June 27, 2018

The Honorable Darrell Issa  
Chairman  
Subcommittee on Courts, Intellectual Property, and the Internet  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Issa:

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 your June 21, 2018 hearing, “Examining the Need for New Federal Judges.” The ABA is a voluntary organization of over 400,000 members, many of whom practice before the federal courts.

As you know, the last comprehensive judgeship bill was enacted in 1990. In the intervening years, federal judicial caseloads have 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 without providing concomitant resources to the federal judiciary. Over the past 28 years, only 34 new district court judgeships have been created, even though filings have increased 38 percent in district courts and 40 percent in circuit courts.

Obviously, workload across the federal courts is neither uniform nor static. That is why the Judicial Conference of the United States conducts a survey of the judgeship needs of the federal courts every two years. The Judicial Conference submitted its most recent judgeship recommendation to Congress in March 2017 and recommended the creation of 52 district court and five circuit court judgeships, and the conversion of eight temporary district court judgeships to permanent status. This hearing is the first action that Congress has taken with regard to that recommendation.

While we believe that the Judicial Conference is in the best position to determine the number of judges needed to dispense timely justice and support its recommendation, we also acknowledge Congress’s longstanding resistance to passing a comprehensive judgeship bill and its legitimate concern over the expense of creating new judgeships. There are several steps short of enactment of a comprehensive judgeship bill that Congress could take to help the judiciary maintain its excellence and serve the people in a timely and just manner.
1. Congress should establish new judgeships in the five district courts singled out by the Judicial Conference for immediate relief – the Eastern District of California, the District of Delaware, the Southern District of Florida, the Southern District of Indiana, and the Western District of Texas. While some district courts not on this list have higher weighted case filings, the Judicial Conference determined that these courts have the most urgent need for additional authorized judgeships after reviewing caseload trends, court management statistics, the availability of senior judges, future vacancies, and the views of the judges involved. All of these courts, except for the Eastern District of California, have current vacancies and most have been declared judicial emergencies. Filling these vacancies should be a priority focus of the Senate. However, even if these courts had a full complement of judges, there would be an insufficient number of judges to dispense timely justice.

2. Congress should convert the eight existing temporary judgeships that have been recommended for conversion into permanent judgeships or at least extend their temporary status for ten years. There is no controversy over the continuing need for these judgeships; in fact, they keep getting extended for one year at a time through the appropriations process and are on course to be extended again for FY 2019. This may have become the routine way of doing business, but it is an inefficient and indirect way of addressing judgeship needs and deprives the affected courts of the ability to engage in long-term resource planning.

3. Congress should consider the impact of legislation on the workload of the federal courts. It should provide the judiciary with sufficient resources to handle new responsibilities resulting from enactment of legislation that expands federal court jurisdiction or adoption of national policies that will inevitably increase the workload of the federal courts.

Thank you for the opportunity to express the views of the ABA on this important issue.

Sincerely,

Thomas M. Susman

cc: Hank Johnson, Ranking Member, House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet