.S. district courts. During this same period, Congress created 41 temporary district court judgeships on seven different occasions.

[26] At present, for example, there is a temporary judgeship authorized for the U.S. District Court for the Eastern District of Missouri. The judgeship was initially authorized in 1990 (P.L. 101-650, December 1, 1990). Since 1990 the temporary judgeship has been extended nine times by Congress, with the most recent extension occurring in February 2019. See Consolidated Appropriations Act of 2019 (P.L. 116-6, February 15, 2019).

temporary judgeship, Congress specifies the number of years the judgeship will continue to exist. Congress can also convert a temporary judgeship to a permanent one.[27]

If Congress does not extend a temporary judgeship or change it to a permanent one, the temporary judgeship eventually lapses.[28] If a judgeship lapses it means that, for the court with the temporary judgeship, the first vacancy on or after a specified date is not filled. By not filling the first vacancy that arises after a temporary judgeship lapses, the number of judgeships for a court returns to the number authorized by Congress prior to the authorization of the temporary judgeship.

At present, there are 179 permanent U.S. circuit court judgeships and no temporary circuit court judgeships. Additionally, there are 663 permanent U.S. district court judgeships and 10 temporary district court judgeships. These temporary judgeships are listed alphabetically by state in **Table 1**.

Table 1. Temporary U.S. District Court Judgeships

(as of September 1, 2019)

Judicial District	Date First Authorized[a]	Date Judgeship Is Set to Lapse[b]
Northern District of Alabama	11/02/2002[c]	09/17/2020
District of Arizona	11/02/2002	07/08/2020
Central District of California	11/02/2002	04/27/2020
Southern District of Florida	11/02/2002	07/31/2020
District of Hawaii	12/01/1990[d]	04/07/2020
District of Kansas	12/01/1990	05/21/2020
Eastern District of Missouri	12/01/1990	05/20/2020
District of New Mexico	11/02/2002	07/14/2020
Western District of North Carolina	11/02/2002	04/28/2020
Eastern District of Texas	11/02/2002	09/30/2020

Source: Congressional Research Service.

Note: This table lists the 10 temporary U.S. district court judgeships that exist as of September 1, 2019.

a. All of the temporary judgeships listed in **Table 1** were most recently extended by the Consolidated Appropriations Act of 2019 (P.L. 116-6, February 15, 2019).

b. A vacancy occurring on or after this date for the court listed will not be filled. However, the date presented in **Table 1** is applicable only if Congress does not further extend the judgeship or convert it to a permanent judgeship.

c. The seven temporary judgeships listed in **Table 1** that were created on this date were authorized by P.L. 107-273.

d. The three temporary judgeships listed in **Table 1** that were created on this date were authorized by P.L. 101-650.

[27] See, for example, P.L. 101-650, December 1, 1990 (Congress made permanent a total of six temporary district court judgeships that had been previously authorized for the Northern District of Illinois, Northern District of Indiana, District of Massachusetts, Western District of New York, Northern District of Ohio, and the Western District of Washington).

[28] For example, Congress created a temporary judgeship for the Northern District of Ohio in 1990 (see P.L. 101-650, December 1, 1990). The judgeship was extended four times (in 1997, 2002, 2007, and 2009) but was not extended a fifth time and was never made permanent. Consequently, the judgeship has since lapsed. Since 1991, a total of 6 temporary district judgeships have lapsed.

Legislation Creating New Judgeships Since 1977

Congress has a variety of legislative vehicles at its disposal to establish new U.S. circuit and district court judgeships. Legislation that authorizes new judgeships must pass both the House and Senate (and is also subject to a presidential veto). Such legislation does not always involve either or both of the House and Senate Judiciary Committees. As discussed further below, Congress has sometimes used the appropriations process to provide the judiciary with additional district court judgeships.

Omnibus Judgeship Bills

If it desires to create a relatively large number of judgeships at one time, Congress may choose to use an "omnibus judgeships bill."

An omnibus judgeships bill, for the purposes of this report, is either a stand-alone bill or a title of a larger bill concerned exclusively or mostly with the creation of federal judgeships.[29] Since 1977 Congress has enacted three omnibus judgeship bills, with the most recent omnibus bill enacted in 1990. Information related to these three pieces of legislation is presented in **Table 2**.

Table 2. Omnibus Bills Used to Create New Judgeships

(1977-2018)

Bill	Citation	Date Enacted	Description
Omnibus Judgeship Act of 1978	P.L. 95-486	10/20/1978	Created 35 circuit court judgeships and 117 district court judgeships (113 permanent and 4 temporary)
Bankruptcy Amendments and Federal Judgeship Act of 1984	P.L. 98-353	07/10/1984[a]	Created 24 circuit court judgeships and 61 district court judgeships (53 permanent and 8 temporary)
Federal Judgeship Act of 1990	P.L. 101-650	12/01/1990	Created 11 circuit court judgeships and 74 district court judgeships (61 permanent and 13 temporary)

Source: Congressional Research Service.

Note: This table shows omnibus judgeship bills from 1977 through 2018 that created new U.S. circuit and district court judgeships.

a. For the circuit court judgeships created by the act, the legislation stated that the "President shall appoint, by and with the advice and consent of the Senate, no more than 11 of such judges prior to January 21, 1985." For the district court judgeships created by the act, the legislation stated that the "President shall appoint, by and with the advice and consent of the Senate, no more than twenty-nine of such judges prior to January 21, 1985."

Each of the three omnibus bills was first introduced in the House and referred to the House Committee on the Judiciary. The Omnibus Judgeship Act of 1978 passed the House in its final form by a vote of 292-112 and the Senate by a vote of 67-15. The Bankruptcy Amendments and Federal Judgeship Act of 1984 passed the House in its final form by a vote of 394-0 and the Senate by voice vote. Most recently, the Federal Judgeship Act of 1990 passed both the House and Senate in its final form by voice vote.

Each of the three bills was passed in a different political context (in terms of whether there was unified or divided party control of the presidency and Congress). In 1978, there was unified Democratic control of the presidency, the Senate, and the House. In 1984, there was divided party

[29] An omnibus judgeship bill may additionally convert or extend temporary judgeships in a relatively large number of judicial districts.

control—with Republicans controlling the presidency and Senate while Democrats were the majority party in the House. Finally, in 1990, there was also divided party control—with Republicans controlling the presidency and Democrats holding majorities in both the Senate and House.

Since the last omnibus judgeships bill passed Congress in 1990, the overall workload of U.S. circuit and district courts has increased. From 1990 through the end of FY2018, filings in the U.S. courts of appeals increased by 15%, while filings in U.S. district courts increased by 39%. In terms of specific types of cases, civil cases increased by 34% during the same period, and cases involving criminal felony defendants increased by 60%. For civil cases, the greatest growth occurred in cases related to personal injury liability; many of these filings are part of multidistrict litigation actions involving pharmaceutical cases.[30]

Appropriations and Authorization Bills

In the past, Congress has at times created a relatively smaller number of judgeships through other legislative vehicles. In recent years this has been the most common method of creating new judgeships, with Congress authorizing a relatively small number of new judgeships using appropriations and authorization bills.

This has occurred on three occasions in the past 19 years and has involved only the creation of new district court judgeships (not circuit court judgeships). Overall, 34 new district court judgeships were created between 1999 and 2003 using appropriations and authorization bills. Information related to these three pieces of legislation is presented in **Table 3**.

Table 3. Appropriations and Authorization Bills Used to Create New Judgeships
(1977-2018)

Bill	Citation	Date Enacted	Description
Consolidated Appropriations Act, 2000	P.L. 106-113	11/29/1999	Created 9 district court judgeships
District of Columbia Appropriations Act, 2001[a]	P.L. 106-553	12/21/2000	Created 10 district court judgeships
21st Century Department of Justice Appropriations Authorization Act	P.L. 107-273	11/02/2002[b]	Created 15 district court judgeships (8 permanent and 7 temporary)[c]

Source: Congressional Research Service.

Note: This table shows appropriation and authorization bills from 1977 through 2018 that created new U.S. district court judgeships.

a. The act also contained Commerce, Justice, and State appropriations.

b. The effective date was 07/15/2003.

c. The act also converted four temporary district court judgeships to permanent judgeships.

The Consolidated Appropriations Act of 2000 received final approval in the House by a vote of 296-135 and in the Senate by a vote of 74-24. The District of Columbia Appropriations Act of 2001 passed in its final form in the House by a vote of 206-198 and in the Senate by a vote of 48-43. The 21st Century Department of Justice Appropriations Authorization Act passed in its final form in the House by a vote of 400-4 and in the Senate by a vote of 93-5.

[30] Judicial Conference of the United States, letter to the Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary, May 14, 2019, Appendix 2, p. 1.

Each of the three bills was passed during periods of divided party control. In 1999 and 2000, Democrats held the presidency while Republicans held both the House and Senate. In 2002, Republicans held the presidency and were the majority party in the House while Democrats were the majority party in the Senate.

Congress has also routinely used appropriations bills to extend temporary district court judgeships that were initially authorized in prior years.[31] Additionally, Congress has used an authorization bill to convert several temporary district court judgeships to permanent ones.[32]

Bills That Restructure the Judiciary

Finally, Congress may choose to establish new judgeships when passing an act that would, at least in part, restructure the federal judiciary. This occurred, for example, in 1982 when Congress created the U.S. Court of Appeals for the Federal Circuit. The creation of the Federal Circuit was a partial restructuring of the judiciary by Congress, as it led to merging the U.S. Court of Customs and Patent Appeals with the appellate jurisdiction of the U.S. Court of Claims to create the new Federal Circuit.[33] In creating the new court, Congress authorized 12 permanent circuit court judgeships.[34]

Biennial Recommendations by the Judicial Conference for New Judgeships

While Congress is constitutionally responsible for determining the size and structure of the federal judiciary, the judiciary itself can recommend legislation that alters or affects the size and structure of the federal court system. This includes legislation to increase the number of U.S. circuit and district court judgeships (and to identify which judicial circuits and districts are most in need of new judgeships).

The Judicial Conference of the United States, the national policymaking body for the federal courts,[35] is the institutional entity within the judiciary that is responsible for making the

[31] Most recently, for example, an extension of 10 temporary district court judgeships was included in the Consolidated Appropriations Act of 2019 (P.L. 116-6, February 15, 2019).

[32] Specifically, the 21st Century Department of Justice Appropriations Authorization Act (P.L. 107-273, November 2, 2002) converted four temporary U.S. district court judgeships, with one new permanent judgeship a piece for the Central District of Illinois, Southern District of Illinois, Northern District of New York, and the Eastern District of Virginia.

[33] See the Federal Courts Improvement Act of 1982 (96 Stat. 25, April 2, 1982). The act passed in its final form in the House 321-76 and in the Senate by voice vote.

[34] Congress also restructured the judiciary when it created the U.S. Court of Appeals for the Eleventh Circuit in 1980 by splitting the Fifth Circuit (94 Stat. 1994, October 14, 1980; effective date October 1, 1981). In this instance, however, Congress did not create any new circuit court judgeships. Instead, Congress reassigned all circuit court judges whose official duty stations were located in Alabama, Florida, or Georgia to the new Eleventh Circuit. Of the 26 judgeships that had been authorized for the former Fifth Circuit, 14 were assigned to the new Fifth Circuit (composed of Louisiana, Mississippi, and Texas) and 12 were assigned to the Eleventh Circuit.

[35] The Judicial Conference of the United States, previously known as the Conference of Senior Circuit Judges, is statutorily empowered to make a comprehensive survey of the conditions of business in the federal courts; prepare plans for the assignment of judges to or from courts of appeals or district courts, when needed; submit administrative and policy suggestions to the various courts in the interest of promoting uniformity of management procedures and the expeditious conduct of court business; exercise authority provided in 28 U.S.C. §372(c) for the review of circuit council conduct and disability orders filed under that section; and carry on a continuous study of the operation and effect of the general rules of practice and procedure in use within the federal courts, as prescribed by the Supreme

judiciary's recommendations for new judgeships. The Judicial Conference may recommend to Congress that new judgeships be either permanent or temporary. Additionally, the Judicial Conference may recommend that a temporary judgeship be extended or converted into a permanent one, or that a judgeship serving multiple districts be assigned to a single judicial district or dual districts.[36]

The Judicial Conference makes its judgeship recommendations biennially, typically in March or April at the beginning of a new Congress.[37]

Process Used to Evaluate Need for New Judgeships

In long-standing practice, the Judicial Conference, through its committee structure, periodically reviews and evaluates the judgeship needs of all U.S. circuit and district courts. Specifically, the Conference uses a formal survey process to determine if any courts require additional judges in order to appropriately administer civil and criminal justice in the federal court system.[38]

The multistep survey process is conducted biennially by the Conference's Subcommittee on Judicial Statistics[39] and takes into account current workload factors and the local circumstances of each court. The process is very similar for both the courts of appeals and the district courts.

First, a court submits a detailed justification for additional judgeships to the Subcommittee on Judicial Statistics.[40] The subcommittee then reviews and evaluates the court's request and prepares an initial recommendation that is given to both the court and the judicial council for the circuit where the requesting court is located.[41]

The circuit judicial council itself then reviews the new judgeship request and makes its recommendation to the subcommittee (which subsequently does a second analysis using the most

Court. See 28 U.S.C. §331, at https://www.uscourts.gov/about-federal-courts/governance-judicial-conference/about-judicial-conference/judicial-conference. Additionally, other statutes provide the Judicial Conference with the authorization to act in a variety of specific areas dealing with the administration of the federal courts.

[36] A judgeship designated as a "roving judgeship" may serve two or more judicial districts. The Judicial Conference may include in its biennial recommendations that a roving judgeship be redesignated as serving only a single district. This was the case, for example, in the Judicial Conference's 1990-1991 judgeship request that the roving judgeship serving both the Northern and Southern Districts of Iowa be redesignated to serve only the district court for the Northern District.

[37] The most recent recommendations made by the Judicial Conference always supersede any prior judgeship recommendations made by the Conference. Consequently, the recommendations made in March 2019 supersede the recommendations made in previous years.

[38] Judicial Conference of the United States, letter to the Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary, May 14, 2019, Appendix 1.

[39] This subcommittee is organized under the Conference's Committee on Judicial Resources.

[40] A court itself must first request additional judgeships in order to be included in the Judicial Conference's biennial survey process. U.S. circuit courts are asked to submit requests for additional judgeships only if a majority of the court's active judges approve of the request. According to the Administrative Office of U.S. Courts, the "opinion of a court as to the appropriate number of judgeships, especially the maximum number, plays a vital role in the evaluation process, and there is recognition of the need for flexibility to organize work in a manner which best suits the culture of the court and satisfies the needs of the region involved." Judicial Conference of the United States, letter to the Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary, May 14, 2019, Appendix 1, p. 2.

[41] A circuit judicial council in each geographic circuit oversees the administration of courts located within the circuit. A council is chaired by the chief circuit judge and is composed of an equal number of circuit and district court judges drawn from courts located within a circuit. The council has "broad authority with a statutory authorization to issue orders to promote accountability and 'the effective and expeditious administration of justice within its circuit.'" For additional information, see https://www.uscourts.gov/about-federal-courts/governance-judicial-conference.

recent caseload data). The subcommittee prepares its final judgeship recommendation for approval by the Committee on Judicial Resources. The committee's recommendation is then provided to the Judicial Conference for final approval (prior to being transmitted to Congress). This multistep evaluation and recommendation process is used for each court that submitted a new judgeship request to the subcommittee.

Factors Used to Evaluate the Need for New Judgeships

In evaluating a court's judgeship request the Judicial Conference examines whether certain caseload levels have been met, as well as court-specific information that might uniquely affect the court making the request.

Filings per Authorized Judgeship

The caseload levels of the courts determine the standards by which the Judicial Conference begins to consider any requests for additional judgeships.[42] The caseload level of a court is expressed as filings per authorized judgeship, assuming all vacancies on the court are filled.

The specific measure or statistic related to case filings that the Judicial Conference examines for U.S. circuit courts is called *adjusted filings per panel*.[43] The standard used by the Judicial Conference as its starting point for evaluating any judgeship request by a circuit court is 500 adjusted filings per panel (based on authorized judgeships).

The specific measure related to case filings that the Judicial Conference examines for U.S. district courts is called *weighted filings per authorized judgeship*.[44] The standard used by the Judicial Conference as its starting point for evaluating any judgeship request by a district court is 430 weighted filings per authorized judgeship *after* accounting for any additional judgeships that would be recommended by the Conference.

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[42] The caseload standards identified in the text for U.S. circuit and district courts are not to be interpreted as optimum caseload levels for these courts. Instead, the standards represent the caseload level used by the Judicial Conference to begin evaluating requests for additional judgeships.

[43] Adjusted filings are determined by removing the number of reinstated cases from a court's filings and counting original pro se appeals as one-third of a case.

[44] According to the Administrative Office of U.S. Courts, "although numerous factors are considered in looking at requests for additional judgeships, the primary factor for evaluating the need for additional district judgeships is the level of weighted filings." Judicial Conference of the United States, letter to the Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary, May 14, 2019, Appendix 1, p. 3.

"Weighted filings" are a way to account for differences in the amount of time it takes judges to resolve various types of civil and criminal matters. Some types of cases that are filed with a court will be relatively more complex and time-consuming than other types of cases. Types of civil cases with relatively greater case weights include death penalty habeas corpus proceedings, actions involving the Racketeer Influenced and Corrupt Organizations Act (RICO), patent cases, fraud/truth in lending cases, and cases involving the Fair Labor Standards Act. Civil cases with relatively lower case weights include recovery actions (e.g., defaulted student loans), asbestos cases, foreclosure actions, and habeas corpus actions (other than death penalty appeals). For criminal offenses, types of cases with relatively greater case weights include criminal enterprise charges, homicide, and extortion cases. Criminal cases with relatively lower case weights include immigration matters and cases related to larceny, theft, and/or transportation of stolen property. For a past guide to different types of cases and how they are weighted, see Federal Judicial Center, "New Case Weights For Computing Each District's Weighted Filings Per Judgeship (revised 1996)," at https://www.fjc.gov/content/new-case-weights-computing-each-districts-weighted-filings-judgeship-revised-1996.

The overall total for "weighted filings per judgeship" for a district court is the sum of all the weights assigned to that court's civil cases and criminal defendants/matters, divided by the number of authorized judgeships for the court.

For smaller district courts, however, with fewer than 5 authorized judgeships, the standard used is *current* weighted filings above 500 per judgeship (since accounting for any new judgeships in the calculation would often reduce, for these smaller courts, the weighted filings per authorized judgeship below the 430 level).[45]

Other Considerations

While caseload statistics are important in evaluating a court's request for additional judgeships, the Judicial Conference also considers court-specific information that might affect the judgeship needs of a particular court. According to the Administrative Office of U.S. Courts, "other factors are also considered that would make a court's situation unique and provide support either for or against a recommendation for additional judgeships."[46] These factors include the availability of senior, visiting, and magistrate judges to provide assistance;[47] geographic factors; unusual caseload activity; temporary increases or decreases in a court's workload; and any other factors that an individual court highlights as important in the evaluation of its judgeship needs.

Most Recent Recommendations for New Judgeships (116th Congress)

The Judicial Conference's most recent recommendations to Congress for new circuit and district court judgeships were made in March 2019. The Conference recommended that Congress authorize 5 new circuit court judgeships and 65 new permanent district court judgeships (as well as convert 8 existing temporary district court judgeships to permanent status).

Judicial Circuits Recommended for New Judgeships

The Judicial Conference recommended that Congress establish five new judgeships for the U.S. Court of Appeals for the Ninth Circuit given its "consistently high level of adjusted filings [per three-judge panel]" and the court's "heavy pending caseload."[48]

In June 2018, the Ninth Circuit had 740 adjusted filings per panel (the third highest among the 11 regional circuits).[49]

[45] Consequently, this could lead to an understatement of a smaller court's actual workload.

[46] Judicial Conference of the United States, letter to the Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary, May 14, 2019, Appendix 1, p. 3.

[47] The Judicial Conference examines the impact of these judges on a court's workload on a court-by-court basis rather than by incorporating their assistance into the caseload standards related to filings per authorized judgeship. This is because courts often do not have control over certain factors that determine how much assistance senior judges or magistrate judges are able to provide. For example, magistrate judges cannot dispose of felony criminal cases (a type of case affecting many of the district courts in need of additional judgeships). Additionally, magistrate judges can only dispose of civil cases with the consent of all the parties involved. The frequency by which parties provide such consent is beyond the control of a court.

[48] Judicial Conference of the United States, letter to the Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary, May 14, 2019, Appendix 3, Ninth Circuit, *Final Subcommittee Recommendation*, p. 5.

[49] Ibid. With the five additional judgeships, the caseload for the Ninth Circuit would still exceed 600 adjusted filing per panel (which is above the threshold of 500 filings per panel discussed in the subsection "Filings per Authorized Judgeship"). Specifically, the five additional judgeships would reduce adjusted filings to 631 per panel—which is 26% above the Conference-specified standard of 500 filings per panel. Ibid.

Congressional authorization of 5 additional judgeships for the Ninth Circuit would increase the number of authorized judgeships for the circuit from 29 to 34[50] and increase the total number of circuit court judgeships, nationally, from 179 to 184.

Judicial Districts Recommended for New Judgeships

The Judicial Conference recommended that Congress establish 65 new judgeships for 27 judicial districts[51] (with more than one judgeship recommended for some districts) and convert 8 temporary district court judgeships to permanent positions.

Figure 2 shows the 27 judicial districts for which the Conference has recommended new judgeships. Of the 27 districts, the Conference recommended the creation of more than one new judgeship in 15 (or 56% of districts). The greatest number of new judgeships, 10, was recommended for the Central District of California (composed of Los Angeles County and six other counties).[52] The Central District of California is the most populous judicial district in the country, with a population of nearly 19.5 million.[53]

[50] In 2009, Congress transferred one judgeship from the D.C. Circuit to the Ninth Circuit (see P.L. 110-177, January 7, 2008; effective January 21, 2009). Prior to the transfer of that single judgeship, Congress last authorized new judgeships for the Ninth Circuit in 1984 (see P.L. 98-353, July 10, 1984). At that time, five additional judgeships were created for the circuit. Since 1984, the population of the Ninth Circuit has increased by approximately 65%, from 40.2 million to 66.5 million. Data for population estimates provided by the U.S. Census Bureau at https://www.census.gov/data.html.

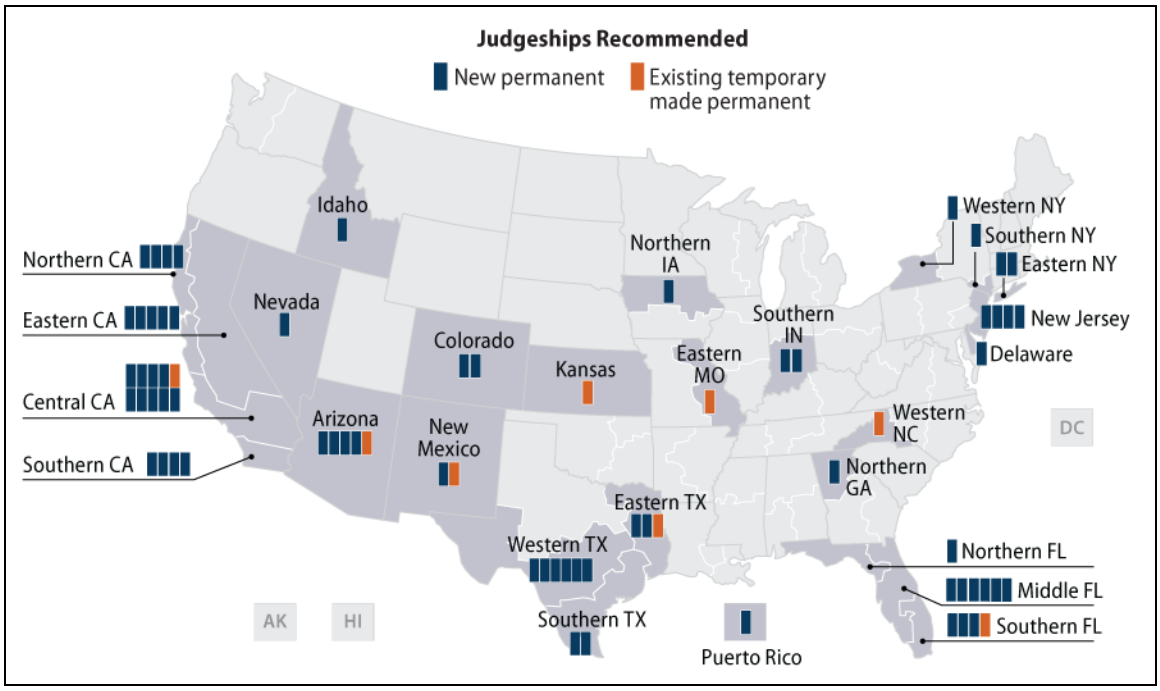
[51] A *judicial district* is a term used to describe the geographic boundaries or geographic jurisdiction of a U.S. district court. As shown by **Figure 2**, some states are composed of a single judicial district (e.g., Colorado), while other states are divided into two or more judicial districts (e.g., California is composed of four judicial districts).

[52] The 10 include a current temporary judgeship that the Judicial Conference recommends be made permanent by Congress.

[53] Data for population estimate provided by the U.S. Census Bureau at https://www.census.gov/data.html.

Figure 2. New U.S. District Court Judgeships Recommended by the Judicial Conference

(March 2019)



Source: Congressional Research Service based on public data provided by the Administrative Office of U.S. Courts.

Note: This figure shows the judicial districts where the Judicial Conference has recommended that Congress authorize new U.S. district court judgeships.

Of the 73 new district court judgeships recommended by the Judicial Conference (which includes converting 8 temporary judgeships to permanent positions), 45 (or 62%) are recommended for district courts located in the country's three most populous states—California, Texas, and Florida. Of the 45 judgeships, 23 are recommended for district courts in California, 11 for courts in Texas, and 11 for courts in Florida.

Altogether, there are 10 new judgeships recommended for district courts located in four southwestern states (Arizona, Colorado, Nevada, and New Mexico). There are also nine new judgeships recommended for district courts located in three northeastern states (Delaware, New Jersey, and New York). The remaining nine judgeships are recommended for courts located in other states.

Many of the U.S. district courts recommended to receive new judgeships hold court in some of the nation's most populous cities—including, but not limited to, Dallas (Northern District of Texas); Houston (Southern District of Texas); Jacksonville (Middle District of Florida); Los Angeles (Central District of California); New York City (Southern District of New York); Phoenix (District of Arizona); San Antonio (Western District of Texas); San Diego (Southern District of California); San Francisco (Northern District of California); and San Jose (Northern District of California).[54]

[54] Of the 10 most populous cities in the United States, 2 are located in judicial districts that were not recommended to receive new judgeships in the Judicial Conference's most recent set of recommendations—Chicago (located in the Northern District of Illinois) and Philadelphia (located in the Eastern District of Pennsylvania).

U.S. District Courts Identified as Having Urgent Need for New Judgeships

During the Judicial Conference's March 2011 proceedings, the Conference authorized the Director of the Administrative Office of U.S. Courts to pursue separate congressional legislation for Conference-approved additional judgeships for certain district courts meeting a designated threshold of weighted filings. The purpose of such a policy change was to enable the Director "to focus Congress' attention on those courts determined to have the greatest need based on specific parameters."[55]

The Conference's most recent recommendations identified six district courts with an urgent need for new judgeships, stating that these particular courts "continue to struggle with extraordinarily high and sustained workloads."[56] These district courts include the Western District of Texas,[57] Eastern District of California,[58] Southern District of Florida,[59] Southern District of Indiana,[60] and the Districts of New Jersey[61] and Delaware.[62]

The "severity of conditions"[63] in these districts, according to the Conference, "require immediate action."[64] Consequently, the Conference urged Congress "to establish, as soon as possible, new judgeships in those districts."[65]

The Conference's final judgeship recommendations describe select caseload statistics for each of these six district courts.[66] These descriptions, provided in part below, are based upon the biennial survey process conducted by the Conference's Subcommittee on Judicial Statistics.

The Conference's recommendations, quoted at length below, note the change in different types of filings that occurred between September 2017 and June 2018. The September 2017 date was used as the "cut-off date" by the subcommittee to make its initial judgeship recommendations (it was the most recent date for which the subcommittee had caseload data prior to the start of the survey process). The June 2018 reporting date was used by the subcommittee to make its final judgeship recommendations (it was the most recent date for which the Conference had caseload data available prior to submitting its recommendations to Congress).

- **Western District of Texas**. From September 2017 to June 2018, overall filings in the court increased by 13% "due to an increase in criminal felony filings.

[55] Proceedings of the Judicial Conference, March 15, 2011, p. 22.

[56] Judicial Conference of the United States, letter to the Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary, May 14, 2019.

[57] The Western District of Texas holds court proceedings in Alpine, Austin, Del Rio, El Paso, Fort Hood, Midland-Odessa, Pecos, San Antonio, and Waco.

[58] The Eastern District of California holds court proceedings in Bakersfield, Fresno, Redding, Sacramento, and Yosemite.

[59] The Southern District of Florida holds court proceedings in Fort Lauderdale, Fort Pierce, Key West, Miami, and West Palm Beach.

[60] The Southern District of Indiana holds court proceedings in Evansville, Indianapolis, New Albany, and Terre Haute.

[61] The District of New Jersey holds court proceedings in Camden, Newark, and Trenton.

[62] The District of Delaware holds court proceedings in Wilmington.

[63] Judicial Conference of the United States, letter to the Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary, May 14, 2019.

[64] Ibid.

[65] Ibid.

[66] The Conference's recommendations also include caseload descriptions for other courts not discussed in the text. Congressional clients interested in such information can contact the author of this report.

Criminal filings rose 28 percent due to a 48 percent increase in immigration filings. The increase was partially offset by moderate declines in drug and fraud prosecutions. Criminal filings are now the highest in the nation at 644 per judgeship. The number of civil cases filed fell three percent as declines in prisoner petitions and private contract litigation more than offset increases in tort actions, copyright litigation, and patent filings."[67] The Conference also notes that the number of supervised release hearings declined 11% but is currently more than twice the national average at 109 per judgeship.[68]

- **Eastern District of California**. The "number of civil cases filed [excluding contract actions related to a multidistrict litigation action] rose four percent as cases related to the Fair Debt Collection Practices Act more than doubled and prisoner petitions rose substantially, more than offsetting a decline in real property litigation. Civil filings continue to exceed 700 per judgeship, among the highest in the nation [even if the multidistrict litigation action is excluded]. The number of criminal felony filings rose 12 percent as a result of increases in most types of offenses, the largest of which occurred in firearms prosecutions."[69] The Conference also notes that criminal filings in the Eastern District of California, at 99 per judgeship, remain below the national average.[70]
- **Southern District of Florida**. The overall filings in the district "rose two percent due to moderate increases in both civil and criminal filings. The number of civil cases filed rose three percent as increases in insurance contract cases, torts filings, and civil rights litigations were partially offset by declines in Fair Labor Standards Act cases, prisoner petitions, cases related to the Fair Debt Collection Practices Act, and social security appeals....The number of criminal felony filings increased two percent as increases in most offense types, the largest of which occurred in fraud prosecutions, more than offset" a decline in drug, burglary, larceny, and theft filings.[71] The Conference also notes that the district court's pending caseload "remains substantially below the national average."[72]
- **Southern District of Indiana**. Since September 2017, "the court experienced an influx of over 2,200 personal injury product liability filings related to a multidistrict litigation (MDL) action in which the district serves as the transferee court.[73] Apart from these cases, overall filings fell two percent as a decline in

[67] Judicial Conference of the United States, letter to the Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary, May 14, 2019, Appendix 3, Texas Western, *Changes in Caseload and Judicial Officer Resources Since September 2017*, p. 5.

[68] Ibid.

[69] Judicial Conference of the United States, letter to the Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary, May 14, 2019, Appendix 3, California Eastern, *Changes in Caseload and Judicial Officer Resources Since September 2017*, p. 5.

[70] Ibid.

[71] Judicial Conference of the United States, letter to the Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary, May 14, 2019, Appendix 3, Florida Southern, *Changes in Caseload and Judicial Officer Resources Since September 2017*, p. 5.

[72] Ibid.

[73] Multidistrict litigation (MDL) occurs when "civil actions involving one or more common questions of fact are pending in different" U.S. district courts. 28 U.S.C. §1407. Some complex product liability suits, for example, can involve MDL. If cases are consolidated under MDL, they are sent to one district court (called the "transferee court") for all pretrial proceedings and discovery. If there is no settlement or the cases are not dismissed by the transferee court,

civil filings was partially offset by an increase in criminal filings. The number of civil cases filed decreased four percent as declines in social security appeals, civil rights cases, and federal prisoner petitions were partially offset by an increase in state prisoner petitions. The number of criminal felony filings rose 16 percent due almost entirely to a 63 percent rise in firearms prosecutions."[74] The Conference also notes, however, that criminal filings in the Southern District of Indiana, at 108 per judgeship, remain "slightly below" the national average.[75]

- **District of New Jersey**. Excluding certain types of cases,[76] "overall filings rose 10 percent due to increases in both civil and criminal felony filings. The number of civil cases filed ... also rose 10 percent due primarily to increases in copyright litigation, civil rights actions, ERISA filings, land condemnation cases, and social security appeals. A 27 percent increase in criminal filings results from higher number of firearms, drug, fraud, and immigration prosecutions."[77] Additionally, the pending caseload for the court "nearly doubled as a result of the influx of personal injury product liability cases."[78] The Judicial Conference also notes that "despite the increase, criminal filings are among the lowest in the nation at 36 per judgeship."[79]
- **District of Delaware**. From September 2017 to June 2018, "overall filings rose seven percent due to an increase in civil filings. The number of civil cases filed rose eight percent due almost entirely to a 20 percent increase in patent litigation. The court has the highest number of patent filings in the nation, which have risen substantially since the Supreme Court's May 2017 decision in *TC Heartland LLC v. Kraft Foods Group Brands LLC*, which modified the venue standards for patent infringement lawsuits.... Civil filings are now well above the national average at 518 per judgeship."[80] In contrast, the "number of criminal felony filings declined ... as filings of all offense types remained relatively stable."[81] Additionally, in its recommendation, the Judicial Conference states that criminal filings in the District of Delaware "are the 2nd lowest in the nation at 21 per judgeship."[82]

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they are sent back to the original (transferor) court for trial.

[74] Judicial Conference of the United States, letter to the Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary, May 14, 2019, Appendix 3, Indiana Southern, *Changes in Caseload and Judicial Officer Resources Since September 2017*, p. 5. The Conference further notes that even if the over 2,200 personal injury product liability cases related to the MDL action are excluded from its analysis, weighted filings for the Southern District of Indiana would stand at 703 per judgeship—which is still among the highest in the nation. Ibid.

[75] Ibid.

[76] The cases excluded from these particular statistics reported for the District of New Jersey include several MDL actions for which the district court serves as the transferee court.

[77] Judicial Conference of the United States, letter to the Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary, May 14, 2019, Appendix 3, New Jersey, *Changes in Caseload and Judicial Officer Resources Since September 2017*, p. 6. Ibid.

[78] Ibid.

[79] Ibid.

[80] Judicial Conference of the United States, letter to the Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary, May 14, 2019, Appendix 3, Delaware, *Changes in Caseload and Judicial Officer Resources Since September 2017*, p. 6.

[81] Ibid.

[82] Ibid.

Weighted Case Filings of Judicial Districts Recommended for New Judgeships

As discussed above, the specific statistic used by the Judicial Conference to compare caseloads across U.S. district courts is the number of weighted filings per authorized judgeship for each court. **Figure 3** shows the number of weighted filings per judgeship for each of the 27 district courts included in the Conference's most recent recommendation to Congress.[83]

The national average of 521 weighted filings per authorized judgeship is shown by the reference line in the figure. For the 27 district courts where the Judicial Conference recommends additional judgeships (including conversion of existing temporary judgeships to permanent status), weighted filings averaged 646 per authorized judgeship.

Of the 27 district courts recommended to receive additional judgeships, 5 courts have caseloads that fall below 500 weighted filings per authorized judgeship; 6 have 500 to 599 weighted filings; 8 courts have 600 to 699 weighted filings; 4 courts have 700 to 799 weighted filings; 1 court has 800 weighted filings; and 3 courts have more than 1,000 weighted filings.

The five districts listed in **Figure 3** with the greatest number of weighted filings are among the six U.S. district courts discussed above as having the most urgent need for additional judgeships (the remaining district, the Southern District of Florida, has the seventh-highest number of weighted filings).

A plurality of the U.S. district courts listed in **Figure 3** last had a permanent judgeship authorized in 1990 (10 of 27, or 37%). Another 8 district courts last had a permanent judgeship authorized prior to 1990 (2 in 1984, 5 in 1978, and 1 in 1954).[84] And 9 district courts last had a permanent judgeship authorized after 1990 (1 in 1999, 5 in 2000, and 3 in 2002).

[83] The weighted filings statistic reported in **Figure 3** for each U.S. district court are current as of March 31, 2019. These statistics are available online at Administrative Office of U.S. Courts, "Federal Court Management Statistics," at https://www.uscourts.gov/statistics-reports/analysis-reports/federal-court-management-statistics.

[84] Of the 27 judicial districts listed in **Figure 3**, the U.S. District Court for the District of Idaho has gone the longest since a new permanent judgeship was authorized by Congress. The district last received a permanent judgeship in 1954.

Figure 3. Number of Weighted Filings per Judgeship for U.S. District Courts Recommended by Judicial Conference to Receive Additional Judgeships

(as of March 31, 2019)

District	Weighted Filings per Judgeship *As of 3/31/2019* (National Average 521)	New Judgeships Recommended (*New Permanent*; *Existing Temp. Made Perm.*)	Existing Judgeships *Perm.*	Existing Judgeships *Temp.*	*Last Year New Judgeship Authorized**
District of New Jersey	1,066	4	17		1990
Southern District of Indiana (Indianapolis)	1,058	2	5		1978
District of Delaware	1,012	1	4		1984
Eastern District of California (Fresno)	800	5	6		1978
Western District of Texas (San Antonio)	789	6	13		2002
Northern District of Florida (Pensacola)	778	1	4		1990
Southern District of Florida (Miami)	778	4	17	1	2000
District of Arizona	755	5	12	1	2000
Central District of California (Los Angeles)	650	10	27	1	1990
Middle District of Florida (Orlando)	642	6	15		1999
Northern District of Georgia (Atlanta)	640	1	11		1978
Southern District of Texas (Houston)	640	2	19		2000
District of Colorado	624	2	7		1984
Northern District of California (San Francisco)	606	4	14		1990
Southern District of California (San Diego)	606	4	13		2002
Eastern District of Texas (Tyler)	604	3	7	1	1990
Western District of New York (Buffalo)	594	1	4		1990
Southern District of New York (Manhattan)	584	1	28		1990
District of New Mexico	553	2	6	1	2000
Eastern District of New York (Brooklyn)	553	2	15		1990
District of Idaho	530	1	2		1954
Eastern District of Missouri (St. Louis)	526	1	6	1	1990
District of Nevada	487	1	7		2000
Northern District of Iowa (Cedar Rapids)	481	1	2		1990
District of Puerto Rico	378	1	7		1978
Western District of North Carolina (Charlotte)	371	1	4	1	2002
District of Kansas	350	1	5	1	1978

* Includes only permanent judgeships or temporary judgeships that were made permanent.
Perm. = Permanent; Temp. = Temporary

Source: Congressional Research Service based on public data provided by the Administrative Office of U.S. Courts.

Notes: This figure shows, as of March 31, 2019, the number of weighted filings per authorized judgeship for each U.S. district court that was recommended by the Judicial Conference to receive additional judgeships. The figure also shows the number of new judgeships recommended, the current number of authorized judgeships, and the last year when permanent judgeships were authorized for the court.

Several of the courts listed in the figure have weighted filings that fall below the national average (521 weighted filings per judgeship), including the District of Nevada, Northern District of Iowa (Cedar Rapids), District of Puerto Rico, Western District of North Carolina (Charlotte), and the District of Kansas.

As noted previously, a court's caseload is not the only factor the Judicial Conference considers in evaluating a court's judgeship needs. Consequently, the Conference's recommendations can be based, in part, on additional factors. For example, in its evaluation of the judgeship needs for

districts where weighted filings are below the national average, the Conference identifies various reasons why it recommends additional judgeships. Some of the reasons include a substantial decline in senior judge assistance in handling cases, the geographic challenges associated with managing workload imbalances between different courthouses in the district, a high pending caseload relative to other district courts in the nation, and a number of criminal filings that is well above the national average.[85]

Options for Congress

As discussed above, Congress determines through legislative action the size of the federal judiciary. Consequently, creating additional U.S. circuit and district court judgeships requires congressional authorization of such judgeships. Such authorization can be accomplished by passing legislation devoted solely to judgeships (i.e., "omnibus judgeships bills") or by including the authorization in an appropriations bill or other legislative vehicle.

Congress may decide not to authorize additional circuit and district court judgeships. If Congress were to authorize such judgeships, it has several options available to it. These include (but are not limited to) the following:

- Adopting all of the most recent recommendations of the Judicial Conference by creating 5 additional permanent judgeships for the Ninth Circuit and 65 additional permanent judgeships for the district courts specified by the Conference (as well as converting 8 temporary district court judgeships to permanent status).
- Adopting, in part, the recommendations of the Judicial Conference by creating additional permanent circuit and/or district court judgeships for some of the courts identified by the Conference's biennial review process as needing additional judgeships.
- Adopting, in part, the Conference's recommendations by authorizing new judgeships only for the six U.S. district courts identified by the Conference as having the most urgent need for such judgeships. It might also include only adopting the Conference's recommendations for converting eight temporary judgeships to permanent status. As presented in **Table 1**, each of the current temporary judgeships is set to lapse in 2020 if not further extended or made permanent by Congress.
- Authorizing new judgeships for circuit and/or district courts that were not recommended for additional judgeships by the Judicial Conference (such judgeships might be permanent or temporary). Congress might conclude on the basis of its own review that there is a need for such judgeships in other courts not included in the Conference's most recent recommendations. For example, the Judicial Conference only assesses a circuit court's need for additional judgeships if at least a majority of active judges serving on the court approve of a request for additional judgeships. Congress may nonetheless decide to authorize additional judgeships for circuit courts where this threshold has not been met.

[85] For specific information about each district court, see Judicial Conference of the United States, letter to the Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary, May 14, 2019, Appendix 3.

- Authorizing new judgeships for some of the courts recommended by the Judicial Conference as needing new judgeships, as well as authorizing new judgeships for other courts not included in the Conference's most recent recommendations.

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