



June 12, 2017

Congressional Authorization of New U.S. Circuit and District Court Judgeships

Congress, pursuant to its authority in Article III, Sec. 1 of the U.S. Constitution, determines through legislative action the size and structure of the federal judiciary. Congress first exercised this power with the passage of the Judiciary Act of 1789, creating a three-tiered judiciary that forms the basis for the modern structure comprised of U.S. district courts (i.e., the federal trial courts), U.S. circuit courts of appeals, and the Supreme Court.

Types of Judgeships Authorized by Congress

Although the Constitution provides Congress in Article I with the authority to create a variety of judgeships and courts (e.g., Congress established the bankruptcy courts in 1978), the focus of the information below is about the most common types of judgeships created by Congress—those for U.S. circuit and district courts.

U.S. circuit and district courts are referred to as Article III courts because Congress created these courts pursuant to its authority in Article III of the U.S. Constitution. Judges appointed to these courts must be nominated by the President and confirmed by the Senate. Appointments to these judgeships are considered to be effective for life, meaning judges remain in office until they die, assume senior status, resign, retire, or are removed by Congress through the process of impeachment.

When increasing the number of U.S. circuit or district court judgeships, Congress may authorize either permanent or temporary judgeships. The creation of a permanent judgeship, as the name suggests, permanently increases the number of judgeships on a U.S. circuit or district court. In contrast, temporary judgeships are designed to increase the number of judgeships on such courts for a limited period of time. In authorizing a temporary judgeship, Congress may choose any length of time it deems appropriate for the judgeship to exist.

Congress may consider it desirable to temporarily increase the number of judgeships on a particular court if the court is dealing with an increased workload considered temporary in nature (e.g., when a court's workload temporarily spikes as a result of new federal legislation or a recent Supreme Court ruling). Congress might also be uncertain about whether an increase of a court's workload is temporary or permanent in nature and, thus, Congress might initially decide to authorize one or more temporary judgeships to meet the workload demands of the court. Temporary judgeships can later be extended by Congress (so as not to lapse after the specified period of time in the authorizing statute has expired) or be converted into permanent judgeships.

While Congress creates temporary judgeships relatively frequently for U.S. district courts, the authorization of temporary U.S. circuit court judgeships is relatively rare. Between 1960 and 2016, Congress created temporary circuit court judgeships on one occasion (and each of the judgeships was later converted to permanent judgeships).

Number of U.S. Circuit and District Court Judgeships Authorized by Congress Since 1945

The combined number of all U.S. circuit and district court judgeships has increased by nearly a factor of 3.5 from 1945, the beginning of the post-War period, to 2016. In 1945, there were a combined total of 248 U.S. circuit and district court judgeships—while in 2016, there were a combined total of 852 such judgeships (including 10 temporary district court judgeships). District court judgeships during this period increased from 189 to 673 (a 256% increase). Circuit court judgeships increased from 59 to 179 (a 203% increase).

While the number of circuit and district court judgeships has increased since 1945, relatively few new judgeships have been authorized since 1990. No new circuit court judgeships have been authorized since 1990, while 28 new district court judgeships have been authorized.

Types of Legislation Used to Authorize Judgeships

Congress may choose to create many judgeships at one time or, instead, create relatively few. There are various legislative vehicles that Congress has at its disposal when choosing to authorize additional judgeships.

If Congress chooses to create a relatively large number of judgeships at one time, it may use an “omnibus judgeships bill.” An omnibus judgeship bill is either a stand-alone bill or a title of a larger bill concerned exclusively, or in large part, with the creation of federal judgeships.

Since 1977, Congress has enacted three omnibus judgeship bills: the Omnibus Judgeship Act of 1978 (which created 25 new circuit court judgeships and 117 new district court judgeships); the Bankruptcy Amendments and Federal Judgeship Act of 1984 (which created 24 new circuit judgeships and 61 new district judgeships); and the Judicial Improvements Act of 1990 (which created 11 circuit judgeships and 61 new district judgeships).

In more recent years, Congress has created a smaller number of new judgeships using appropriations bills: the Judiciary Appropriations Act, 2000 (which created 9 district court judgeships); the Judiciary Appropriations Act, 2001

(which created 10 district judgeships); and the 21st Century Department of Justice Appropriations Authorization Act, 2002 (which created 19 district judgeships).

Congress might also create new judgeships when passing an act that would restructure the federal judiciary. For example, when creating the U.S. Court of Appeals for the Federal Circuit in 1982, Congress authorized 12 new Article III circuit court judgeships (increasing the number of circuit court judgeships at the time from 132 to 144).

Bills authorizing new judgeships that have become law have often received bipartisan support. For example, the Judgeship Improvements Act of 1990 passed the House by 387-18 and the Senate by voice vote.

Role of the Judicial Conference in Determining the Need for New Judgeships

While Congress is primarily responsible for determining the structure and scope of the federal judiciary, it has increasingly relied on the Judiciary itself to recommend changes to the size of the judiciary by adding additional permanent or temporary judgeships.

The Judicial Conference of the United States is the policy-making body for the federal court system. The Conference meets twice a year to consider administrative and policy issues affecting the federal courts, including making any recommendations to Congress concerning legislation involving the judicial branch. Such recommendations include requests for the creation of new circuit and district court judgeships.

In longstanding practice, the Judicial Conference—through its committee structure—periodically reviews the judgeship needs of all U.S. circuit and district courts to determine if any courts might require additional judgeships. If such a need is determined to exist, the Conference makes recommendations to Congress for the creation of new judgeships. The Judicial Conference may recommend that new judgeships be permanent or temporary; recommend the extension of temporary judgeships; the conversion of these judgeships from temporary to permanent, or the reassignment of a judgeship serving multiple districts to a single, or dual, districts.

The Judicial Conference’s recommendation as to which judicial districts need new judgeships is based, in part, upon a comparison across districts of the complexity of different types of cases handled by judges, as well as the amount of time it takes for judges to dispense with such cases. Types of civil cases that are generally more complex or time-consuming for judges include environmental, patent, civil rights, antitrust, and Freedom of Information Act actions. Types of criminal cases that might be more complex or time-consuming include criminal enterprise, homicide, and extortion cases. In general, there is greater variation in complexity across different types of civil cases than for criminal cases.

The specific statistic used by the Judicial Conference to make its comparison across U.S. district courts is the number of “weighted filings” per authorized judgeship in each district. The weighted filings statistic is a mathematical adjustment to the number of case filings in a district that takes into account the relative complexity of cases and the expected amount of time required for disposition of a district’s cases. The higher the number of weighted filings per judgeship in a district, the more likely that district might need one or more new judges to handle its caseload. Conversely, if the number of weighted filings per judgeship is relatively low, a district might not require additional judges. A similar statistic is used for comparing the workload of U.S. circuit courts.

While the number of weighted filings per judgeship is the primary factor in the Judicial Conference’s evaluation of a court’s need for additional judgeships, the Conference’s recommendations for new judgeships are not based solely upon this statistic. Other factors that the Conference might consider in making its recommendations include the number of judgeships requested by the court itself; the availability of senior, visiting, and magistrate judges to assist in handling a court’s caseload; geographical factors; unusual caseload complexity of a court; and whether a court is experiencing temporary increases in its caseload.

The Judicial Conference’s Most Recent Recommendation for New Judgeships

The most recent recommendation by the Judicial Conference, issued in March 2017, called for the creation of 5 new circuit court judgeships and 52 district court judgeships (all permanent). The Conference also recommended converting eight temporary district court judgeships to permanent judgeships.

Each of the five requested new circuit court judgeships is for the U.S. Court of Appeals for the Ninth Circuit (comprised of California, eight other western states, and two U.S. territories).

The new district court judgeships are recommended for 27 of the nation’s 91 judicial districts (located in 17 different states and Puerto Rico). The Conference recommended that several judicial districts receive more than one new district court judgeship, including the Central District of California (Los Angeles), the Eastern District of California (Sacramento), the Middle District of Florida (Tampa), and the Western District of Texas (San Antonio).

In making its recommendation, the Judicial Conference notes that since 1990, when the last omnibus judgeship legislation was enacted (creating 72 new judgeships), appeals filings have increased 40% and district court filings have increased 38% (with civil case filings up 38% and criminal filings up 39%).

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