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The Honorable Robert W. Goodlatte, Chair Committee on the Judiciary U.S. House of Representatives Washington, DC 20515

Dear Chairman Goodlatte:

I am writing on behalf of the American Bar Association to express our views on the judgeship needs of the federal judiciary and request that this letter be made part of the record of today's hearing before your committee, titled, "Are judges always the answer?"

When federal courts do not have sufficient judges to keep up with the workload, civil trial dockets take a back seat to criminal dockets due to the Speedy Trial Act. As a result, persistent judge shortages increase the length of time that civil litigants and businesses wait for their day in court, create pressures that "robotize" justice, and increase case backlogs that will perpetuate delays for years to come. This has real consequences for the financial well-being of communities and businesses and the personal lives of litigants whose cases must be heard by the federal courts – examples include cases involving challenges to the constitutionality of a law, unfair business practices under federal antitrust laws, patent infringement, police brutality, employment discrimination, and bankruptcy.

The negative consequences of too few judges have been exacerbated by the across-the-board budget cuts mandated by sequestration this fiscal year. Staff layoffs and furloughs and reductions in services and operating hours implemented in courts across the country in response to sequestration have made it even more difficult for courts with too few judges to keep up with caseloads and deliver timely justice. The combination of too few judges and insufficient funding is diminishing the ability of our federal courts to serve the people and deliver timely justice.

The last comprehensive judgeship bill was enacted in 1990. In the intervening years, federal judicial caseloads have steadily and steeply increased, fueled in large part by congressional expansion of federal court jurisdiction and national drug and immigration policies that call for and fund enhanced law enforcement efforts. Despite this growth, Congress has authorized only 34 additional district court judgeships -- in 1999, 2000, and 2002 -- while allowing a half-dozen temporary judgeships in other districts to expire. Consequently, over the past 23 years, district courts have experienced a 39 percent increase in filings, but only a 4 percent increase in judgeships. Even more sobering, the

number of appellate court judges has not changed, despite a 34 percent increase in filings since 1991.

The Judicial Conference of the United States conducts a survey of the judgeship needs of the U.S. courts every two years during which it considers requests for additional authorized judgeships as well as requests for not filling existing vacancies. Policies were adopted by the Judicial Conference in 1997 and 1998 establishing procedures for recommending that vacancies not be filled on district courts and courts of appeals, respectively. All Judicial Conference recommendations with regard to judgeship needs originate from requests made by individual courts. If a particular court does not make a judgeship request, the Judicial Conference does not initiate an inquiry.

The Judicial Conference's review process starts with an examination of weighted or adjusted case filings of that court, after which many additional factors are taken into consideration. Judgeship recommendations are developed using a multi-step process of evaluation that takes into account the experience-based views of judges affected by the workloads, types of cases that come before the court, 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 or adjusted case filings and explains why judgeships are not requested in every jurisdiction or circuit with abnormally high caseloads.

This past July, Senator Coons (D-DE) introduced S. 1385, a comprehensive judgeship bill that is based on the Judicial Conference's latest detailed assessment of the resource needs of the judiciary. The bill calls for the addition of 5 permanent judgeships and one temporary judgeship for the courts of appeals and 65 permanent judgeships and 20 temporary judgeships for the district courts. It also calls for the conversion of 8 existing temporary district court judgeships to permanent status.

The district courts in which the Judicial Conference is recommending additional judgeships currently are laboring under weighted case filings of almost 630 per authorized judgeship, far above the 430 weighted caseload threshold that the Judicial Conference uses as a starting point for examining a district court's need for additional judgeships. If Congress created all of the judgeships requested, the weighted caseload of all authorized district court judgeships would still be in excess of 430 cases.

In some jurisdictions, caseloads are dramatically worse: judges of the District of Arizona and the Western District of Texas have caseloads that exceed 700 weighted filings, and judges in three districts – the Eastern District of California, the Eastern District of Texas, and the District of Delaware – labor to dispense timely justice with weighted caseloads of over 1,000 per judge. The litigants before these courts deserve better.

The need for more judgeships is just as evident in our courts of appeals, where the number of appeals filed annually has grown from approximately 41,000 in 1990 to close to 56,500 in March 2013. The Judicial Conference has limited its request to four

permanent judgeships for the Ninth Circuit Court of Appeals and one permanent judgeship for the Sixth Circuit Court of Appeals.

We are aware that some Members of Congress question the method by which weighted and adjusted case filings are determined and caseload minimums for considering the need for additional judgeships are set by the Judicial Conference. A review of documents dating back to 2003 reveals that the concerns of the Government Accountability Office (GAO) with regard to the validity of the methodology used to determine case weights have been a major factor of contention that likely has contributed to the failure to enact a comprehensive judgeship bill since 1990. We urge collaboration among Congress, the Judicial Conference, and the GAO to resolve this impasse so that the substantive needs of the U.S. courts can be met without further delay.

Just as Congress has an obligation to oversee the courts, it likewise has an obligation to provide the judiciary with the resources it needs to carry out its constitutional and statutory duties. There are several steps, short of enactment of S. 1385, that Congress could take to help the judiciary maintain its excellence and serve the people in a timely and just manner:

- 1. Congress should quickly move to establish new judgeships in the five district courts singled out by the Judicial Conference for immediate relief -- the District of Arizona, the Eastern District of California, the District of Delaware, the Eastern District of Texas, and the Western District of Texas. The astronomically high caseloads under which they struggle are indisputable and indefensible. Both the House and Senate Financial Services and General Government Appropriations Committees acknowledged the severity of the conditions by including a provision in their FY 2014 appropriations bills to authorize new judgeships in these districts.
- 2. Congress should convert the eight temporary judgeships into permanent judgeships or at least extend their temporary status for ten years or more. To reiterate the Judicial Conference's concern, without reauthorization, all eight will lapse next year, further diminishing scarce judicial resources in these districts, and both the Senate and House Financial Services and General Services Appropriation bills contain provisions extending these judgeships.
- 3. Congress should consider the impact of legislation on the workload of the federal courts. Congress should take steps to assure that the judiciary has sufficient resources to handle new responsibilities resulting from enactment of legislation, such as immigration reform, that expands federal court jurisdiction or is expected to substantially increase the workload of the federal courts.
- 4. When making budgeting decisions, Congress should take into consideration that the federal judiciary is essential to preserving constitutional democracy and freedom, and that waiting to restore funds until the erosion in the quality of justice

becomes a *fait accompli* is not a viable national option. The ABA urges Congress to protect the federal judiciary from future deficit reduction and to increase funding for FY 2014 to an amount equal to or greater than the amount approved by the House Appropriations Committee this past summer.

Thank you for the opportunity to express the views of the ABA on issues so central to our mission.

Sincerely,

Thomas W. Susman

cc. Members of the Subcommittee