June 2, 2020

The Honorable Richard Shelby
Chairman
Committee on Appropriations
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Patrick Leahy
Vice Chairman
Committee on Appropriations
United States Senate
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Shelby, Vice Chairman Leahy, Chairman Graham, and Ranking Member Feinstein:

On behalf of the American Bar Association, which is the largest voluntary association of lawyers and legal professionals in the world, I write to express our support for inclusion of the Federal Judiciary's emergency supplemental funding request in the next stimulus bill and for consideration of legislative proposals that the Judicial Conference of United States believes are needed to address the impact of COVID-19 on the judicial system now and post-pandemic. The Judiciary’s request may be accessed here.

Like other institutions throughout the country, the operations of the federal courts have been severely disrupted by the pandemic. Even though physical courthouse doors have been closed for months, judges and court personnel have developed new protocols and utilized technology in an ongoing effort to deliver justice by continuing to perform the vital core functions assigned to the Judiciary by the Constitution and Congress. While numerous proceedings are being conducted electronically for the first time, grand jury proceedings and criminal jury trials (as well as most civil trials) have been suspended, and civil litigation and other services have had to be prioritized. Despite laudatory efforts to keep the courts operating, justice has been delayed in districts and circuits across the country. And the case backlogs caused by the temporary shutting of court facilities are destined to get considerably worse, even after the courts reopen their doors, because the Judiciary will be called upon to resolve an explosive number of lawsuits and bankruptcy filings resulting from the ongoing COVID-19 crisis.

As the Judiciary prepares to reopen, it not only has to provide a safe environment for everyone who works in or enters court facilities, it also must have the resources needed to handle the
inevitable increased workloads. In line with the ABA’s longstanding policies and enduring concerns, this letter will focus on the need for Congress to take specific actions promptly to ensure that the Federal Judiciary has adequate resources to provide timely and impartial justice so that individuals and businesses can get back on solid ground and contribute to the restoration of the economy.

**Emergency Supplemental Funding**

The ABA urges you to support the Judiciary’s emergency supplemental appropriations request for $25 million. As explained in depth in its transmission letter, the additional funds are needed to deal with the current challenges posed by COVID-19, plan for the safe return of court personnel, and reopen court facilities to litigants and the public. The funds will help pay for personal protective equipment, enhanced cleaning of court facilities, health screening at courthouse entrances, expansion of IT infrastructure and videoconferencing equipment (needs that will persist into the future if the courts adopt the use of virtual platforms for some routine services going forward, as expected), and increased costs associated with changes to probation and pretrial services supervision as a result of COVID-19.

It is worth emphasizing that the Judiciary has determined that it actually needs $52.5 million in additional supplemental funds, but in keeping with its successful efforts at cost-containment over the past decade, the Judiciary has identified $27.5 million in available current resources and therefore is requesting that Congress appropriate $25 million – less than half the total amount needed. Even when combined with the $7.5 million that the Judiciary gratefully received through enactment of the CARES Act in March, this is a modest request for emergency supplemental funds from a coequal branch of government with vast responsibilities. This fact alone distinguishes this request from all other funding requests that Congress has received. We therefore urge you to give it priority consideration and do all you can to ensure that the Judiciary receives the funds it needs to address the operational requirements caused by the COVID-19 pandemic in a timely manner.

The Judiciary has also submitted 17 legislative proposals to better deliver justice to your constituents who seek redress in the courts now and after the pandemic eases. Seven of the proposals deal with criminal justice matters, three deal with judgeships and the remainder deal with various other issues. While we only focus here on requests pertaining to judgeship needs, we hope you will give due consideration to all of them. Before turning to those specific proposals, however, we want to emphasize that we have long supported the underlying principles embodied in many of the criminal justice proposals and are encouraged that they already are being given serious consideration by Congress and the administration.
Conversion of Temporary Article III and Bankruptcy Judgeships to Permanent Status

Two proposals that deserve prompt, favorable action urge conversion of longstanding temporary Article III and bankruptcy judgeships to permanently authorized positions within the Judiciary. These are sensible proposals that will help the courts better plan for the growing backlog and inevitable surge in caseloads resulting from the pandemic.

As you likely know, the Judicial Conference conducts a survey of the Article III and bankruptcy judgeship needs of the federal courts every two years. The Judicial Conference’s judgeship recommendations start with an examination of weighted case filings, after which many other factors are taken into consideration, such as the nature and mix of the district’s caseload, historical caseload data and filing trends, and district-specific geographic, economic, and demographic factors. As discussed in more detail below, this rigorous review results in the Judicial Conference either recommending the creation of temporary or permanent judgeships, the conversion of temporary judgeships to permanent status or not filling existing vacancies where there is no longer a need for a full complement of judges.

Article III Judgeship Needs

The Judicial Conference’s most recent judgeship recommendation was submitted to Congress in March 2019. Regarding Article III judgeships, the Conference recommended that Congress authorize 70 new Article III judgeships and convert eight of the 10 existing temporary district court judgeships to permanent status. Its current emergency request for additional resources is limited to asking for the conversion of eight temporary district court judgeships1 and creation of seven new district court judgeships.2

While we believe that the Judicial Conference is in the best position to determine the number of judges needed to dispense timely justice, we also acknowledge Congress’s longstanding and legitimate concern over the expense of creating any new judgeships and current concerns about government spending. At this juncture, even if there is no interest in creating new judgeships, Congress can and should help the judiciary maintain its excellence and ability to dispense timely justice by converting the eight existing temporary judgeships into permanent ones. Such action will not require an increase in direct spending in FY 2021.

One of the temporary judgeships for which conversion is requested was created in 1990, two others in 1997 and 2000, and the rest in 2002. Because of persistent workloads in the affected courts, each judgeship has remained filled since its original creation. Even though there is no

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1 The request to convert eight Article III district court judgeships to permanent status consists of the following: 1-KS, 1-MS Eastern, 1-AZ, 1-CA Central, 1-FL Southern, 1-NM, 1-NC Western, and 1-TX Eastern.
2 The request includes creation of seven new judgeships as follows: 1-IN Southern, 1-DE, 1-NJ, 1-TX Western, 1-AZ, 1-FL Southern, and 1-CA Eastern.
controversy over the continuing need for these judgeships, Congress has only been willing to extend them one year at a time through the appropriations process. This may now be the routine way of doing business, but it is an inefficient and indirect way of addressing judgeship needs and deprives the courts of the ability to engage in long-term resource planning. We urge you to make these judgeships permanent now to preserve and maximize existing judicial resources and better position the courts to handle post-pandemic caseloads.

Bankruptcy Judgeship Needs

The Judicial Conference also is asking Congress to convert 14 temporary bankruptcy judgeships to permanent status. The need for these conversions is especially compelling, given the devastating economic impact of the COVID-19 pandemic. The expected growth in the number and complexity of bankruptcy cases has already been realized. And, according to financial experts, after the CARES Act stimulus payments are exhausted, the number of consumer cases will rise precipitously.

All but one of the districts for which conversions are requested have needed additional bankruptcy judges since 2005 to handle swelling workloads. Congress itself has implicitly concurred with the Judicial Conference’s assessment that there is indeed a persistent and growing need for additional bankruptcy judgeships in those districts to ensure timely adjudication of bankruptcy matters, but it has chosen to meet that need by only authorizing temporary judgeships, thereby creating unnecessary friction, uncertainty, and fostering an inability for courts to plan efficiently. The Judicial Conference has had to rely on these temporary extensions to meet pressing needs for the past 15 years, but now is the time for more permanent change.

Bankruptcy petitions are filed on a scale that few imagine. They account for approximately two-thirds of all cases filed annually in federal courts. In 2019, over 776,000 new bankruptcy petitions were filed, over 788,000 were terminated, and over one million were pending at the end of the year. Approximately 350 temporary and permanent bankruptcy judges were responsible for handling all these cases. It is not idle conjecture to expect bankruptcy filings to explode as a result of recent debilitating economic developments.

As pointed out by the Judicial Conference in its recent submission, “The expected increase in bankruptcy reorganization cases, particularly in Delaware, will likely result in a significant workload increase as these cases often involve very complex and time-consuming matters that require extensive judicial resources….Filings across the nation, including in each of the districts included in this request, are expected to increase significantly during the recovery from COVID-19.” Converting the requested temporary bankruptcy judgeships to permanent positions will help

3 Conversion of the following 14 temporary bankruptcy judgeships is requested: 7-DE, 2-PR; 2MI, Eastern; 1-MD; 1-FL Middle, and 1-FL Southern.
ensure that constituents and businesses in your states will be able to receive timely assistance from the bankruptcy courts, which in turn, will help speed this nation’s economic recovery.

We urge you to provide the Judiciary with the resources it needs to continue to operate effectively during and after this pandemic.

Sincerely,

Judy Perry Martinez

cc: The Honorable John N. Kennedy, Chair, Senate Appropriations Subcommittee on Financial Services and General Government
The Honorable Chris Coons, Ranking Member, Senate Appropriations Subcommittee on Financial Services and General Government
The Honorable Ben Sasse, Chair, Senate Judiciary Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts
The Honorable Richard Blumenthal, Ranking Member, Senate Judiciary Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts