AMERICAN BAR ASSOCIATION

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STATEMENT

of the

AMERICAN BAR ASSOCIATION

submitted to the

Subcommittee on Administrative Oversight and the Courts

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

for the hearing on

"Responding to the Growing Need for Federal Judgeships: The Federal Judgeship Act of 2009"

September 30, 2009

Mr. Chairman and Members:

The American Bar Association is pleased to have this opportunity to express its support for S. 1653, the Federal Judgeship Act of 2009, which is based on a detailed assessment of resource needs conducted by the Judicial Conference of the United States last year. We request that this statement be made part of the hearing record.

This long-overdue comprehensive judgeship bill would authorize nine permanent circuit court judgeships and 38 permanent district court judgeships, and would convert five existing temporary judgeships into permanent positions. In addition, it would create 16 temporary judgeships and extend one existing temporary judgeship in districts and circuits where burdensome caseloads are expected to subside in time.

The last comprehensive judgeship bill was enacted in 1990. That legislation established 11 additional circuit court judgeships and 61 permanent and 13 temporary district court judgeships. Since 1990, case filings in the federal appellate courts have increased by 42 percent and in district courts by 34 percent. In the intervening years, Congress authorized only a modest number of additional district court judgeships on an *ad hoc* basis in 1999, 2000, and 2002; it has not authorized any additional circuit court judgeships, despite the explosive growth in the number of both criminal and civil appeals.

While neither the Judicial Conference nor the ABA wants to encourage unnecessary growth in the size of the federal judiciary, the quality of the federal courts is dependent on judges having manageable workloads. Our judicial system is predicated upon the principles that each case deserves to be evaluated on its merits, that justice will be dispensed even-handedly, and that justice delayed is justice denied. When judges are laboring under excessive workloads, we cannot fairly expect each case to receive the time and attention it needs or our judges to resolve every dispute in a timely fashion.

The Judicial Conference's recommendations for new district court judgeships start with an examination of weighted case filings, after which many other factors are taken into

consideration. The district courts in which the Judicial Conference is recommending additional judgeships have seen an average growth in weighted filings from 427 in 1991 to 573 in 2008. These statistics do not reveal the seriousness of the situation in some jurisdictions in which new judgeships are sought. Consider, for example, the Western District of Texas, where district court judges have weighted caseloads of 688, or the District of Minnesota, where the district court caseload is 799 per judge. Most disturbing of all, district court judges in the Eastern District of California labor to dispense timely justice with a weighted caseload of 970 per judge -- the highest in the country.

The need for more judgeships is just as dire in our courts of appeals, where the number of appeals has grown from 40,898 in 1990 to 61,492 in 2008. According to the Administrative Office of the U.S. Courts, based on totals for 2008, the average circuit court caseload per three-judge panel was 1,049, dramatically above the 773 average circuit court caseload filings recorded in 1991, one year after 11 new circuit court judgeships were created by Congress.

There is no doubt that such untenable workloads degrade the delivery of justice by delaying access to the courts for the resolution of civil disputes, and that they encourage early resignations from the bench and deter retiring judges from taking senior status. These actions, in turn, bear their own financial cost and negatively affect our business communities.

Over the last decade, Congress has primarily responded to caseload growth by providing more resources, not additional judgeships. The judiciary, in turn, has implemented many new methods to handle caseload growth, including enhancing its use of time-saving and cost-effective technologies, developing and implementing innovative case-management systems, and relying more heavily on senior judges, magistrate judges and staff attorneys. These responses have represented good-faith efforts by both Congress and the courts to develop cost-saving alternative methods to handle caseload growth. But they are no longer sufficient, given the continuing growth of federal caseloads, fueled in

large by the "war on terror," congressional expansion of federal court jurisdiction, and new national policies that call for enhanced law enforcement efforts.

The ABA's practicing lawyers around the country are concerned that our federal courts cannot continue to compensate for insufficient "judge-power." Case backlogs and court delays impede the delivery of justice. And utilization of more and more methods to dispose of cased as quickly as possible is fundamentally altering the quality of justice in our federal courts. Promptly filling existing vacancies will ameliorate -- not fix -- the problem. To maintain the excellence of, and timely access to, our federal courts, the only viable solution is to authorize new judgeships in areas where the need is overwhelming.

We are aware that some members of Congress question the method by which weighted case filings are determined and optimal caseload standards are set by the Judicial Conference. After carefully reviewing the record for S. 2774, the omnibus judgeship bill of the110th Congress approved by the Judiciary Committee last year, including the responses to questions posed by congressional members in lieu of a hearing (S. Rpt. 110-427 and S. Hrg.110-457, Serial No. J-110-111), and after listening to experiences of our ABA members who have first-hand experience, we have concluded that these concerns do not provide justification to delay consideration of S. 1653. The Judicial Conference and the Federal Judicial Center have thoroughly and satisfactorily explained the basis for the methodology used to calculate case weights and have offered sufficient evidence of its validity.

Furthermore, we believe that undeserved importance has been attributed to case weights and case filing standards. The significance of these caseload statistics is that they furnish the threshold for consideration of requests for new judgeships; they are by no means determinative of need. As the Judicial Conference has explained in great detail in its written statement and responses to questions last year, judgeship recommendations are developed using a multi-step process of review and evaluation that takes into account the experience-based views of judges affected by the workloads, magistrate judge assistance, status of senior judges, geographical factors, cause of caseload growth and availability of

alternative methods to handle it, administrative practices, and a host of other factors. Consideration of these additional factors diminishes the overall importance of the weighted case filings and explains why judgeships are not requested in every jurisdiction or circuit with abnormally high caseloads.

Congressional reluctance to authorize new judgeships is understandable in light of the substantial expense associated with each new judgeship and competing government-wide demands for resources. But the cost to this nation of not providing the judiciary with its most essential resource is far greater. Our government of separated powers requires a judicial branch comprised of a sufficient number of Article III judges to resolve disputes between the branches, rule on constitutional and statutory questions, and protect individual liberties. It is incumbent on Congress to authorize the judgeships the judiciary now needs to carry out its constitutional duties and deliver fair, impartial, and timely justice.

In order to respond constructively to future growth and other challenges facing the courts, we suggest that the subcommittee give consideration to holding hearings to explore creating structures that would facilitate cooperation and ongoing discussion of issues and solutions. The so-called "Williamsburg Conferences," convened annually from 1979 to 1994, and the Office of the Administration of Justice, operational within the Justice Department from 1977 to 1981 might provide valuable guideposts for such an endeavor.

We thank you for your leadership on this issue and urge members of your Subcommittee swiftly and decisively to approve S. 1653 with bipartisan support and to take all necessary steps to assure its prompt consideration by the full Judiciary Committee.