

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
501 I STREET, SUITE 15-220
SACRAMENTO, CA 95814

Chambers of
KIMBERLY J. MUELLER
Chief United States District Judge

(916) 930-4260

Via e-mail

April 8, 2020

Chief Judge Sidney R. Thomas
Judicial Council of the Ninth Circuit
c/o Libby A. Smith, Circuit Executive
United States Courts for the Ninth Circuit
James R. Browning United States Courthouse
95 Seventh Street
San Francisco, California 94103

RE: Eastern District of California's Request for Suspension of Speedy Trial Act Deadlines Given Judicial Emergency Due to Coronavirus Disease-2019 (COVID-19) Pandemic (18 U.S.C. § 3174)

Dear Chief Judge Thomas:

I write on behalf of the Eastern District of California to request that the Judicial Council of the Ninth Circuit grant a suspension of the time limits provided by the Speedy Trial Act, 18 U.S.C. § 3161(c), for a period of time not to exceed one year, as allowed by 18 U.S.C. § 3174(b). This letter serves as my certification that the Eastern District of California is unable to comply with the time limits set forth in section 3161(c) due to our longstanding emergency circumstances reflected in the status of our court calendars and the limited capabilities of our district with our insufficient number of district judges, despite our efficient use of existing resources. The COVID-19 pandemic has exacerbated our pre-existing emergency such that there simply are no other options for alleviating our calendar congestion, despite the many steps we have been taking to manage the current crisis since its onset.

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Because I know you and the Judicial Council are keenly aware of the circumstances created by the COVID-19 pandemic and the responses of governmental and public health organizations, I refrain from a review of relevant prior events. As of today, however, it is clear that the pandemic is currently advancing in the 34 counties making up the Eastern District of California. In Sacramento County alone, the County Public Health Officer reports 580 confirmed cases and 22 deaths so far; yesterday he extended Sacramento's shelter-in-place order to May 1, 2020, with the possibility of further extensions, and further tightened restrictions to severely limit activities outside residential homes. Fresno County has 156 cases with 3 deaths and also has a shelter-in-place order in effect. Kern County has a total of 309 cases and 2 deaths, and has declared a local health emergency based on COVID-19. Earlier today, we have learned two federal detainees housed in the Kern County Sheriff's Lerdo Detention Facilities have tested positive for the virus. Given the rapid progress of the disease within our district in just the last week, and the best public health information available to us, we expect that our numbers will continue to rise throughout this month, with a plateau beginning on or about May 1, representing a best-case scenario.

Crisis Management: General Orders and Other Initiatives

Along with other districts throughout the Ninth Circuit, the Eastern District of California took steps beginning in mid-March in an effort to respond to public health advisories and get ahead of the curve. Specifically, we have taken the following formal actions, which we have reported on our court's web page, www.caed.uscourts.gov, in an effort to keep the public apprised:

1. On March 12, 2020, in my capacity as Chief Judge, I issued General Order 610, placing restrictions on certain visitors to our courthouses depending on their travel history, health condition or exposure to persons who had traveled to countries experiencing coronavirus outbreaks. The order, which has since been superseded by General Order 612, was intended to protect the safety of courthouse staff and visitors, in light of the coronavirus pandemic and the best available public health information available at that time.

2. On March 17, 2020, I issued General Order 611, placing limitations on court proceedings by suspending civil and criminal jury trials through May 1, 2020, and providing judges with the flexibility to hold hearings to the extent possible by telephone and video conference. In this order I made a general finding that time under the Speedy Trial Act was excluded under 18 U.S.C. § 3161(h)(7)(A) to May 1, 2020, given the circumstances created by the pandemic.¹ I issued this order after receiving a request from our Federal Defender that our court immediately suspend in-person court appearances in criminal cases until May 1, 2020. I made clear that grand juries were not suspended, but would be convened at the discretion of the U.S Attorney.
3. On March 18, 2020, in light of the quickly evolving public health landscape, I issued General Order 612 closing all federal courthouses in the Eastern District of California to the public through May 1, 2020. Persons having official court business could still enter a courthouse with a judge's approval. As relevant here, this order provided that criminal matters remained on calendar unless continued by agreement or by a judge with a Speedy Trial Act exclusion of time; to the extent possible under the law those matters maintained on calendar would be heard by telephone or video conference. On March 20, 2020, I provided an interpretation of General Order 612, defining "persons having official court business" and clarifying methods for members of the media to gain access to court proceedings.
4. On March 25, 2020, I joined with all members of our Magistrate Judge bench to issue General Order 613, providing temporary procedures for providing pretrial services reports by email to assigned counsel appearing at a criminal proceeding telephonically or by video.

¹ While this exclusion serves as a gap-filler covering the period during which we were transitioning to teleworking and virtual court proceedings, individual judges continue to make particularized findings to support exclusions of time in the cases over which they preside.

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5. On March 30, 2020, following enactment of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), I issued General Order 614 making the findings required by that Act and authorizing the use of videoconferencing, or teleconferencing if videoconferencing is not reasonably available, for the events specified in section 15002(b) of the Act.
6. On April 6, 2020, after several hearings in which we provided audio access to members of the public, we adopted a protocol for public access and posted detailed instructions on our webpage.
7. Regarding grand jury proceedings, I have remained in close consultation with our United States Attorney’s Office and have continued to leave any summoning of the grand jury to that office’s sound discretion. Our court has signaled we would allow proceedings, if required in Sacramento, to be held in our large ceremonial courtroom in the Robert T. Matsui Courthouse to promote physical distancing, while at the same time expressing our concerns about the ability for proceedings to go forward without jeopardizing public health and safety, including the health and safety of grand jurors, witnesses, counsel and court reporters. To date our court has not needed to consider overriding any decision of the United States Attorney with respect to grand juries.

Copies of our General Orders are attached, for ease of reference.

Behind the scenes, our Clerk of Court and I have continually monitored what other courts are doing, participated in the helpful Circuitwide and nationwide telephone conferences set up to allow information sharing, monitored the messages and orders issuing from the federal government, State of California and multiple County Health Offices, and stayed in touch on a regular basis with our bench, chambers and Clerk’s Office staff, as well as our Chief Probation Officer, Chief Pretrial Services Officer, U.S. Marshal and Chief Bankruptcy Judge. We have responded to innumerable email messages from the U.S. Attorney and Federal Defender and other stakeholders as we facilitate efforts to maintain consensus

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regarding the design and functionality of our virtual court setup, which has taken longer to deploy than anticipated given the decidedly mixed capabilities at the many local jails in which our federal pretrial detainees are housed. We have piloted telephonic court hearings and videoconference proceedings in which all participants appear remotely, and have recruited other members of the bench and the Clerk of Court's staff to expand the bandwidth of our crisis management team. The Clerk's Office IT staff in particular has worked nonstop to transition us not only to virtual court proceedings but to full teleworking for all staff, helping to address hundreds of infrastructural needs for equipment and the achievement of remote network access. Our IT staff also has helped solve many new problems, such as finding an electronic court reporting (ECRO) solution to ensure a good record for remote court hearings when a live court reporter is not available to telephone in.

Planning Group Consultation; Reasons for Request

As required by 18 U.S.C. § 3174(a), I have consulted with those persons identified by the statute as members of a court's Speedy Trial Planning Group to seek their recommendation. All recommend that our court submit this application requesting suspension of the Speedy Trial Act's time limits. One member observed that ideally the suspension could be revoked, or no longer relied upon, if and when the court is able to return to normal functioning. Having considered the entirety of our court's circumstances, in consultation with Planning Group members and our Clerk of Court, I have concluded the suspension is necessary given that no other remedy for our current greater congestion is reasonably available. The primary reasons for my conclusion are summarized below.

The Eastern District of California is operating with severely limited capabilities during the COVID-19 pandemic. Almost all of our judges and members of court staff are working remotely, dispersed across an extremely large geographic area. As noted all of our courthouses are closed to the public. We are holding only those proceedings that are essential in criminal cases, and only very few time sensitive civil hearings between now and May 1, 2020, a date that appears likely to be extended. While we have functioning telephone and videoconferencing capabilities, conducting our trial court hearings in this way can be very challenging

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under the best of circumstances, and does not begin to approximate the quality of proceeding for which we regularly strive. In terms of submitted matters that we can resolve on the papers, while we all are set up now to telework and are getting work done, it is difficult to attain the same level of productivity as we do in chambers, given some remaining technological challenges including intermittent internet connections, many employees' ergonomically inadequate home office setups, and the understandable distractions that can arise in a home where others are sheltering in place as well. As we are adjusting to work in new and imperfect physical circumstances, we are beginning to see a rising stream of new motions and petitions seeking immediate release from confinement in light of COVID-19, for which no established law guides the resolution and there often are no easy answers, particularly given the equitable considerations implicated. These new matters require attention now, with submitted motions set aside in the meantime.

Even once we can return to our courthouses, as we all hope to do as soon as we can, we expect then to need time to regroup. We anticipate a significant backlog of trials, given that at least 52 trials districtwide have been continued since mid-March. The first trials will likely not be held until at least two weeks after our doors open again, given that jury administrators will need time to identify jury pools and summon them in. Realistically, our preexisting backlog of motions and old cases will have grown given the wave of new motions occasioned by the pandemic, making it unlikely we will have been able to use enough of our time away from the courthouse to whittle the backlog down in any meaningful way.

No Other Reasonable Remedy Available Against Backdrop of Pre-existing Emergency

As you know, our district has enjoyed the services of visiting judges on occasion over the last several years. While we appreciate the work these judges have performed for us, it has been clear for some time that there is no visiting judge program that can address our longstanding need for judicial resources; what we need is resident judges that own full caseloads. Under the current circumstances, with the accompanying severe restrictions on travel and movement in the community, obtaining visiting resident judges simply is not a reasonable possibility in any respect. Even if a cadre of visiting judges were available to assist us by

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working remotely, our existing staff and technological resources are currently overtaxed to the extent we simply cannot support a visiting judge program at this time.

Even apart from the emergency created by the COVID-19 pandemic, our court has been operating with increasingly limited resources for many years now. All of the crisis management tasks summarized above are in addition to the traditional work of our court, which already is burdened by heavy criminal and civil caseloads with too few judges. Our preexisting dearth of judicial resources is heightened by recent transitions: the taking of active senior status by one judge, District Judge Morrison C. England, and inactive senior status by another, District Judge Garland E. Burrell, at the end of last year. My predecessor, Chief District Judge Lawrence J. O'Neill, also has departed the court, taking inactive senior status at the beginning of February 2020. The two judicial openings created in our Fresno Division as a result of these career transitions continue to remain vacant, with no nominations pending. As the Judicial Council well knows, the Eastern District of California's plight is nothing new. The population of our district is approaching 8.5 million and yet we have only 6 active district judgeships, including our two vacancies. Currently, there is only one active District Judge assigned to our Fresno Division and that judge, District Judge Dale A. Drozd, is the only judge hearing criminal cases. Because of the many pleas and sentencing he must handle, Judge Drozd currently holds two full criminal calendars a week, with trials conducted on the other three days of the week, eliminating his ability to hold civil law and motion calendars. Additionally, Judge Drozd alone reviews all Title III wiretap applications and related proceedings, a not insignificant task in light of the high number of complex, gang-related investigations and prosecutions arising in our Fresno Division.

Even if our two vacancies are filled at some point during this election year, and the particularly severe congestion in our Fresno Division somewhat relieved, we still will qualify for five additional district judgeships, as the Judicial Conference has once again recommended in its most recent report to Congress. A more complete picture of our District's pressing needs, even before anyone had any sense of the disruptions COVID-19 would cause, is painted in our 2021 Biennial Survey of Article III Judgeships Response, attached.

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Conclusion

For all of these reasons, based on the impact of the COVID-19 pandemic on the pre-existing paltry judicial resources of the Eastern District of California, our court respectfully requests the Judicial Council extend the time limits under 18 U.S.C. § 3161(c) for a period of time not to exceed one year.

Thank you for your consideration.

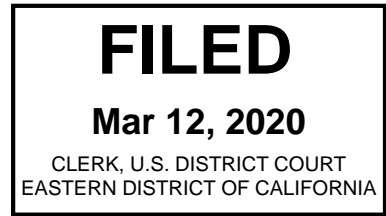
Respectfully yours,



CHIEF UNITED STATES DISTRICT JUDGE

Attachments (General Orders; 2021 Biennial Survey of Article III Judgeships Response)

cc: Keith Holland, Clerk of Court, Eastern District of California



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IN RE:) **GENERAL ORDER NO. 610**
)
RESTRICTIONS ON VISITORS)
TO EASTERN DISTRICT OF)
CALIFORNIA COURTHOUSES)
_____)

The Centers for Disease Control have advised people to take precautions in light of the COVID-19 virus outbreak and state that the best way to prevent illness is to avoid being exposed to this virus.

IT IS THEREFORE ORDERED, effective immediately, in an attempt to ensure the safety of courthouse staff and visitors, the following persons shall not enter any courthouse in the Eastern District of California:

- Persons who have travelled to any of the following countries within the last 14 days:

CHINA
SOUTH KOREA
JAPAN
ITALY
IRAN

(This list may be updated as further guidance is received.)

- Persons who reside or have had close contact with someone who has traveled to one of the countries listed above within the last 14 days;
- Persons who have been asked to self-quarantine by any doctor, hospital or health agency;
- Persons who have been diagnosed with, or have had contact with, anyone who has been diagnosed with COVID-19 in the last 14 days;
- Persons with fever, cough or shortness of breath.

Anyone attempting to enter in violation of these protocols will be denied entry by a Court Security Officer.

These restrictions will remain in place temporarily until it is determined to be safe to remove them. People who think they may have been exposed to COVID-19 should contact their healthcare provider immediately.

DATED: March 11, 2020.

FOR THE COURT:



CHIEF UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IN RE:) GENERAL ORDER NO. 611
)
FINDINGS AND ORDER)
AS TO COURT PROCEEDINGS)
IN LIGHT OF COVID-19,)
ALSO KNOWN AS CORONAVIRUS.)
_____)

WHEREAS, the President of the United States of America has declared a national emergency in response to COVID-19, also known as “Coronavirus,” and encouraged limitations on gatherings of more than 10 persons;

WHEREAS, the Governor of the State of California has declared a public health emergency throughout the State in response to the spread of COVID-19, and strongly encouraged certain segments of the population to remain at home at the current time;

WHEREAS, the Centers for Disease Control and Prevention, California Department of Public Health and other public health authorities have advised the taking of precautions, including limiting gathering sizes and practice social distancing, to reduce the possibility of exposure to the virus and slow the spread of the disease;

WHEREAS local health officials in the Eastern District of California in particular have declared local health emergencies in light of the presence of persons infected with the coronavirus in their jurisdictions, including in Sacramento and Fresno Counties where the court’s two main courthouses are located, and the outbreak of COVID-19 in the Eastern District has reached the point where court operations are affected in that many persons at higher risk of serious or fatal

1 illness are involved in court proceedings as attorneys, parties or court staff or being asked to serve
2 the court as jurors;

3 WHEREAS slowing the transmission of the virus in the community is an important part of
4 mitigating the impact of the disease on vulnerable individuals and reducing the immediate burden
5 on the health care system and the community at large, including members of the federal bar and
6 their clients as well as pro se litigants;

7 WHEREAS the Eastern District court maintains a robust capacity for conducting business
8 remotely, and essential court operations can and will continue unimpeded, but not all of the
9 court's work can be completed at a distance; and

10 WHEREAS the need for in-court hearings and trials must be balanced against the risk
11 stemming from the associated interpersonal contact; jury proceedings are inadvisable in the
12 current environment to protect public health and ensure that when juries are seated they represent
13 a cross-section of the community and constitute the required jury of one's peers to which criminal
14 defendants in particular are entitled, *see Thiel v. S. Pac. Co.*, 328 U.S. 217, 220 (1946) ("The
15 American tradition of trial by jury, considered in connection with either criminal or civil
16 proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the
17 community."); *Taylor v. Louisiana*, 419 U.S. 522, 537 (1975) ("[T]he Sixth Amendment affords
18 the defendant in a criminal trial the opportunity to have the jury drawn from venires
19 representative of the community[.]"); and even if a jury that meets these requirements could be
20 seated at this point notwithstanding public officials' urging certain populations to remain home,
21 there is no assurance the jury's deliberations would be unaffected by continuing health and safety
22 concerns and evolving public health mandates and protocols.

23 Accordingly, with the concurrence of a majority of the District Judges of the court, in
24 order to protect public health, reduce the size of public gatherings and unnecessary travel, and

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1 ensure the ability to deliver fair and impartial justice to all those who come before the court, the
2 court orders as follows:

3 1. The United States Courthouses in Sacramento, Modesto (with hearings held in
4 Sacramento during ongoing remodeling), Fresno, Bakersfield, Yosemite and Redding
5 will remain open for business, subject to the following limitations.

6 2. Effective immediately, the court will not call in jurors for service in civil or criminal
7 jury trials until May 1, 2020. All civil and criminal jury trials in the Eastern District of California
8 scheduled to begin during this time period are continued pending further order of the court. The
9 court may issue other orders concerning future continuances as necessary and appropriate.

10 3. All courtroom proceedings and filing deadlines in a case will remain in place unless
11 otherwise ordered by the Judge presiding over that case.

12 4. The time period of any continuance entered in a criminal case as a result of this order
13 shall be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), as the court finds based
14 on the recitals above that the ends of justice served by taking that action outweigh the interests of
15 the parties and the public in a speedy trial. Absent further order of the court or any individual
16 judge, the period of exclusion shall be from March 17, 2020, to May 1, 2020. The court may
17 extend the period of exclusion in a subsequent order as evolving circumstances warrant.

18 5. Individual judges may continue to hold hearings, conferences and bench trials in the
19 exercise of their discretion, including by teleconference or videoconference, consistent with this
20 order.

21 6. Criminal matters before Magistrate Judges, such as initial appearances, arraignments,
22 detention hearings and the issuance of search warrants, shall continue to take place in the ordinary
23 course, subject to the parties' established ability to seek continuances or, as allowed by law, the
24 holding of telephonic or videoconference appearances.

25 7. The Bankruptcy Court, Clerk's Office, Probation Office, Pretrial Services Office and all
26 other court services shall remain open pending further order of the court, although the method of
27 providing services may be modified to account for COVID-19 and attendant public health
28 advisories.

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8. This order does not affect grand juries, which are convened by the U.S. Attorney and shall continue to meet as scheduled by his office.

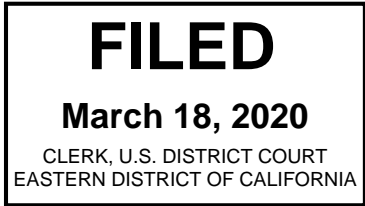
9. This order may be modified, expanded or superseded at any time to account for the developing nature of the COVID-19 public health emergency.

IT IS SO ORDERED.

DATED: March 16, 2020.



CHIEF UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IN RE:)
)
)
 ADDITIONAL TEMPORARY)
 RESTRICTIONS ON COURTHOUSE)
 ACCESS AND IN COURT HEARINGS)
 _____)

GENERAL ORDER NO. 612

WHEREAS, the court previously has issued General Orders addressing the national, regional and local public health emergency posed by the coronavirus (COVID-19) outbreak by continuing all trials to May 1, 2020;

WHEREAS, since the issuance of the court’s prior orders circumstances related to the outbreak have continued to quickly evolve, with state and local public agencies instituting further enhanced measures to manage the spread of the virus and limit the potential for the illness and death it can cause;

WHEREAS, within the Eastern District of California, the Sacramento County Public Health Department has now issued an order for residents to stay at home to the extent possible and many facilities to close, while recognizing the need for essential services to continue; and the Fresno County Board of Supervisors has adopted a Local Emergency resolution and that County has activated its Emergency Operations Center in response to COVID-19;

WHEREAS, the Judges of the United States District Court for the Eastern District of California are continuing to balance the various interests implicated by the COVID-19 outbreak and the court’s response to the outbreak, including: the health of jurors, witnesses, parties, attorneys, the public whom it is our privilege to serve, Clerk’s Office and all court staff,

Probation and Pretrial Services staff, chambers staff and judges; the constitutional rights of criminal defendants and other parties; and the public's interest in, and the court's duty to ensure, the effective and expeditious administration of justice;

NOW THEREFORE, effective immediately through May 1, 2020, the United States District Court for the Eastern District of California hereby issues the following Order to supplement its prior orders issued on March 12 and 17, 2020, with the findings relied on in those orders incorporated in full herein:

1. In light of the current coronavirus (COVID-19) outbreak, all courthouses of the United States District Court for the Eastern District of California shall be closed to the public. Only persons having official court business as authorized by a Judge of the District Court or the Bankruptcy Court, or a healthy building tenant having official business on behalf of a tenant agency, may enter courthouse property. This order applies to the following divisional locations:

- (1) The Robert T. Matsui United States Courthouse, 501 I Street, Sacramento;
- (2) The Robert E. Coyle United States Courthouse, 2501 Tulare Street, Fresno;
- (3) The Redding Federal Courthouse, 2986 Bechelli Lane, Redding;
- (4) The Bakersfield Federal Courthouse, 510 19th Street, Bakersfield;
- (5) The Yosemite Federal Courthouse, 9004 Castle Cliff Court, Yosemite; and
- (6) The Modesto U.S. Bankruptcy Court, 1200 I Street, Second Floor, Modesto.

2. All of the court's civil matters will be decided on the papers, or if the assigned Judge believes a hearing is necessary, the hearing will be by telephone or videoconference. This applies to all matters including motion hearings, case management conferences, pretrial conferences and settlement conferences.

3. In civil matters and bankruptcy matters in which parties represent themselves (pro se litigants), those parties are strongly encouraged to file documents by mail. For those unable to file by mail the court will provide drop boxes for filing inside the entrances to the Sacramento, Fresno and Modesto courthouses, that otherwise previously have accepted hand-delivered pro se filings in the Clerk's Offices for those courts.

4. In the court's criminal matters all initial appearances, arraignments and other essential proceedings will continue to be held before the duty Magistrate Judges, unless the parties agree to continue them; to the full extent possible matters that are maintained on calendar shall be conducted by telephone or video conference.

5. In criminal cases before the District Judges, the assigned District Judge may continue matters to a date after May 1, 2020, excluding time under the Speedy Trial Act with reference to the court's prior General Order 611 issued on March 17, 2020, with additional findings to support the exclusion in the Judge's discretion; if any criminal matters are maintained on calendar, to the full extent possible they shall be conducted by telephone or video conference.

6. Any Judge may order case-by-case exceptions to any of the above numbered provisions for non-jury court matters at the discretion of that Judge or upon the request of counsel, after consultation with counsel.

IT IS SO ORDERED.

DATED: March 18, 2020.

FOR THE COURT:



CHIEF UNITED STATES DISTRICT JUDGE

INTERPRETATION OF GENERAL ORDER 612;

CLARIFICATION REGARDING MEDIA ACCESS

Clarification

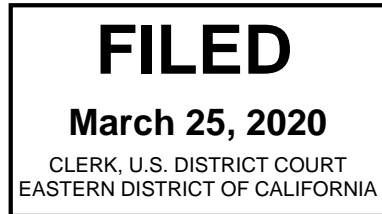
General Order 612 provides as follows, in pertinent part:

“Only persons having official court business as authorized by a Judge of the District Court or the Bankruptcy Court, or a healthy building tenant having official business on behalf of a tenant agency, may enter courthouse property.”

“Persons having official court business” is defined to mean only the following essential individuals: counsel representing a party to an item on a published court calendar and a party required by the court to appear in person for the matter calendared. Any other person who believes he or she has a right to attend a court proceeding, and desires to attend the hearing in person, must qualify as someone who is essential to the proceeding, obtain the advance written approval of the judge presiding over the proceeding and present that approval to court security in order to enter courthouse property.

Media Access

The court recognizes the Constitutional right of the media to access court proceedings on behalf of the public. Therefore, a member of the media may enter courthouse property upon presenting bonafide press credentials to court security and identifying a court proceeding that person will attend. If a member of the media wishes to monitor a court proceeding telephonically, that person shall contact the Courtroom Deputy for the judge presiding over the proceeding. Upon the media representative’s presentation of bonafide press credentials to the Courtroom Deputy, the Courtroom Deputy will provide instructions for allowing telephone access on a secure line, at no cost, to listen to the hearing with all other court rules in effect including the standing prohibition on audio recording.



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IN RE:

TEMPORARY PROCEDURES TO
PROVIDE PRETRIAL SERVICE REPORTS
BY EMAIL TO ASSIGNED COUNSEL
(AUSA AND DEFENSE ATTORNEY) WHO
ARE APPEARING TELEPHONICALLY OR
BY VIDEO

GENERAL ORDER NO. 613

On March 18, 2020, the Eastern District of California issued General Order No. 612 which placed additional restriction on courthouse access based on the coronavirus (COVID-19) outbreak. The Order requires that to the extent possible, all criminal matters be conducted by telephonic or video conferences. Due to these telephonic and video appearances, the court finds that it is necessary to implement temporary procedures for providing attorneys access to pretrial services reports and to allow pretrial services officers to appear telephonically in criminal cases.

Pursuant to 18 U.S.C. § 3153, “[e]ach pretrial services report shall be made available to the attorney for the accused and the attorney for the Government.” 18 U.S.C. § 3153(c)(1). The Director is to issue regulations establishing the policy for the release of such information which is to provide for the confidentiality requirement that the information be used only for purposes of bail determination and is otherwise confidential. 18 U.S.C. § 3153(c)(2). The Guide to Judiciary Policy provides that the pretrial report shall be made available to the defendant, and the attorneys for the defendant and the government pursuant to the practice and procedure of the district court in connection with a pretrial release or detention hearing. Guide to Judiciary Policy, Vol. 8A, Appx. 5A. In this district, it has been the practice and procedure to physically provide copies of

the pretrial services report to the interested parties at the hearing and collect the report at the conclusion of the hearing. However, in the current state of affairs, the parties are not present in court to receive the pretrial services report. Good cause therefore exists to implement temporary procedures to provide the pretrial services report while taking into account the confidentiality of the information contained within the report.

Accordingly, through May 1, 2020 and any time thereafter based upon a further General Order or any extension(s) of General Orders 611 and 612, the United States Pretrial Services for the Eastern District of California may appear telephonically in criminal proceedings. Pretrial Services shall email pretrial services reports to the assigned counsel (AUSA and FDO/Panel Attorney/retained Counsel) who are appearing telephonically or by video in criminal cases. Pursuant to the pretrial services confidentiality regulations, 18 U.S.C. § 3153(c)(1), pretrial services reports shall be used only for the purposes of bail determination. Pretrial services reports shall be made available to the attorney for the accused and the attorney for the government. Pretrial services reports are not public record, shall not be reproduced or disclosed to any other party, and shall remain confidential. Once the matter is complete the email shall be deleted and no record of the pretrial services report shall be kept by the recipient.

IT IS SO ORDERED.

Dated: March 25, 2020.

FOR THE COURT:



CHIEF UNITED STATES DISTRICT JUDGE

/s/ Edmund F. Brennan
EDMUND F. BRENNAN
CHIEF MAGISTRATE JUDGE

/s/ Deborah L. Barnes
DEBORAH L. BARNES
MAGISTRATE JUDGE

/s/ Stanley A. Boone
STANLEY A. BOONE
MAGISTRATE JUDGE

/s/ Allison Claire
ALLISON CLAIRE
MAGISTRATE JUDGE

/s/ Dennis M. Cota
DENNIS M. COTA
MAGISTRATE JUDGE

/s/ Carolyn K. Delaney
CAROLYN K. DELANEY
MAGISTRATE JUDGE

/s/ Erica P. Grosjean
ERICA P. GROSJEAN
MAGISTRATE JUDGE

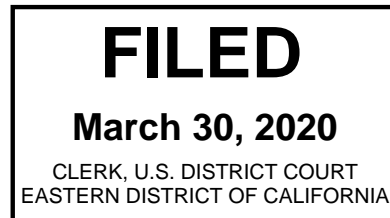
/s/ Barbara A. McAuliffe
BARBARA A. McAULIFFE
MAGISTRATE JUDGE

/s/ Kendall J. Newman
KENDALL J. NEWMAN
MAGISTRATE JUDGE

/s/ Sheila K. Oberto
SHEILA K. OBERTO
MAGISTRATE JUDGE

/s/ Jeremy D. Peterson
JEREMY D. PETERSON
MAGISTRATE JUDGE

/s/ Jennifer L. Thurston
JENNIFER L. THURSTON
MAGISTRATE JUDGE



**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

IN RE:

CORONAVIRUS PUBLIC EMERGENCY

AUTHORIZING VIDEO-
TELECONFERENCING AND TELEPHONE
CONFERENCING FOR CRIMINAL
PROCEEDINGS UNDER SECTION 15002
OF THE CORONAVIRUS AID, RELIEF,
AND ECONOMIC SECURITY (CARES)
ACT

GENERAL ORDER NO. 614

This court issues this General Order¹ as another in a series of General Orders in response to the exponential spread of the Coronavirus Disease 2019 (COVID-19) in the Eastern District of California and elsewhere, making the following findings and orders:

WHEREAS on March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, H.R. 748 (the “CARES Act”), into law;

WHEREAS on March 29, 2020, pursuant to Sections 15002(b)(1) and 15002(b)(2)(A) of the CARES Act, the Judicial Conference of the United States found that emergency conditions due to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601 *et seq.*) with respect to COVID–19 have affected and will materially affect the functioning of the federal courts generally;

¹ As the court was preparing this order on its own motion, it received email communications from the U.S. Attorney and Federal Defender for the Eastern District of California. The court has considered those communications in finalizing this order.

WHEREAS, this court has previously issued General Order Nos. 610, 611, 612 and 613, making findings and implementing temporary emergency procedures in response to the COVID-19 crisis, and those General Orders remain in effect;

WHEREAS, for the reasons previously set forth in those orders, I specifically find that felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure generally cannot be conducted in person in this district without seriously jeopardizing public health and safety;

WHEREAS, given infrastructural and technological limitations both within the court system, the various jails in the district housing federal detainees, and the Bureau of Prisons, videoconferencing is not yet reasonably available to conduct most if not all criminal hearings in the Eastern District of California;

As Chief Judge, under the authority granted by Section 15002(b)(1) of the CARES Act, I hereby order as follows:

(1) I hereby authorize the use of videoconferencing, or telephone conferencing if videoconference is not reasonably available, for all events listed in Section 15002(b) of the CARES Act, including:

- a. Detention hearings under 18 U.S.C. § 3142;
- b. Initial appearances under Fed. R. Crim. P. 5;
- c. Preliminary hearings under Fed. R. Crim. P. 5.1;
- d. Waivers of indictment under Fed. R. Crim. P. 7(b);
- e. Arraignments under Fed. R. Crim. P. 10;
- f. Probation and supervised release revocation proceedings under Fed. R. Crim. P. 32.1;
- g. Pretrial release revocation proceedings under 18 U.S.C. § 3148;
- h. Appearances under Fed. R. Crim. P. 40;
- i. Misdemeanor pleas and sentencings as described in Fed. R. Crim. P. 43(b)(2); and

j. Proceedings under 18 U.S.C. ch. 403 (the “Federal Juvenile Delinquency Act”), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.

(2) If a judge in an individual case finds, for specific reasons, that a felony plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice, the judge may, with the consent of the defendant after consultation with counsel, use videoconferencing, or teleconferencing if videoconferencing is not reasonably available, for the felony plea or sentencing in that case. The defendant’s consent may be obtained on the record at the time of the relevant event and need not be in writing.

(3) As provided by Section 15002(b)(3) of the CARES Act, the authorization provided in this order will remain in effect for 90 days unless terminated earlier. If emergency conditions continue to exist 90 days from the entry of this order, I will review this authorization and determine whether to extend it.

IT IS SO ORDERED.

DATED: March 30, 2020.

FOR THE COURT:



CHIEF UNITED STATES DISTRICT JUDGE

2021 BIENNIAL SURVEY OF JUDGESHIP NEEDS

U.S. DISTRICT COURTS APPLICATION

Please complete the form even if your court is not requesting additional Article III judgeships, conversion of an existing temporary judgeship to permanent status, or extension of a temporary judgeship. Space provided for answers will expand as needed.

- If your court **is not** requesting any change to the current number of authorized judgeships, you need only complete Question 1 below.
- If your court **is** requesting additional judgeships or conversion/extension of a temporary judgeship, please skip Question 1 and complete the remainder of the survey.

District Eastern District of California

Indicate the number of additional permanent judgeships and/or conversion or extension of temporary judgeships your court is requesting (**include any requested in prior surveys that you believe are still required**):

<u>5</u>	Permanent judgeships
<u>0</u>	Conversion of temporary judgeship to permanent
<u>0</u>	Extension of temporary judgeship

- 1 **If your court is not requesting any change to its current number of authorized judgeships, please indicate what factors, if any, influenced your decision (e.g., weighted filings are below the general standard of 430 per judgeship with an additional judgeship or below the standard of 500 per judgeship for small courts, or significant contributions provided by senior judges).**

N/A

2021 BIENNIAL SURVEY OF JUDGESHIP NEEDS

U.S. DISTRICT COURTS APPLICATION

2 If your court is requesting a change to its current number of authorized judgeships, please explain all factors that justify your request

The Eastern District of California is requesting five (5) permanent judgeships.

The Eastern District of California first exceeded the judicial caseload standard for additional judgeships in 1994. For each of the twenty-five (25) years following that first instance, our weighted caseload has remained among the top ten (10) in the nation and the top three (3) in the circuit. Today, at 730 filings per six (6) authorized judgeships we continue to strain to meet the demands of our caseload. Our situation is exacerbated exponentially by two (2) current vacant judgeships in our district. These vacancies, which have now lasted over a combined four (4) months, have had the effect of increasing our current weighted caseload to 1095 per active judgeship, with no nominations pending to fill our vacancies. Due to our current judgeship situation, our ongoing heavy caseload, our large population base, significant contributions demanded of our decreasing number of senior judges and diminished additional resources, we are requesting five (5) additional judgeships.

In recent years, our weighted filings have been surpassed by districts that have caseloads heavily influenced by influxes of MDL Litigation. MDL cases create a temporary burden on the receiving district as opposed to the continuing burden that has existed in the Eastern District for many years. These Districts include four currently in the top 10, Louisiana Eastern, Indiana Southern, New Jersey and Arizona. Districts such as Texas Western and Arizona have also seen a non-typical influx of immigration litigation over the last few years thus pushing their filings upward. Even though our Eastern District filings have decreased slightly over the last five years, due to a state policy resulting in a decrease in prisoner filings, our combined civil and criminal filings remain significantly above the set judicial standard.

Rank	District	Judges	Weighted Filings ¹
1	LAE	12	1,200
2	INS	5	1,148
3	DE	4	1,127
4	NJ	17	1,044
5	FLN	4	950
6	TXW	13	839
7	AZ	13	800
8	FLS	18	758
9	OHS	8	745
10	CAE	6	730
National Average		7.50	535

2021 BIENNIAL SURVEY OF JUDGESHIP NEEDS

U.S. DISTRICT COURTS APPLICATION

¹*Federal Court Management Statistics - FY2019 and CM/ECF for JPML – JPML Litigation Statistics by MDL – 1/15/2020*

With full utilization of all the current resources available to us, processing times for our civil cases are insurmountable. This is directly attributable to our longstanding need for additional judgeships. Caseload pressure remains so severe that there appears to be no impending respite in the case processing delays of our District. At 13.6%, the number of civil cases over three years old, in our court, ranks seventy fifth (75) in the nation. Over the last 5 years we have maintained rankings between 74 and 81, despite consistently ranking near the top nationwide in terminations per judgeship. When comparing the cases over three years for districts in the top ten weighted filings, we have the second highest percentage of cases waiting to be processed. With such delays and tapped out judicial resources, it's difficult to dispute that we are in dire need of a more permanent solution to repair the long-deferred maintenance of our judicial infrastructure.

CAE National Rank/ Number of Cases over 3 years	2019	2018	2017	2016	2015
	75	74	80	79	81

National Rank Weighted Filings	District	Judges	National Rank Civil Cases over 3 Years
1	LAE	12	88
10	CAE	6	75
3	DE	4	59
2	INS	5	57
7	AZ	13	50
9	OHS	8	40
6	TXW	13	29
8	FLS	18	8
4	NJ	17	3
5	FLN	4	1

Source - Federal Court Management Statistics - FY2019

Based on the Administrative office data, the last Article III Judgeship created in the Eastern District of California was in 1978 when the population of the District was about 2.5 million. Our District encompasses 55% of the geographical size of California. It includes thirty-four (34) counties of the fifty-eight (58) counties in the State. Our Judicial resources are now spread over an excess of 8,000,000 people and is estimated to reach nearly 10,000,000 by 2031. Essentially, we have only one judge serving 1,333,333 people. At six (6) Article III judges, we are working with 57% less judges than the Northern District of California which has fourteen (14) judges at roughly the same population size. (See Attachment).

2021 BIENNIAL SURVEY OF JUDGESHIP NEEDS

U.S. DISTRICT COURTS APPLICATION

The ongoing Judicial Emergency in our District has been exacerbated by two recent judicial vacancies. Our current request for five (5) additional Judges comes while operating under intensified caseload strain following the recent Inactive Senior Status of Judge Lawrence J. O'Neill and Senior Status of Judge Morrison C. England. Judge England took Active Senior Status on December 17, 2019 and Judge O'Neill took Inactive Senior Status on February 2, 2020. Concurrently, Senior Judge Garland E. Burrell assumed Inactive Senior Status effective December 31, 2019. Judge Mendez will become eligible for senior status on April 17, 2022 and has communicated he may assume inactive senior status in 2023.

With no nominations made and no indication of when these two vacancies in our district will be filled, workload stress levels are heightened for our existing judges and the administration of justice in our Court is affected in ways that we can no longer adequately mitigate. Of our six (6) Article III seats, two (2) preside in our Fresno Division. With the departure of Judge O'Neill, who worked in the Fresno Division, this leaves us with a single district judge in that office. Approximately 450 civil cases and 300 criminal defendants that were previously assigned to Judge O'Neill, are currently unassigned while awaiting the appointment and confirmation of a new district judge. Under the current circumstances, our District has been compelled to issue temporary emergency procedures in an attempt to stretch our critically low resources across our heavy caseload, while prioritizing felony criminal cases in an effort to avoid Speedy Trial dismissals. Unassigned civil cases with trial dates through the end of 2021 will most likely be delayed, associated pretrial conferences will be affected and parties will be highly encouraged to consent. While our court is taking steps to encourage consent, our Magistrate Judges already carry a heavy caseload and they will be unable to take on significantly more without an impact on productivity elsewhere.

Our urgent need for five (5) additional judges cannot be more apparent as history appears to be repeating itself. Extended judicial vacancies over the past twelve years have intensified the congestion in our court. The first vacancy, following the resignation of Judge David Levi in 2007, lasted eleven months until the appointment of Judge John A. Mendez in 2008. A second vacancy, lasting nearly two years, occurred when Judge Frank C. Darrell, Jr. took Senior Status in January 2009. Judge Kimberly J. Mueller was appointed in late December 2010 to replace him. Judge Garland E. Burrell, Jr., took senior status in 2012, creating a nine-month vacancy until the appointment of Judge Troy N. Nunley in 2013. Finally, Judge Anthony W. Ishii assumed senior status in November 2012. His vacancy lasted over three years until December 2015, when Judge Dale A. Drozd filled the vacancy. Unfortunately, these long waiting periods between judgeships mean that caseload delays accrue and follow a new judge once they are appointed for significant period of time, as he or she is also receiving an equal share of newly filed cases.

The amount of work that our judges are expected to perform during their active tenure is a deterrent for some when it comes to considering senior status, as an active senior judge

2021 BIENNIAL SURVEY OF JUDGESHIP NEEDS

U.S. DISTRICT COURTS APPLICATION

who takes half a caseload in our district still carries close to the average weighted caseload of an active district judge in other districts. Our District has gone from having the assistance of six (6) senior judges to three (3). In the past, our senior judges carried full caseloads to help alleviate the heavy caseload. Now each carries a half caseload. We currently have only two (2) recalled magistrate judges. We do not anticipate that these judges will continue beyond 2022.

To attempt to compensate for our lack of district judgeships, the Judicial Conference has authorized the appointment of twelve (12) full-time magistrate judges for our district. We continue to maximize the utilization of our magistrate judges by referring prisoner cases, social security cases and civil cases for pretrial proceedings to the greatest extent possible. We also encourage parties in regular civil cases to consent to our magistrate judges. While our consent rate is very high at 16%, the greatest caseload burden continues to fall upon our active district judgeships.

2021 BIENNIAL SURVEY OF JUDGESHIP NEEDS

U.S. DISTRICT COURTS APPLICATION

Our court has maximized the use of our senior judges, magistrate judges and participated in various short-term visiting judges' programs. We have even dealt with past judicial vacancies by redistributing cases to active judges. In those instances, the number of cases to be redistributed came nowhere near the nearly 750 cases that currently remain unassigned in Fresno, following the recent inactive senior status of a couple of judges in our district. In 2014 and 2015, to address the three-year vacancy in our Fresno Office created when Judge Ishii took senior status, we assigned approximately 450 Fresno cases to our Sacramento district judges. When Senior District Judge Burrell reduced his caseload from half a caseload to a quarter, we redistributed approximately 190 cases to our active Sacramento District Judges. In the last 3 years, the 9th Circuit has assisted in finding visiting judges, when possible, to hear trials in both Sacramento and Fresno. To date we have reassigned 71 trials to visiting judges. Prior to our recent efforts, beginning in late 2008, 87 circuit and district judges from the Ninth Circuit volunteered to handle older prisoner habeas and civil rights cases. Although the combined effect of these extraordinary measures has undoubtedly resulted in a modest reduction to our pending caseload, it is unrealistic to assume that a court can continue to bear the burden of supporting visiting judges indefinitely or that their modest contribution would have a significant and meaningful impact. Additionally, as a general rule, the visiting judges we have enjoyed have not come with support staff, meaning that our existing court staff has added to their overburdened duties to provide these judges the support they require. In the long run, temporary assistance is no substitute for having an adequate number of Article III judges in the district.

- 3 **If the caseload of your court could support a request for more judgeships than your court is requesting (based solely on the application of the general standard of 430 weighted filings per judgeship with an additional judgeship or the standard of 500 weighted filings per judgeship for small courts), please identify which factors influenced the court's decision to request fewer additional judgeships than a straight application of the Conference standard would allow.**

N/A

- 4 **Have judgeship vacancies, either current or past, had an impact on your court's request?**
 Yes No

If yes, please explain how.

As noted above, past vacancies have had the effect of increasing the pending caseload of the District. With high caseloads and already critically low judicial resources, our current vacancies magnify the burden of our caseload. It has come to a time where the delivery of justice in the Eastern District is seriously imperiled.

2021 BIENNIAL SURVEY OF JUDGESHIP NEEDS

U.S. DISTRICT COURTS APPLICATION

5 Please provide the following information about magistrate judges in your district:

- a. **Are magistrate judges on the district-wide wheel for the direct assignment of civil cases?** Yes No

If yes, what percentage of a full draw does each magistrate judge receive?

Magistrate judges are randomly assigned as the presiding judge at the initial filing of all prisoner (non-capital habeas and civil rights) and social security petitions. This figure is approximately 50% of all civil cases. If a party declines, the case is then reassigned to a district judge and the magistrate judge is retained in a referral capacity. On all other civil cases filed in the Eastern District, magistrate judges are randomly assigned as the referral judge and cases are distributed equally among the magistrate judges of each office. When cases are opened, consent forms are provided to the parties, as well as a letter from the Chief Judge explaining the opportunity and benefit of consent. In FY 2019, magistrate judges were assigned as the presider in 2115 cases.

Does the direct assignment of civil cases vary by court division? Yes No

If yes, please specify how.

N/A

- b. **Are any special types of cases routinely referred to magistrate judges for disposition?** Yes No

If yes, please specify.

Criminal petty offense and misdemeanor criminal actions are routinely assigned to magistrate judges for disposition

- c. **Do magistrate judges regularly participate in other alternative dispute resolution (ADR) proceedings in addition to settlement conferences?** Yes No

Our magistrate judges have taken a very proactive approach to settlement. Our magistrate judges hold a yearly settlement week that routinely results in the settlement of over 50 cases and they travel to prisons throughout or district to hold multiple settlement conferences during a settlement day.

- d. **Are magistrate judges routinely assigned pretrial duties in civil cases?** Yes No

If yes, what types of duties and in what types of cases?

2021 BIENNIAL SURVEY OF JUDGESHIP NEEDS

U.S. DISTRICT COURTS APPLICATION

The magistrate judges in Sacramento and Fresno perform a wide range of duties, with an emphasis on prisoner cases, civil discovery motions, settlement conferences, social security appeals, and preliminary felony proceedings. They are responsible for the progress and management of all prisoner petitions (civil rights and habeas corpus) and social security cases filed in the district up to trial. Sacramento Division Magistrate Judges also have full pretrial responsibility in non-prisoner pro se cases. Fresno Division Magistrate Judges do all scheduling in regular civil actions up to pretrial. Magistrate judges are also responsible for the management of three quarters (3/4) of the death penalty cases in the district.

If applicable, do these assignments vary by court division? Yes No

If yes, please specify how.

The magistrate judges in Sacramento rotate the handling of all preliminary felony criminal actions, misdemeanor actions and petty offenses arising in the Sacramento Division. In the Sacramento Division magistrate judges are responsible for all pretrial proceedings in non-prisoner pro se cases and death penalty habeas cases.

The magistrate judges in Fresno rotate the handling all preliminary felony criminal actions, misdemeanor actions and petty offenses arising in the Fresno Division. In the Fresno Division, magistrate judges are assigned all non-dispositive motions in civil cases and handle civil status conferences for the district judges. In the Fresno Division, magistrate judges conduct all status hearings in Felony Criminal actions and conduct all pretrial proceedings in 50% of the death penalty habeas cases.

The magistrate judge at Yosemite National Park handles all preliminary felony criminal actions, misdemeanor actions and petty offenses arising in the Park and a full share of Fresno's prisoner petitions, social security actions and non-dispositive motions and status conferences in regular civil cases.

The magistrate judge at Bakersfield handles all preliminary felony criminal actions, misdemeanor actions and petty offenses in the southern portion of the district as well as a full share of habeas corpus cases, prisoner civil rights cases, social security appeals filed in Fresno. She also handles all motions and pretrial case management duties in regular civil cases filed in the southern portion of the district.

The magistrate judge at Redding handles all preliminary felony criminal actions, misdemeanor actions and petty offenses in the northern counties of the district. In civil cases he handles a full share of the prisoner cases filed in Sacramento, a full share of social security cases and all motions and pretrial case management duties in civil cases filed in the northern counties of the district. He also conducts all pretrial scheduling in civil cases for one of our district judges.

2021 BIENNIAL SURVEY OF JUDGESHIP NEEDS

U.S. DISTRICT COURTS APPLICATION

- e. **Are magistrate judges routinely assigned pretrial duties in felony cases?** Yes No

If yes, what types of duties and in what types of cases?

Magistrate judges conduct arraignments, detention hearings, bail hearings, status hearings and hear non-dispositive discovery motions. In Fresno, magistrate judges hear all status conferences in felony cases.

- f. **If applicable, do these assignments vary by court division?** Yes No

If yes, please specify how.

In Fresno magistrate judges hear all status conferences in felony cases.

- g. **Please indicate why the need for additional judicial resources cannot be met by the authorization of additional magistrate judges rather than Article III judges?**

Our magistrate judges are at full, legal utilization. While magistrate judges are prohibited by the Constitution from performing Article III functions, we utilize our magistrate judges at full capacity and have a 2 to 1 ration of magistrate judges to district judges so they may do as much as possible given our lack of Article III judges. The magistrate judges in this district have already been tasked with a great many assignments, more so than in most districts (See Eastern District Local Rules 302 and 305 attached). Even if more magistrate judges were appointed, there is not an additional category of work that could be assigned or referred to magistrate judges that is appropriately taken, at this juncture, from Article III judges.

- h. **Has the court considered a change in the utilization of magistrate judges as a possible alternative to requesting additional Article III judgeships?**

No. Our magistrate judges are at full, legal utilization.

6. Please provide the following information about senior judges in your district:

- a. How many senior judges regularly take cases? 3

Of those judges, please indicate the number that take:

- 1) a partial caseload 3

2021 BIENNIAL SURVEY OF JUDGESHIP NEEDS

U.S. DISTRICT COURTS APPLICATION

2) a full caseload **0**

b. **Do any of the senior judges limit the types of cases they will take?** Yes No

If yes, please indicate which case types.

Judge Shubb (Sacramento) is assigned a 50% civil and 50% criminal case draw.

Judge Ishii (Fresno) is assigned a 50% civil and 0% criminal case draw.

Judge England (Sacramento) is assigned a 50% civil and 50% criminal case draw.

NOTE: Judge England is currently not receiving assignments from December 2019 until at least April 2020 due to medical issues.

c. **Do any of the senior judges routinely help other courts?** Yes No

d. **Do you anticipate any change in the number or contribution (either an increase or? decrease) of senior judges over the next two years?** Yes No

If yes, please explain.

Judge Mendez will become eligible for senior status on April 17, 2022 and may assume inactive senior status in 2023. Judge Ishii has evinced his desire to assume inactive senior status in 2023.

e. **Have you requested fewer additional judgeships because of the contributions of senior judges?** Yes No

7. **During fiscal year 2019, did any visiting judges help your court:**

a. from within the circuit Yes No

b. from outside the circuit Yes No

c. If yes to either 7a or 7b:

1) For what purpose did you seek assistance (e.g., specific types of cases, temporary influx in filings, reduce backlog);

Visiting judges help us by conducting civil and criminal trials in cases where a judge has two trials scheduled to begin at the same time. In these cases, final pre-trial conferences have been held and they are then assigned to a visiting judge for trial. One visiting judge continues to help our district by taking prisoner habeas case assignments.

2021 BIENNIAL SURVEY OF JUDGESHIP NEEDS

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2) What types of cases were handled by the visiting judges;

Civil and criminal cases (trials only) and Prisoner Habeas cases.

3) How were the visiting judges used (please check all that apply); and

- Motions Pretrial Conferences Settlement Procedures
 Civil Trials Sentencing Hearings Arraignment Hearings
 Criminal Trials Plea Proceedings
 Others: [Click here to enter response.](#)

4) What factors, if any, restricted the use of visiting judges (e.g., lack of space, insufficient support staff)?

Judges who are willing to assist often prefer to preside over trials. However, the need in this district is to recruit the assistance of judges who are willing to take a substantial number of cases and handle the case from start to finish. Specifically, through experience, we have come to the conclusion that the only form of meaningful help would be in the form of five (5) resident visiting judges with their own support staff, who could take a meaningful share of our caseload, and handle the cases to conclusion. Because we only have one (1) district judge in Fresno and over 600 pending felony defendants, we have a process to check internally to see if a judge in district can help with a trial. While we don't rule out seeking assistance from the Circuit on an emergency basis, we often cannot predict that we will need coverage soon enough to find a visiting judge to cover. While visiting judges have solved some short-term problems with trial conflicts, in the long-term this temporary assistance is no substitute for having additional Article III judges in the district.

d. If no to either 7a or 7b above:

1) what factors prevented the use of visiting judge to relieve workload problems; and

From past experience we have found that the overall size and complexity of our caseload does not promote the use of visiting judges. As stated above, generally visiting judges prefer to take a trial or limited number of cases. Our pending caseloads are so great that this type of assistance has minimal impact and we have come to the conclusion that the only form of meaningful help would be in the form of five (5) resident visiting judges with their own support staff, who could take a meaningful share of our caseload, and handle the cases to conclusion.

2) what would facilitate your court's use of visiting judges?

2021 BIENNIAL SURVEY OF JUDGESHIP NEEDS

U.S. DISTRICT COURTS APPLICATION

NA

8. During fiscal year 2019, did any of your court's active judges provide visiting judge assistance:

a. to other courts within the circuit Yes No

b. to other courts outside the circuit Yes No

c. **If yes to either 8a or 8b above, please explain the purpose of that assistance (e.g., specific types of cases, temporary influx in filings, recusal situation).**

Senior Judge Shubb presided over a trial conducted in Boise, Idaho in 2019. The district had a desperate need for assistance as its two Judges were already presiding over other trials. Judge Shubb was able to arrange his schedule to assist in that instance.

9. a. What types of alternative dispute resolution (ADR) techniques does your court use?

2021 BIENNIAL SURVEY OF JUDGESHIP NEEDS

U.S. DISTRICT COURTS APPLICATION

From the very first hearing in district court (generally the Rule 16 scheduling conference), settlement discussions begin. Our judges evaluate the legal and/or factual complexities of the case to determine the best method of ADR that has the highest possibility of early resolution.

Settlement conferences are conducted before magistrate judges in all non-prisoner cases unless parties elect private mediation.

We have adopted a Voluntary Dispute Resolution Program (VDRP) as an alternative to litigation in the court. Under this program, civil cases (non-prisoner) which are appropriate for VDRP and with consent of all parties are assigned a neutral volunteer evaluator to narrow the focus of the dispute and/or to assist in settlement.

An ADR staff attorney has been designated to build on our existing in-house programs and implement new programs to enhance ADR within the district, with an emphasis on prisoner actions. Our ADR staff attorney works closely with our ADR judge who is dedicated to maximizing settlement opportunities. ADR efforts have resulted in:

- A significant expansion of the Pro Bono Prisoner Civil Rights Panel. Volunteer lawyers are assigned to represent prisoners in the litigation process. For those prisoners who proceed on merit, legal representation aids in maximizing the use of court resources because most prisoners are ill-equipped to represent themselves effectively in court proceedings.
- The expanded use of ADR to provide prisoners with settlement alternatives in civil rights actions. Several magistrate judges regularly conduct settlement conferences with prisoners, either at the prison, at the courthouse, or via video conferencing. Judges traveling to the prisons frequently hold multiple conferences in one day, thereby saving collateral resources of travel (U.S. Marshal's office) and appearances and travel for counsel (U.S. Attorney's office).
- The establishment of a prisoner mediation clinic at a local law school where law students assist the settlement judge in preparing for and conducting settlement proceedings at prisons or the courthouse.

b. What impact has ADR had on the workload of the judges in your court?

The ADR program is a valuable complement to other strategies adopted by the district to reduce the extreme workload of the court. Even when parties are not able to settle as the result of ADR sessions, the process enables litigants to narrow the focus of contested issues which promotes more efficient use of court time.

2021 BIENNIAL SURVEY OF JUDGESHIP NEEDS

U.S. DISTRICT COURTS APPLICATION

- c. **Please estimate the number of cases assigned to ADR and disposed of without significant district judge involvement in 2019.**

In 2019, the Eastern District of California held settlement conferences in 255 prisoner civil rights cases. 158 of these prisoner cases settled. 80 cases were assigned to the Voluntary Dispute Resolution Program (VDRP) and 12 of those were settled. 35 VDRP cases from 2019 are still pending, 15 did not settle and 18 cases were removed from the process.

This request represents the views of the majority of the active members of the court.

Chief Judge responding: Kimberly J. Mueller
Print Name


CHIEF UNITED STATES DISTRICT JUDGE

Date: 3/6/2020 Telephone Number: 916-930-4260

Please e-mail your signed, dated response as a Portable Document Format (PDF) file to [Article III Judges - Judicial Services Office/DCA/AO/USCOURTS](#) by March 6, 2020. You may also send your response by fax to (202) 502-1888.

BIENNIAL JUDGESHIP SURVEY

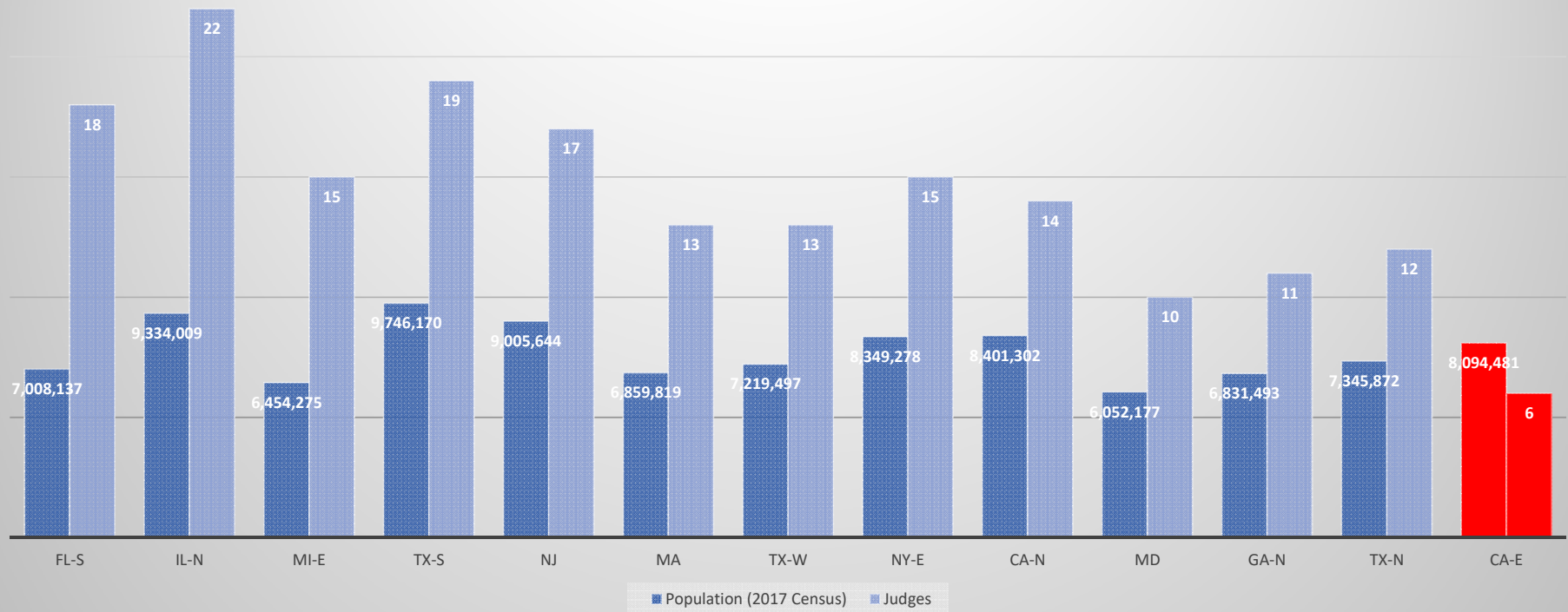
2000 – 2019

TOP 11 COURTS

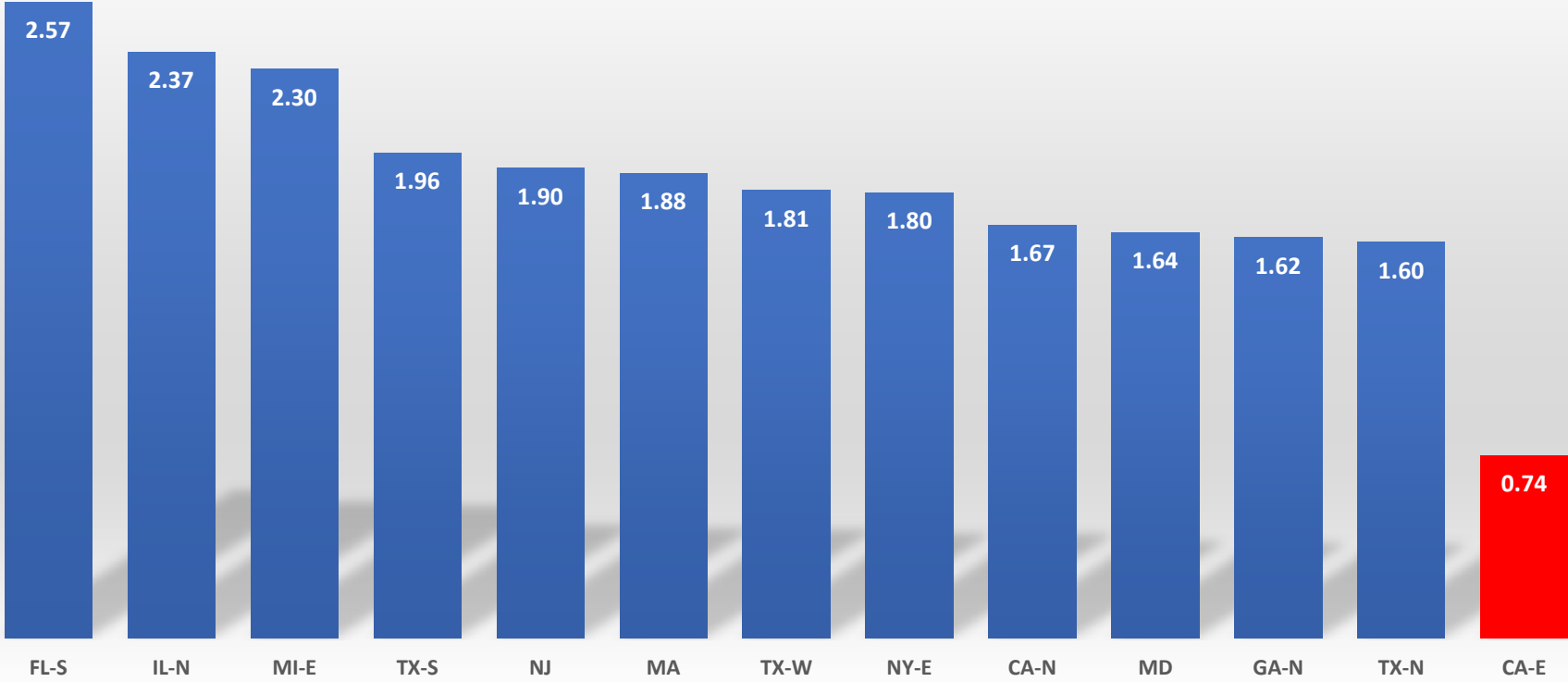
RECOMMENDATION and PERCENT OF BENCH

Rank	District	Authorized Judgeships	Judicial Conference Recommendation										
			2000	2003	2005	2007	2009	2011	2013	2015	2017	2019	AVG
1	CAED	6	2 33%	3 50%	4 67%	4 67%	5 83%	7 117%	7 117%	6 100%	5 83%	5 83%	4.8 80%
2	AZD	8	5 63%	3 38%	5 63%	5 63%	2 25%	5 63%	10 125%	4 50%	0 0%	4 50%	4.3 54%
3	ARWD	1	0 0%	1 100%	1 100%	1 100%	1 100%	0 0%	0 0%	0 0%	0 0%	1 100%	0.5 50%
4	FLMD	11	2 18%	3 27%	5 45%	5 45%	5 45%	6 55%	6 55%	6 55%	6 55%	6 55%	5 45%
5	IDD	2	0 0%	1 50%	1 50%	1 50%	1 50%	1 50%	1 50%	1 50%	1 50%	1 50%	0.9 45%
6	NM	5	3 60%	3 60%	2 40%	2 40%	1 20%	2 40%	1 20%	2 40%	2 40%	1 20%	1.9 38%
7	CASD	8	8 100%	5 63%	1 13%	0 0%	0 0%	3 38%	4 50%	2 25%	3 38%	4 50%	3 38%
8	TXWD	10	4 40%	0 0%	0 0%	1 10%	4 40%	5 50%	5 50%	4 40%	4 40%	6 60%	3.3 33%
9	NYWD	4	1 25%	1 25%	1 25%	1 25%	1 25%	2 50%	1 25%	1 25%	1 25%	1 25%	1.1 28%
10	CAND	14	1 7%	2 15%	4 29%	3 21%	5 36%	5 36%	6 43%	5 36%	2 15%	4 28%	3.7 26%
11	CACD	27	2 7%	3 11%	4 15%	5 19%	5 19%	9 33%	12 44%	13 48%	7 26%	9 33%	6.9 26%

Equivalent Districts Nationwide Population and Authorized Judgeships



Equivalent Districts Nationwide Judges per 1 Million Population



RULE 302 (Fed. R. Civ. P. 72)

DUTIES TO BE PERFORMED BY MAGISTRATE JUDGES

(a) General. It is the intent of this Rule that Magistrate Judges perform all duties permitted by 28 U.S.C. § 636(a), (b)(1)(A), or other law where the standard of review of the Magistrate Judge's decision is clearly erroneous or contrary to law. Specific duties are enumerated in (b) and (c); however, those described duties are not to be considered a limitation of this general grant.

Magistrate Judges will perform the duties described in 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 53 upon specific designation of a District Judge or by designation in (b) and (c).

(b) Duties to Be Performed in Criminal Matters by a Magistrate Judge Pursuant to 28 U.S.C. § 636(a), (b)(1)(A), (b)(1)(B), (b)(3), or Other Law.

(1) All pretrial matters in felony criminal actions except motions to suppress evidence, motions to quash or dismiss an indictment or information, motions to discover the identity of an informant, motions for severance, and entry of pleas of guilty;

(2) Preliminary proceedings in felony probation or supervised release revocation actions;

(3) All pretrial, trial, and post-trial matters in any misdemeanor action (including petty offenses and infractions), see Fed. R. Crim. P. 58; L.R. 421;

(4) Supervision of proceedings conducted pursuant to letters rogatory or letters of request;

(5) Receipt of indictments returned by the grand jury in accordance with Fed. R. Crim. P. 6(e)(4), 6(f);

(6) Conduct of all proceedings contemplated by Fed. R. Crim. P. 1, 3, 4, 5, 5.1, 9, 40, 41, except Rule 41(e) post-indictment/information motions and Rule 41(f) motions in felony actions made at any time; included within this grant are applications for mobile tracking devices (18 U.S.C. § 3117), pen registers or trap and trace devices (18 U.S.C. § 3121 et seq.), applications for retrieval of electronic communications records (18 U.S.C. § 2701 et seq.), and applications for disclosure of tax return information (26 U.S.C. § 6103);

(7) Motions to exonerate bail;

(8) Extradition proceedings, 18 U.S.C. § 3181 et seq.;

(9) Upon specific designation of a Judge and consent of the parties, jury voir dire in criminal actions.

(c) Duties to Be Performed in Civil Matters by a Magistrate Judge Pursuant to 28 U.S.C. § 636(a), (b)(1)(A), (b)(1)(B), (b)(3), or Other Law.

(1) All discovery motions, including Fed. R. Civ. P. 37 motions, and supervision of proceedings conducted pursuant to letters rogatory or letters of request; all stipulations and motions relating to protective orders and sealing documents submitted or filed for hearing before discovery cutoff;

(2) Supervision of proceedings conducted pursuant to letters rogatory or letters of request;

(3) All pretrial motions pursuant to the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss for failure to state a claim upon which relief can be granted, and to dismiss an action involuntarily;

(4) Review of petitions in civil commitment proceedings under Title III of the Narcotic Addict Rehabilitation Act;

(5) Proceedings under 46 U.S.C. §§ 2302, 4311(d), and 12309(c);

(6) All motions for specific leave of court for the making of deposits into the registry of the Court, and all motions for orders providing for special placement of deposits, see L.R. 150;

(7) All motions brought pursuant to the Federal Debt Collections Procedures Act of 1990, 28 U.S.C. § 3001 et seq.;

(8) Applications for writs of entry in connection with the enforcement of Internal Revenue Service tax liens;

(9) Petitions to enforce Internal Revenue Service summonses filed pursuant to 26 U.S.C. §§ 7402(b) and 7604(a);

(10) Petitions to quash administrative summonses filed pursuant to 26 U.S.C. § 7609(b)(2);

(11) Examinations of judgment debtors in accordance with Fed. R. Civ. P. 69;

(12) Settlement conferences as may be calendared;

(13) In Fresno, all pretrial scheduling conferences and the final pretrial conference;

(14) All applications for interim disbursement under L.R. 202(f);

(15) Actions brought under Title 42 of the United States Code to review a final decision of the Commissioner of Social Security, including dispositive and non-dispositive motions and matters;

(16) Actions involving federally insured student loans, 20 U.S.C. § 1071 et seq., including dispositive and non-dispositive motions and matters;

(17) Actions brought by a person in custody who is seeking habeas corpus relief (28 U.S.C. § 2241 et seq.), or any relief authorized by 42 U.S.C. § 1981 et seq., *Bivens* or the Federal Tort Claims Act including dispositive and non-dispositive motions and matters;

(18) Upon specific designation of a Judge, jury verdicts in civil actions;

(19) Motions for entry of default judgment under Fed. R. Civ. P. 55(b)(2);

(20) Enforcement of L.R. 271 as provided in L.R. 271(i);

(21) In Sacramento, all actions in which all the plaintiffs or defendants are proceeding in propria persona, including dispositive and non-dispositive motions and matters. Actions initially assigned to a Magistrate Judge under this paragraph shall be referred back to the assigned Judge if a party appearing in propria persona is later represented by an attorney appearing in accordance with L.R. 180.

(d) Retention by a District Judge. Notwithstanding any other provision of this Rule, a Judge may retain any matter otherwise routinely referred to a Magistrate Judge. Applications for retention of such matters, however, are looked upon with disfavor and granted only in unusual and compelling circumstances.

RULE 305 (Fed. R. Civ. P. 73)

PROCEDURES FOR THE DISPOSITION OF CIVIL ACTIONS ON CONSENT OF THE PARTIES

(a) Notice of Option. The Clerk shall notify the parties in all civil actions that they may consent to have a Magistrate Judge conduct any and all proceedings in the action and order the entry of a final judgment. Such notice shall be handed or transmitted by the Clerk to the plaintiff at the time the action is filed, and to the removing defendant at the time of removal, and the plaintiff or defendant shall transmit the notice to all other parties as an attachment to copies of the complaint and summons, or the removal documents, when served. See also 28 U.S.C. § 636(c). The Court may, at appropriate times, inform the parties of the options available under section 636(c). All such communication shall comply with the requirement of section 636(c)(2).

(b) Reference to Magistrate Judge. After all necessary consents have been obtained, the Clerk shall transmit the file in the action to the assigned Judge, for review, approval by the Judge and Magistrate Judge, and referral. Notwithstanding the consent of all parties, the Judge or Magistrate Judge may reject the referral. Once an action has been referred to a Magistrate Judge, that Magistrate Judge shall have authority to conduct all proceedings referred to the Magistrate Judge, including, if appropriate, authority to enter a final judgment in the action. See Fed. R. Civ. P. 73(a).

(c) Appeal to the Court of Appeals. Upon the entry of final judgment in any action disposed of by a Magistrate Judge on consent of the parties under the authority of 28 U.S.C. § 636(c) and these Rules, an aggrieved party may appeal directly to the United States Court of Appeals for the Ninth Circuit in the same manner as governs appeals from any other final judgment of the Court. See Fed. R. Civ. P. 73(c).

U.S. District Court - Judicial Caseload Profile

California Eastern

Actions Per Judgeship – Pending Cases

				Numerical Standing Within	
12-month Period Ending Sep 30	Pending Cases	All Districts Average Pending	% of National Average	U.S.	Circuit
2019	1209	675	179%	6	1
2018	1239	688	180%	7	1
2017	1216	628	194%	6	1
2016	1274	659	193%	3	1
2015	1263	629	201%	2	1
2014	1306	625	209%	3	1
2013	1351	579	233%	3	1
2012	1427	540	264%	2	1
2011	1319	542	243%	3	1
2010	1427	557	256%	3	1
2009	1357	587	231%	3	1
2008	1305	570	229%	3	1
2007	1247	479	260%	2	1
2006	1176	456	258%	2	1
2005	1060	478	222%	4	1
2004	895	503	178%	3	1
2003	869	459	189%	4	1
2002	806	471	171%	5	1
2001	803	447	180%	3	1
2000	835	443	188%	3	1
20 YEAR AVG	1169	551	213%	3.5	1