

From the Courts: Justice Watch

Additional federal judges tied to split of 9th Circuit

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South Florida could get three new federal judges under a bill approved by the U.S. House this month.

But the bill, tied to a controversial, longstanding proposal to split the 9th U.S. Circuit Court of Appeals in the western United States into two circuits, may be shot down in the Senate, say some lawmakers.

Additionally, some court insiders questioned whether three new judges are even needed in the Southern District of Florida, where case-loads have fallen steadily over the last few years.

“The filings don’t seem to be significantly higher,” said Kathleen Williams, federal public defender for the district. “I don’t know that there’s a need.”

The House of Representatives earlier this month approved a bill to fund 68 new federal judgeships and 12 new appellate judgeships. The bill called for the creation of three new judgeships in the Southern District of Florida, one of the busiest in the country, and eight new judgeships in the state.

The Middle District of Florida, which includes Orlando and Tampa, would get the most new judges of any district other than one in Arizona — four new permanent judges and one temporary one. Temporary judges are appointed for five years and then usually wind up taking over positions left vacant by retiring or senior judges.

No new appellate judges were proposed in the 11th Circuit, which covers Florida, Georgia and Alabama. The court is based in Atlanta and maintains a branch in Miami.

The bill, introduced by House Judiciary Committee Chairman F. James Sensenbrenner Jr., R-Wis., and co-sponsored by Rep. Mike Simpson, R-Idaho, would also split the 9th Circuit.

Republican lawmakers have been attempting unsuccessfully to split the 9th Circuit for more than a decade. They argue that the circuit, which encompasses California, eight other states, Guam and the Northern Mariana Islands, has become too unwieldy and bloated as the population in the west has exploded.

They point to the fact that the 9th Circuit, the largest in the country, has 47 judges and represents 56 million people, figures that are twice as large as the next largest circuit. They want a 12th Circuit created to include Alaska, Arizona, Idaho, Montana, Nevada, Oregon and Washington.

But Democrats claim the push to split the 9th Circuit is politically motivated, that conservatives simply want to separate the other states from California, known for its liberal appellate court. Each appeals court is supposed to include different states to provide a diversity of opinion, they argue.

Tying the judgeship funding bill — called the Federal Judgeship and Administrative Efficiency Act of 2005 — to the proposed 9th split could kill the whole bill, say political insiders.

“This is more of the Republicans interfering with the courts,” said U.S. Rep. Debbie Wasserman Schultz, D-Florida. She voted against the bill due to that provision and others, although she said she favors funding new judges for South Florida. “I don’t agree with the decision to split the 9th in half in order to create a more conservative circuit.”

The funding of new judges “was the only good thing in that bill,” Wasserman Schultz said.

Several proposed companion bills have been filed in the Senate, including one by Sen. Mel Martinez, R-Florida. Martinez’s bill simply calls for funding eight new judgeships in Florida, including three in the southern district. A reconciliation bill is expected to be voted on by Christmas.

Some members of the South Florida legal community applauded the move to create three new judgeships in South Florida, one of the largest and most high profile districts in the country. There are 18 judges and seven senior judges in the Southern District of Florida. The last new judgeship in the southern district was created in 2003 and another in 2001.

“We are the busiest and best district in the country and we could always use more judges,” said David Markus, vice president of the Florida Association of Criminal Defense Lawyers.

If new judgeships are created in South Florida, a battle over where they would be stationed is likely, said insiders. A push to post the new judges in Broward, Palm Beach or Martin counties, where the population is rapidly growing, is expected, although some would likely want the judges based in Miami. “We’d like to see them in our brand new courthouse which is opening next year,” Markus said.

No judge is permanently stationed in Fort Pierce, and judges in other counties take turns volunteering to hear cases there. Chief Judge William Zloch, who did not return calls for comment, has wanted a judge stationed in Fort Pierce for years, according to insiders.

The entire bench would vote on where the new judges would be stationed, according to court rules of procedure.

Caseloads on the decline

But others questioned whether new judges are actually needed here. Case filings in the Southern District of Florida have fallen every year since 2001, according to caseload statistics filed on the U.S. Courts Web site. In 2001, caseload filings peaked at 10,790, then fell to 9,490 in 2002, 9,058 in 2003 and to 8,479 in 2004. The decrease in filings from 2003 to 2004 was 6 percent.

Judges in turn have experienced a reduction in their caseloads, from 635 cases per judge in 2001 to 559 in 2002, 503 in 2003 and 470 in 2004. Their number of completed trials also dropped, from an average of 34 in 1999 to 20 in 2004.

Lower caseload statistics in recent years are not limited to South Florida and have been experienced in other federal districts around the country. The drop, say attorneys, is due to a shift in the focus of federal law enforcement since Sept. 11, 2001, from prosecutions to the investigation of terrorism. But that trend has started to reverse, say experts, as law enforcement begins to refocus on prosecution of health care fraud and other crimes.

However, overall caseload statistics show that all district courts in the country together experienced a rise in case filings in 2004, to a record 358,983 filings, a 9.3 increase over the previous year. The number of filings assigned to each judge also spiked in 2004, from 483 to 528.

Despite the smaller workload here, new judges are still needed in South Florida, insists Bob Martinez, a former U.S. attorney for the Southern District of Florida and now a partner at Colson Hicks Eidson in Coral Gables.

“Our judges here have had, for the last 20 years, some of the largest caseloads in the country,” Martinez said. “So they’re used to the caseloads and long hours. We have to look at what’s happening in the future, and the fact that filings and multi-district litigation are expected to increase in our district. I feel very strongly that three new judges are needed here.”

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