

ALASKA BAR ASSOCIATION

Resolution No. 2-2006

(concerning the United States Court of Appeals for the Ninth Circuit)

WHEREAS, proposals are currently pending in Congress that would split the United States Court of Appeals for the Ninth Circuit into two parts, with the new Ninth Circuit limited to California and Hawaii, and a new Twelfth Circuit created for Alaska, Washington, Oregon, Idaho, Montana, Nevada and Arizona; and

WHEREAS, in the year ending March 31, 2005 the 28-member Ninth Circuit resolved 12,253 cases and is by any measure the most productive federal appellate court in the Nation; and

WHEREAS, the Federal Bar Association, the American Bar Association, the Ninth Circuit Lawyers' Representatives Coordinating Committee (appointed by the 9 State Bar Associations), and several individual State Bar Associations all oppose splitting the Circuit; and

WHEREAS, only a very small minority of Ninth Circuit judges supports the split; and

WHEREAS, despite the Ninth Circuit's caseload having increased over the past two years by 12.5% and 20.8%, respectively (due largely to a massive increase in immigration cases), the median life of a case from initial local filing at the trial level to final disposition by the Ninth Circuit in 2004 was 30.5 months, less than 5 months off the national median of 25.9 months; and

WHEREAS, the Sixth Circuit is slower than the Ninth Circuit in handling appeals, while the Ninth Circuit is the second fastest in the Nation in handling appeals from federal agencies; and

WHEREAS, there is no meaningful geo-political split on the Court defined by California judges, considering that a slight majority of the 13 Ninth Circuit California judges are Republican appointees, and a slight majority of the Ninth Circuit judges who would be in the new 12th Circuit are Democratic appointees; and

WHEREAS, so long as Alaska remains within a larger Ninth Circuit, with 3 existing vacancies and another 7 positions slated to be added, there exists a fair chance that a second active Alaska judge could be appointed to the Ninth Circuit (while such an outcome is a virtual impossibility within a much reduced Twelfth Circuit); and

WHEREAS, the estimated start-up costs for a new Twelfth Circuit (depending on whether it is headquartered in Seattle or Phoenix) could be as high as \$95 million, with an additional annual administrative cost for two Circuit systems up to \$10 million; and

WHEREAS, in comparison to the Supreme Court's general reversal rate of 74%, the Ninth Circuit's reversal rate in recent years has been 75%; and

WHEREAS, during the portion of the Supreme Court's 2005 Term from October 2005 through February 2006, six other Circuits had 100% unanimous reversal rates while the Ninth Circuit's 75% reversal rate included 8 of 9 unanimous reversals (constituting a 66% overall unanimous reversal rate); and

WHEREAS, the current session of Congress is expected to revisit the issue of splitting the Ninth Circuit,

NOW THEREFORE BE IT RESOLVED, that the Alaska Bar Association in Convention assembled hereby supports retaining intact the United States Court of Appeals for the Ninth Circuit, and opposes any initiative to split the Circuit.

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