

111TH CONGRESS
1ST SESSION

H. R. 191

To amend title 28, United States Code, to provide for the appointment of additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into two circuits, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2009

Mr. SIMPSON introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to provide for the appointment of additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into two circuits, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ninth Circuit Court
5 of Appeals Judgeship and Reorganization Act of 2009”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

1 (1) the term “former ninth circuit” means the
2 ninth judicial circuit of the United States as in ex-
3 istence on the day before the effective date of this
4 Act;

5 (2) the term “new ninth circuit” means the
6 ninth judicial circuit of the United States established
7 by the amendment made by section 3(2)(A); and

8 (3) the term “twelfth circuit” means the twelfth
9 judicial circuit of the United States established by
10 the amendment made by section 3(2)(B).

11 **SEC. 3. NUMBER AND COMPOSITION OF CIRCUITS.**

12 Section 41 of title 28, United States Code, is amend-
13 ed—

14 (1) in the matter preceding the table, by strik-
15 ing “thirteen” and inserting “fourteen”; and

16 (2) in the table—

17 (A) by striking the item relating to the
18 ninth circuit and inserting the following:

“Ninth California, Guam, Hawaii, Northern
Mariana Islands.”;

19 and

20 (B) by inserting after the item relating to
21 the eleventh circuit the following:

“Twelfth Alaska, Arizona, Idaho, Montana, Ne-
vada, Oregon, Washington.”.

22 **SEC. 4. JUDGESHIPS.**

23 (a) NEW JUDGESHIPS.—

1 (1) FOR FORMER NINTH CIRCUIT.—The Presi-
2 dent shall appoint, by and with the advice and con-
3 sent of the Senate, 2 additional circuit judges for
4 the former ninth circuit, whose official duty stations
5 shall be in Arizona, California, or Nevada.

6 (2) FOR NEW NINTH CIRCUIT.—The President
7 shall appoint, by and with the advice and consent of
8 the Senate, 3 additional circuit judges for the new
9 ninth circuit. The judges authorized by this para-
10 graph shall not be appointed before January 21,
11 2010.

12 (b) TEMPORARY JUDGESHIPS.—

13 (1) APPOINTMENT OF JUDGES.—The President
14 shall appoint, by and with the advice and consent of
15 the Senate, 2 additional circuit judges for the former
16 ninth circuit, whose official duty stations shall be in
17 Arizona, California, or Nevada.

18 (2) EFFECT OF VACANCIES.—The first 2 vacan-
19 cies occurring on the new ninth circuit 10 years or
20 more after judges are first confirmed to fill both
21 temporary circuit judgeships created by this sub-
22 section shall not be filled.

23 (c) EFFECTIVE DATE.—This section shall take effect
24 on the date of the enactment of this Act.

1 **SEC. 5. NUMBER OF CIRCUIT JUDGES.**

2 The table contained in section 44(a) of title 28,
3 United States Code, is amended—

4 (1) by striking the item relating to the ninth
5 circuit and inserting the following:

“Ninth 25”;

6 and

7 (2) by inserting after the item relating to the
8 eleventh circuit the following:

“Twelfth 9”.

9 **SEC. 6. PLACES OF CIRCUIT COURT.**

10 The table contained in section 48(a) of title 28,
11 United States Code, is amended—

12 (1) by striking the item relating to the ninth
13 circuit and inserting the following:

“Ninth Honolulu, San Francisco, Pasadena.”;

14 and

15 (2) by inserting after the item relating to the
16 eleventh circuit the following:

“Twelfth Phoenix, Seattle.”.

17 **SEC. 7. ASSIGNMENT OF CIRCUIT JUDGES.**

18 Each circuit judge of the former ninth circuit who
19 is in regular active service and whose official duty station
20 on the day before the effective date of this Act—

1 (1) is in California, Guam, Hawaii, or the
2 Northern Mariana Islands shall be a circuit judge of
3 the new ninth circuit as of such effective date; and

4 (2) is in Alaska, Arizona, Idaho, Montana, Ne-
5 vada, Oregon, or Washington shall be a circuit judge
6 of the twelfth circuit as of such effective date.

7 **SEC. 8. ELECTION OF ASSIGNMENT BY SENIOR JUDGES.**

8 Each judge who is a senior circuit judge of the former
9 ninth circuit on the day before the effective date of this
10 Act may elect to be assigned to the new ninth circuit or
11 to the twelfth circuit as of such effective date, and shall
12 notify the Director of the Administrative Office of the
13 United States Courts of such election.

14 **SEC. 9. SENIORITY OF JUDGES.**

15 The seniority of each judge—

16 (1) who is assigned under section 7, or

17 (2) who elects to be assigned under section 8,
18 shall run from the date of commission of such judge as
19 a judge of the former ninth circuit.

20 **SEC. 10. APPLICATION TO CASES.**

21 The following apply to any case in which, on the day
22 before the effective date of this Act, an appeal or other
23 proceeding has been filed with the former ninth circuit:

24 (1) If the matter has been submitted for deci-
25 sion, further proceedings with respect to the matter

1 shall be had in the same manner and with the same
2 effect as if this Act had not been enacted.

3 (2) If the matter has not been submitted for de-
4 cision, the appeal or proceeding, together with the
5 original papers, printed records, and record entries
6 duly certified, shall, by appropriate orders, be trans-
7 ferred to the court to which the matter would have
8 been submitted had this Act been in full force and
9 effect at the time such appeal was taken or other
10 proceeding commenced, and further proceedings with
11 respect to the case shall be had in the same manner
12 and with the same effect as if the appeal or other
13 proceeding had been filed in such court.

14 (3) A petition for rehearing or a petition for re-
15 hearing en banc in a matter decided before the effec-
16 tive date of this Act, or submitted before the effec-
17 tive date of this Act and decided on or after such
18 effective date as provided in paragraph (1), shall be
19 treated in the same manner and with the same effect
20 as though this Act had not been enacted. If a peti-
21 tion for rehearing en banc is granted, the matter
22 shall be reheard by a court comprised as though this
23 Act had not been enacted.

1 **SEC. 11. TEMPORARY ASSIGNMENT OF CIRCUIT JUDGES**
2 **BETWEEN CIRCUITS.**

3 Section 291 of title 28, United States Code, is
4 amended by adding at the end the following new sub-
5 sections:

6 “(c) The chief judge of the Ninth Circuit may, in the
7 public interest and upon request by the chief judge of the
8 Twelfth Circuit, designate and assign temporarily any cir-
9 cuit judge of the Ninth Circuit to act as circuit judge in
10 the Twelfth Circuit.

11 “(d) The chief judge of the Twelfth Circuit may, in
12 the public interest and upon request by the chief judge
13 of the Ninth Circuit, designate and assign temporarily any
14 circuit judge of the Twelfth Circuit to act as circuit judge
15 in the Ninth Circuit.”.

16 **SEC. 12. TEMPORARY ASSIGNMENT OF DISTRICT JUDGES**
17 **BETWEEN CIRCUITS.**

18 Section 292 of title 28, United States Code, is
19 amended by adding at the end the following new sub-
20 sections:

21 “(f) The chief judge of the Ninth Circuit may in the
22 public interest—

23 “(1) upon request by the chief judge of the
24 Twelfth Circuit, designate and assign one or more
25 district judges within the Ninth Circuit to sit upon
26 the Court of Appeals of the Twelfth Circuit or a di-

1 vision thereof whenever the business of that court so
2 requires; and

3 “(2) designate and assign temporarily any dis-
4 trict judge of the Ninth Circuit to hold a district
5 court in any district within the Twelfth Circuit.

6 “(g) The chief judge of the Twelfth Circuit may in
7 the public interest—

8 “(1) upon request by the chief judge of the
9 Ninth Circuit, designate and assign one or more dis-
10 trict judges within the Twelfth Circuit to sit upon
11 the Court of Appeals of the Ninth Circuit or a divi-
12 sion thereof whenever the business of that court so
13 requires; and

14 “(2) designate and assign temporarily any dis-
15 trict judge of the Twelfth Circuit to hold a district
16 court in any district within the Ninth Circuit.

17 “(h) Any designations or assignments under sub-
18 section (f)(1) or (g)(1) shall be in conformity with the
19 rules or orders of the court of appeals of the circuit to
20 which the judge is designated or assigned.”.

21 **SEC. 13. ADMINISTRATIVE COORDINATION.**

22 Section 332 of title 28, United States Code, is
23 amended by adding at the end the following new sub-
24 section:

1 “(i) Any 2 contiguous circuits may jointly carry out
2 such administrative functions and activities as the judicial
3 councils of the 2 circuits determine may benefit from co-
4 ordination or consolidation.”.

5 **SEC. 14. ADMINISTRATION.**

6 The court of appeals for the ninth circuit as con-
7 stituted on the day before the effective date of this Act
8 may take such administrative action as may be required
9 to carry out this Act and the amendments made by this
10 Act. Such court shall cease to exist for administrative pur-
11 poses 2 years after the effective date of this Act.

12 **SEC. 15. EFFECTIVE DATE.**

13 Except as provided in section 4(c), this Act and the
14 amendments made by this Act shall take effect on the first
15 day of the first fiscal year that begins at least 9 months
16 after 5 of the judges authorized to be appointed under
17 section 4 have been confirmed by the United States Sen-
18 ate.

19 **SEC. 16. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated such sums
21 as may be necessary to carry out this Act, including funds
22 for additional court facilities.

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