

United States Senate

WASHINGTON, DC 20510-3203

July 10, 2023

The Honorable Robin L. Rosenberg
Chair, Advisory Committee on Civil Rules
Judicial Conference
One Columbus Circle, NE
Washington, D.C. 20544

Dear Chair Rosenberg:

We write to you today about the issue of judge shopping. Specifically, in some federal judicial districts, plaintiffs can effectively choose the judge who will hear their cases due to local court rules governing how matters are assigned. In other districts, local rules require cases to be assigned randomly among all of the judges serving in the district. As a result, based on geography, some plaintiffs are able to guarantee that their claims will be heard before a specific judge whereas others are left to chance, and this inconsistency undermines Americans' faith in our judicial system. Congress requires the Judicial Conference to submit "recommendations to the various courts to promote uniformity of management procedures...of court business."¹ We urge you to provide applicable recommendations to every district court in order to address this problem and restore fairness to our federal judiciary.

One notable example of this issue occurs in the Northern District of Texas. Even though the Northern District has twelve active judges and another four senior judges who still hear cases, the relevant special order² provides that civil cases filed in many divisions are always assigned to a single judge, or to one of just a few: cases filed in the Amarillo Division are always assigned to Judge Kacsmark; cases filed in the Wichita Falls Division are always assigned to Judge O'Connor; cases filed in the Abilene, Lubbock, and San Angelo Divisions are split between just two judges; and cases filed in the Fort Worth Division are split between three. Consequently, plaintiffs can effectively choose the exact judge (or set of a few judges) who will hear their cases by choosing the courthouse in which they sue. The State of Texas itself has sued the Biden Administration at least 31 times in Texas federal district courts, but it has not filed even *one* of those cases in Austin, where the Texas Attorney General's office is located. Instead, Texas has always sued in divisions where case-assignment procedures ensure that a particular preferred judge or one of a handful of preferred judges will hear the case. That includes the Northern District's Amarillo Division, where Texas has filed seven of its cases against the federal government. Many other litigants have done the same, including the Alliance Defending Freedom in its case challenging the FDA's approval of mifepristone.

¹ 28 U.S.C. 331.

² Special Order 3: Order Regarding Judgeships and Case Assignments, <https://www.txnd.uscourts.gov/special-order-3/>.

Nothing requires any district to let plaintiffs choose their judges like this. Federal law splits many districts into two or more divisions, but these are geographical only. We acknowledge that there may be good-faith reasons for districts to assign judges to specific divisions. Such splits may reduce travel times for judges, jurors, criminal defendants, and other litigants by allowing cases to be tried locally. On the other hand, any logistical inconveniences must be balanced against unfairness in judicial process. Furthermore, with electronic filing, divisions need not affect judicial assignments at all. Some district courts with many divisions divide civil cases randomly between all their judges, regardless of where the case is filed. The Northern District of New York is—like the Northern District of Texas—a geographically large district split into many divisions. But the Northern District of New York assigns all of its judges to all of its divisions and randomly divides all cases between all of them, regardless of where the cases are filed.³

The Judicial Conference recently highlighted issues related to “judicial assignment and venue for patent cases in federal trial court,” and Chief Justice John Roberts affirmed the Conference’s support for “random assignment of cases.”⁴ Shortly thereafter, the Western District of Texas changed its case-assignment rules for patent cases filed in Waco so that such cases are now randomly assigned between all eleven active judges in the district and one senior judge.⁵ While this was a positive development, it is unclear why this principle should not apply to every district court for every area of the law.

Congress currently allows each district court to decide for itself how to assign cases.⁶ This gives courts the flexibility to address individual circumstances in their districts and among their judges. But that flexibility is permitting litigants to hand-pick their preferred judges and effectively guarantee their preferred outcomes. Accordingly, the Judicial Conference should recommend rules to all district courts that would promote uniformity in the federal courts.

Additionally, as Congress considers whether new legislation is necessary to address this issue, we request responses to the following questions by Monday, July 24, 2023:

1. Which divisions across the nation have local rules that guarantee one district judge will hear all (or nearly all) cases filed in those divisions?
 - a. What considerations may justify such local rules?
2. What options are available to guarantee variability in the assignment of cases to district judges?
 - a. Through what mechanisms could such options be implemented?
3. How often does the Judicial Conference “submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business,” as required by statute?
4. What other options should Congress consider to reduce judge shopping, both at the district-court level and circuit-court level?

³ N.D.N.Y. General Order No. 12 (Oct. 8, 2020), <https://www.nynd.uscourts.gov/sites/nynd/files/general-ordes/GO12.pdf>.

⁴ 2021 Year-End Report on the Federal Judiciary, <https://www.supremecourt.gov/publicinfo/year-end/2021year-endreport.pdf>.

⁵ Order Assigning the Business of the Court as it Relates to Patent Cases (July 25, 2022), <https://www.txwd.uscourts.gov/wp-content/uploads/Standing%20Orders/District/Order%20Assigning%20the%20Business%20of%20the%20Court%20as%20it%20Relates%20to%20Patent%20Cases%20072522.pdf>.

⁶ 28 U.S.C. § 137(a).

5. Is there any requirement that district courts publicize their division-of-business orders?
a. If not, will the Judicial Conference consider adopting such a requirement?

Sincerely,



Charles E. Schumer
United States Senator



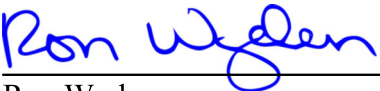
Elizabeth Warren
United States Senator



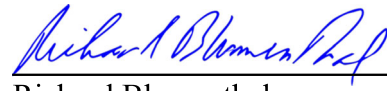
Alex Padilla
United States Senator



Mazie K. Hirono
United States Senator



Ron Wyden
United States Senator



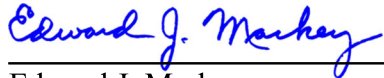
Richard Blumenthal
United States Senator



Benjamin L. Cardin
United States Senator



Tammy Baldwin
United States Senator



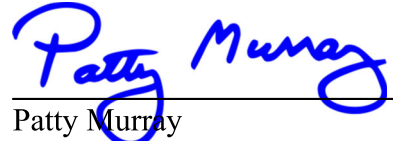
Edward J. Markey
United States Senator



Raphael Warnock
United States Senator



Kirsten Gillibrand
United States Senator



Patty Murray
United States Senator



Dianne Feinstein
United States Senator



Catherine Cortez Masto
United States Senator




Jeanne Shaheen
United States Senator



Peter Welch
United States Senator



Martin Heinrich
United States Senator



Robert Menendez
United States Senator



Cory A. Booker
United States Senator