

AMENDED ITEM—MARCH 21, 2022

SUGGESTED MOTION: Move to amend the order of the agenda with the addition of item 8.
Letter of support for transfer of Judgeship to East Central Judicial District, to the regular agenda.

REGULAR AGENDA:

8. Letter of support for transfer of Judgeship to East Central
Judicial District (Wilson) (Information/action)

SUGGESTED MOTION: Move to authorize the Chairman to sign a letter of support to the North Dakota Supreme Court recommending the transfer of Judgeship from the Southeast Judicial District with chambers in Valley City to the East Central Judicial District with chambers in Fargo.



March 21, 2022

Board of County Commissioners

Chad M. Peterson
Fargo, North Dakota

Rick Steen
Fargo, North Dakota

Jim Kapitan
Fargo, North Dakota

Duane Breitling
West Fargo, North Dakota

Mary Scherling
Stanley Township,
North Dakota

North Dakota Supreme Court
600 East Boulevard Avenue
Bismarck, ND 58505-0530

RE: Vacancy in Judgeship No. 2, South East Judicial District – Supreme Court
Nos. 20220082

Dear Clerk:

On March 10, 2022 it was announced that the Honorable Mark T. Blumer would not seek reelection to the Judgeship No. 2 position, with chambers in Valley City, ND, South East Judicial District. The North Dakota Supreme Court indicates it will accept comments regarding the upcoming vacancy until March 25, 2022.

The Cass County Commission understands the Judges of the East Central Judicial District have requested that the Supreme Court enter its order transferring the present Judgeship No. 2, with chambers in Valley City, North Dakota, SEJD, to the ECJD, as Judgeship No. 10 with chambers in Fargo, North Dakota, ECJD.

The Judges of the ECDJ have made a compelling argument supporting their request to transfer the vacant judgeship from the SEJD to the ECJD. The Cass County Board of Commissioners fully supports the request to transfer Judgeship No. 2 with Chambers in Valley City, South East Judicial District to the ECJD, as Judgeship No. 10 with chambers in Fargo, ND, ECJD. Based on the information presented, the Cass County Board of Commissioners believes this is the most appropriate allocation of resources.

Respectfully,

Taylor Kaushagen
Commission Assistant

Rick Steen, Chairman
Cass County Commission

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cc: Cass County Commissioners

**In the Supreme Court
State of North Dakota**

**In the Matter of the Vacancy in Judgeship No. 2, with Chambers in Valley City, North
Dakota, SEJD.**

Supreme Court No. 20220082

Petition for Transfer of Judgeship to ECJD

[¶] 1] On or about March 10, 2022, and following the announcement that the Honorable Mark T. Blumer would not be seeking reelection, the North Dakota Supreme Court issued a Notice of Consultation in the Matter of the Vacancy in Judgeship No. 2, with chambers in Valley City, North Dakota, SEJD. This Notice of Consultation was mandated by Section 27-05-02.1 of the North Dakota Century Code, which requires that whenever a vacancy occurs in the office of a district court judge “the supreme court shall determine . . . whether that office is necessary for effective judicial administration or whether the district court judgeship may be transferred to another location to fulfill a need for judicial services.” N.D. Cent. Code § 27-05-02.1(1). The statute further grants the Supreme Court the authority to “transfer a district court judgeship to any location in which a judge is necessary for effective judicial administration.” *Id.* at § 27-05-02.1(3). For the reasons set forth herein, the undersigned Judges of the East Central Judicial District (hereinafter ECJD), argue that retaining the judgeship in the Southeast Judicial District (hereinafter SEJD) is not necessary for effective judicial administration and that transferring the judgeship to the ECJD (with chambers in Fargo) is necessary for effective judicial administration and will help fulfill an urgent and ongoing need for judicial services in that district. Accordingly, we now petition the Supreme Court to transfer that judgeship to the ECJD, as Judgeship No. 10, with chambers in Fargo, North Dakota.

[¶ 2] Rule 7.2 of the North Dakota Rules of Administrative Procedure sets forth the criteria concerning the disposition of a district court judgeship pursuant to this statute. N.D. Admin. R. 7.2. Thus, Section 4 of Rule 7.2 list the following criteria:

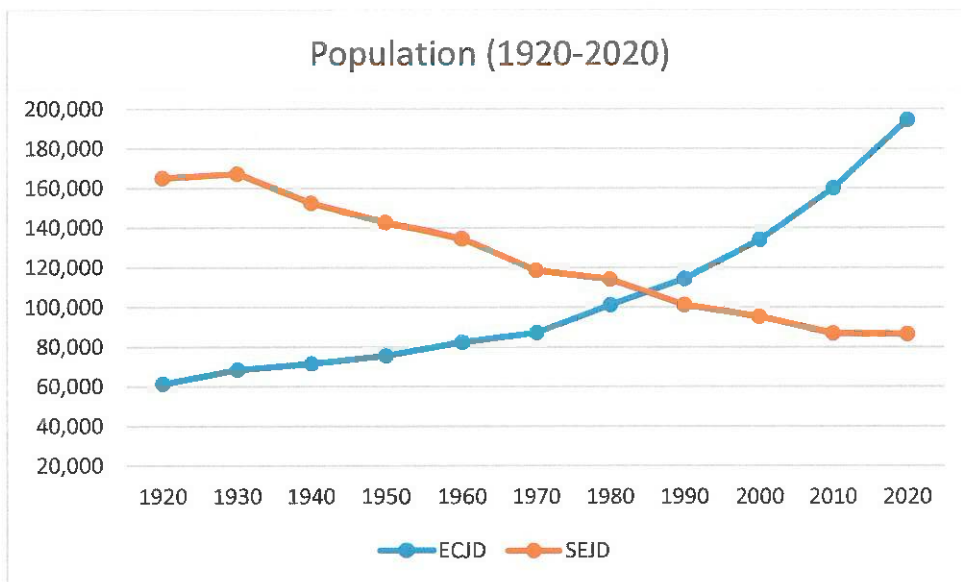
- a. Population;
- b. Caseloads and unusual case types;
- c. Trends in (a) and (b);
- d. Impact of proposed vacancy disposition on travel requirements;
- e. Age or possible retirement or remaining judges in the affected judicial district; and
- f. Availability of facilities (e.g., law enforcement, correctional, and court facilities).

Id. at § 4 (a)-(f).

[¶ 3] As the Supreme Court is well aware, there have been two upcoming judgeship vacancies in the ECJD which have recently required this analysis: ECJD Judgeship No. 4 (created by the decision of the Honorable Steven L. Marquart not to seek re-election) and ECJD Judgeship No. 6 (created by the retirement of the Honorable Thomas R. Olson as of April 30, 2022). Both of those judgeships were retained by the Court in the ECJD. In the Matter of the Vacancy in Judgeship No. 6, with Chambers in Fargo, East Central Judicial District, 2022 ND 42; and In the Matter of the Vacancy in Judgeship No. 4, with Chambers in Fargo, East Central Judicial District, 2021 ND 227. In both of those instances, the Unit 2 Trial Court Administrator filed Notice of Consultation Judgeship Reports with the Supreme Court. Rather than setting forth all of the information contained in those reports into this request, we have attached copies of those reports and ask that the information they contain be incorporated herein by reference, as if fully set forth. Instead, we shall highlight some of the most pertinent information contained therein and provide some additional evidence which may be relevant to the Supreme Court's determination.

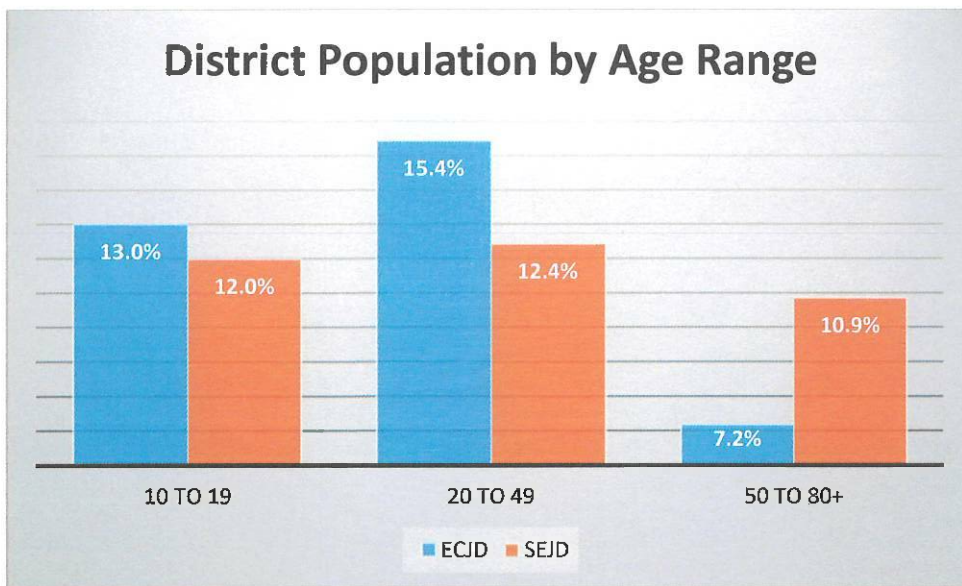
Population

[¶ 3] The long term population trends for the SEJD and the ECJD could not be more dissimilar. According to US Census data, the population in the counties which now compose the SEJD has consistently decreased over the last century. For example, in 1920, those counties which now make up the SEJD held 25.51% of population of the entire State of North Dakota (164,967 people out of a total state population of 646,772.) By 2020, the population of those same counties composed just 11.10% of the state's population (86,464 out of 779,094.) Conversely, in 1920, the population of the counties which now compose the ECJD had 9.45% of the state's total population (61,088 of 646,772). By 2020, that figure had increased to 24.94% of the state's total population (194,320 of 779,094). This trend, which shows no signs of abating, can best be expressed graphically, as shown below:



While decrease in population for the SEJD appears to have flattened over the last decade, it is still trending down. On the other hand, the increase in population for the ECJD appears to be on an ever-steepening upward trend, including within the last decade.

[¶ 4] In prior determinations of whether to transfer or retain a judgeship, the Supreme Court has examined the relative ages of the districts’ populations. See In the Matter of the Judicial Vacancy in District Judgeship No. 6, with Chambers in Minot, North Dakota, Northwest Judicial District, 2001 ND 199, ¶ 15 (stating: “an increasingly older population makes fewer demands on the judicial system than the same number of younger citizens.”) This metric reinforces the need to transfer the judgeship to the ECJD. According to the Census Reporter, and based upon the 2019 five year average, the population of the ECJD is significantly younger than the population of the SEJD. See <https://censusreporter.org/profiles>. Again, a simple graph illustrates the disparity most clearly:



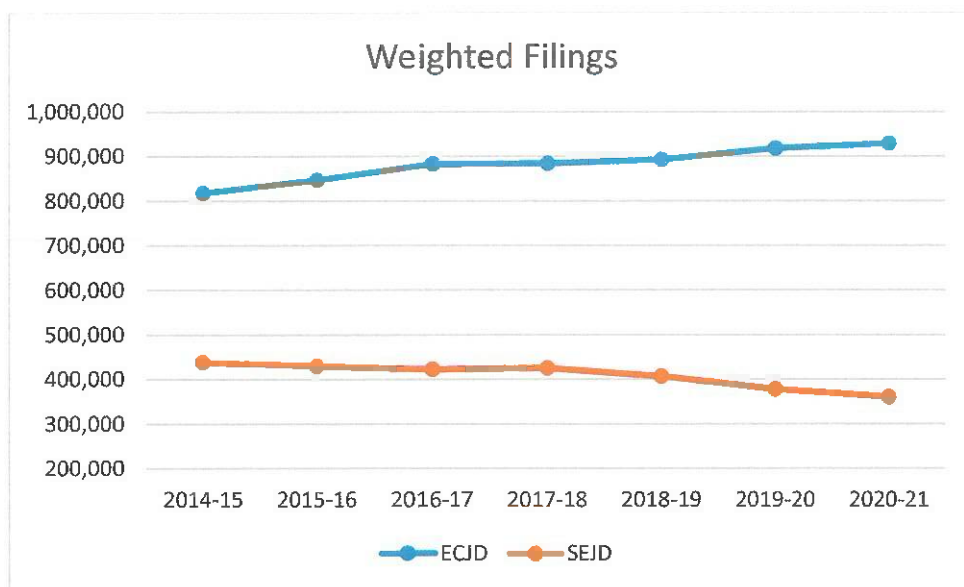
There can be no doubt that the population and population trends criteria strongly mandate transferring this judgeship to the ECJD.

Caseload

[¶ 5] The last additional judicial officer added to either judicial district was the ECJD Judgeship No. 9, added by the legislature in 2013. For purposes of looking at caseload trends, therefore, this Petition will primarily focus on the caseload information since that date. From the North Dakota

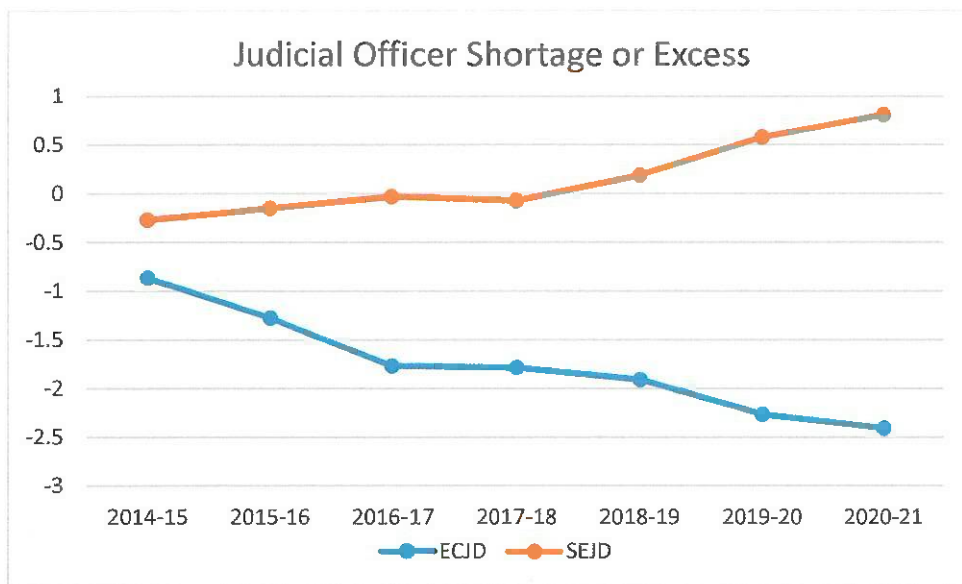
Supreme Court’s annual weighted caseload numbers, it again appears the two districts are heading in opposite directions.

[¶ 6] In terms of weighted filings (using the two-year rolling average methodology utilized by the Supreme Court) and judicial officer need based off those filings, there is both a clear and sustained increasing need in the ECJD and just as clear and sustained decreasing need in the SEJD for judicial officers. For example, from these annual reports, the weighted filings in the SEJD have fallen from 438,056 in 2014-15 to 360,564 in 2020-21. Contrastingly, the weighted filings in the ECJD have risen from 816,935 in 2014-15 to 928,326 in 2020-21. Again, the difference can be seen most dramatically in the following chart:



[¶ 7] The disparity in the need for judicial officers between the two districts is even more pronounced. In the 2014-15 two-year rolling average, the SEJD was under-judged by .27 judicial officers. By the 2020-21 two-year rolling average, the SEJD was over-judged by .81 judicial officers. Further, the decreased need for judicial officers has been persistent over the period and shows no sign of abating. According to the Notice of Consultation Judgeship Report filed by the Unit 2 Court Administrator for this judgeship, the second year of the latest two-year rolling average

(2021) shows even less judicial officer need than the 2020 figure (with the 2021 figure being at **.95 judicial officer excess**.) Again, the situation is exactly the opposite in the ECJD. The 2014-15 two-year rolling average for the ECJD showed that it was under-judged by .87 judicial officers, whereas, the 2020-21 two-year rolling average evidences a **judicial shortage of 2.41 judicial officers**. Finally, this increase in the need for judicial officers is not a result of an aberrant blip, but rather is the result of a continuing and persistent increase in need. As might be expected, the most recent year of data (2021), again shows the trend continuing as it shows increased need over the 2020 figure. All of this can again best be shown by the following graphic:



[¶ 8] In addition to these raw numbers, it must be noted that the ECJD has the largest urban population in the state with the highest concentration of commercial and corporate entities. This results in higher numbers of complex litigation being commenced in the ECJD. For example, in recent years all new asbestos cases (each with hundreds of parties and thousands of filings) are being filed in the ECJD.

[¶ 9] Further, and as set forth in the attached Notice of Consultation Judgeship Reports, the ECJD also sees the most cases requiring interpreters. A recent study conducted by the National

Center for State Courts concerning the effect on interpreters in North Dakota Courts stated: “Overall, interpreter hearings for all case types studied lasted approximately twice as long as non-interpreter hearings.” See SELF-REPRESENTED LITIGANTS & LANGUAGE INTERPRETERS: NORTH DAKOTA WORKLOAD FACTORS PROJECT, at p. 21 (National Center for State Courts, Nov. 2021). Accordingly, the NCSC recommended to increase the weight given to these types of cases. If anything, the weighted caseload study may actually be undercounting the need for judicial resources in the ECJD.

[¶ 10] These are but two of the myriad examples that can be drawn from the caseload of the ECJD which show why an additional judge is so urgently needed in the ECJD. Looking at the objective evidence, there can be no doubt but that the caseload and caseload trends criteria strongly favor transference of the judgeship to the ECJD.

Impact of Proposed Vacancy Disposition on Travel Requirements

[¶ 11] The SEJD is one the most geographically large districts in the State. It is comprised of 14 counties with a total area of 16,016 square miles. The ECJD is one of the geographically smallest districts. It is comprised of 3 counties with a total area of 3,364 square miles. These facts are already recognized in the weighted caseload study. The SEJD receives the largest travel adjustment (11,070 minutes, or 54 minutes per day). The ECJD received the smallest travel adjustment (2,888 minutes). These numbers were calculated for the ECJD, as of 2012, and for the SEJD, as of 2014 (when additional counties were added to the SEJD by the Court). There is no doubt that transference of this judgeship will result in more travel time required in the SEJD than saved in the ECJD.

[¶ 12] However, since 2014, when the travel time was last adjusted, the practices of all courts in North Dakota have dramatically altered. With improved technology, and largely as a result of the

Covid-19 pandemic, all courts (including the SEJD and the ECJD) dramatically increased the use of reliable electronic means to conduct court hearings. This has allowed not only parties, but also judges, to appear remotely for certain types of cases and hearings. In turn, this has meant that the actual amount of travel conducted by the courts has decreased from the standards set in 2012 and 2014, respectively. For example, a comparison of the actual travel vouchers submitted by the SEJD judges in the last four months of 2019 and the last four months of 2021, showed a reduction of 19.5% (from 9,144 to 7,365 miles traveled). There are steps, which may not be optimal, that can be taken to reduce the impact of travel time on the SEJD need.

[¶ 13] To be clear, we are not arguing transference of this judgeship from the SEJD will have no effect on the travel requirements of that district. Indeed, transference of the judgeship to the ECJD will likely increase the travel time required of the remaining judges of the SEJD. However, this fact alone should not mandate rejection of the request to transfer this judgeship. The ECJD has been underjudged for most of recent history. As a result, the ECJD has been forced to put procedures in place that (while not optimal) meet bare constitutional requirements while still allowing it to keep up with its caseload. Even with the transference of this judgeship, the ECJD will still be nearly two judicial officers short of the need indicated by the weighted caseload study. There are procedures (such as increased use of REM hearings) that, while not optimal, can help the SEJD to reduce the travel time required if the judgeship is transferred. It does not seem reasonable to require one district to adopt measures to cope with its under-judged situation, while not requiring an over-judged district to adopt measures to deal with its caseload. Further, it appears that the SEJD is now actually utilizing some of these procedures. The criteria concerning impact of travel requirements slightly favors retaining the judgeship in the SEJD, but does not, in an unbiased analysis, outweigh the other criteria favoring transference of the judgeship.

Age or Possible Retirement of Remaining Judges in the Affected Judicial District

[¶ 14] If this judgeship were transferred to the ECJD, it would leave the SEJD with six judges remaining, as follows:

1. Hon. Cherie L. Clark, SEJD Judgeship No. 1, with chambers in Jamestown, born in 1969 , and first appointed in 2017;
2. Hon. Bradley A. Cruff, SEJD Judgeship No. 3, with chambers in Wahpeton, born in 1964, and first elected in 2012;
3. Hon. James D. Hovey, SEJD Judgeship No. 4, with chambers in New Rockford, born in 1964, and first appointed in 2010;
4. Hon. Daniel E. Narum, SEJD Judgeship No. 5, with chambers in Ellendale, born in 1969, and first appointed in 2006;
5. Hon. Jay A. Schmitz, SEJD Judgeship No. 6, with chambers in Valley City, born in 1962, and first elected in 2010; and
6. Hon. Troy J. Lefevre, SEJD Judgeship No. 7, with chambers in Jamestown, born in 1974, and first elected in 2016.

Thus, like the ECJD, it appears there is a good spread of age and years of experience with the remaining judges of the SEJD. This criteria is neutral as to whether the judgeship should be transferred or retained.

Availability of Facilities

[¶ 15] In addition to the information contained in the attached Notice of Consultation Judgeship Reports, it must be emphasized that presently the facilities are available for a tenth judge in the ECJD in Fargo. The Cass County Courthouse was expanded significantly in 2012. When the 2012 addition to the Cass County Courthouse was planned and constructed, it was specifically anticipated the ECJD would, at some time in the future, need the addition of the tenth judge. Thus, with that expansion, the Cass County Courthouse already contains a chambers into which a tenth judge, and accompanying staff, could be housed. While the ECJD contains fewer courtrooms

available than judicial officers, this has always been the case in the ECJD, since at least unification in 1994. However, through the use of efficient coordination by Court Administration and a constantly updated Case Management Plan put in place by the Judges of the ECJD, this has not, and should not in the near future, obviate the need for, or ability to use, an additional judicial officer.

[¶ 16] Further, and again in addition to the information provided in the Notice of Consultation Judgeship Reports, it must be noted that due to the ever-increasing caseloads in the ECJD, Cass County has hired architects and is presently planning for a significant expansion of its correctional facility. *See* <https://www.inforum.com/news/north-dakota/cass-county-board-hires-architects-for-jail-expansion-election-training-and-storage-center> (InForum article by B. Amundson, entitled: “Cass County Board Hires Architects for Jail Expansion, Election Training and Storage Center” and dated January 19, 2022).

[¶ 17] The proposed expansion of the Cass County Jail highlights the expansion of law enforcement in the ECJD. We understand that various local law enforcement partners may be submitting information directly to the Court; but our investigations have revealed that in the last decade all of our partners in the criminal justice system have experienced substantial staff increases. We will defer to the information provided directly by them but it is our understanding that since 2012, the Cass County State’s Attorney has added 5 attorneys and 6 support staff (from a letter provided by the Cass County State’s Attorney); that between 2013 and 2022, the Fargo Police Department has added 36 officers and multiple support staff (from on-line annual reports of the FPD); and that between 2013 to 2020, the West Fargo Police Department, has added 27 officers and 3 support staff (from on-line annual reports of the WFPD).

In short, since 2013, all of the major entities involved in the criminal justice system in the ECJD, with the exception of the courts, have expanded personnel to meet the growing demand in this area. Simply put, more police, more prosecutors, more defenders and more jail space buttress the other evidence of the need for more judicial officers in the ECJD.

[¶ 18] Relatedly, but not directly on point with this criteria, it appears that the number of admitted lawyers in ECJD has experienced a similar increase. A review of the Supreme Court's website shows that there are presently 548 lawyers admitted to the North Dakota Bar that list an address within the counties that compose the ECJD. That figure is up dramatically from what it was a decade ago (up from 420 in the 2012 Directory of Lawyers.) This is an increase of just over 30%. These figures specifically exclude any lawyers with a listed address in Moorhead, Minnesota, and who may maintain significant practices in Cass County as well. The ECJD numbers stand in stark contrast to the trends in the SEJD. Presently, 79 lawyers list an address within the counties that compose the SEJD. This figure is down from what it was a decade ago (down from 106 in the 2012 Directory of Lawyers.) This is a decrease of over 25%. Once again, the criteria relating to availability of facilities militates in favor of transferring this judgeship to the ECJD.

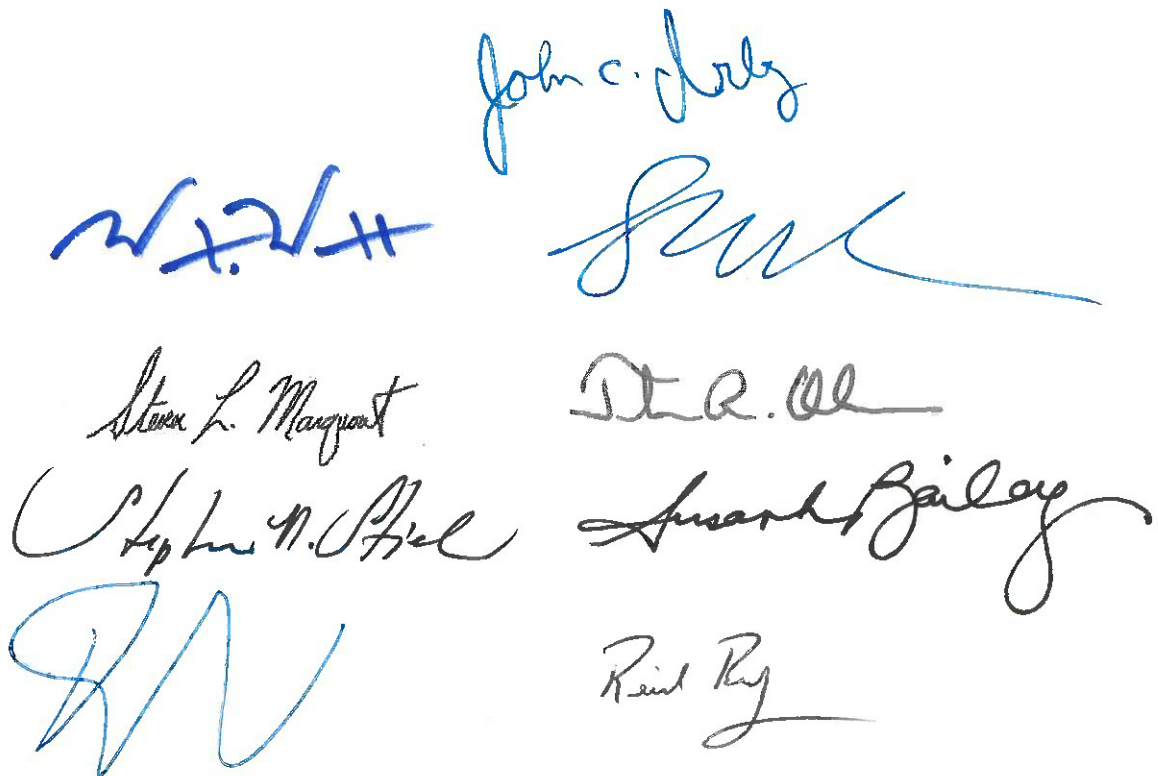
Conclusion

[¶ 19] We recognize the Supreme Court is faced with a difficult decision. Statewide, the weighted caseload study shows an overall deficit of almost two full judges. The decision, therefore, facing the Supreme Court is how to spread this shortage across the state to most efficiently provide judicial resources to all citizens of the State of North Dakota. We further recognize that under present weighted caseload numbers, transferring this judgeship from the SEJD to the ECJD would result in the SEJD being ever so slightly underjudged at the moment (although if present trends persist, that under-judged status should be short-lived and with available technology and best

practices, there are steps that can be taken to ensure judicial services are adequately provided in that district). However, the ECJD is approaching critical mass in terms of its need. Recognizing that the weighted caseload study is not perfect, it is the best available information. Under that analysis, the SEJD is the most over-judged district in the state. Further, there is no doubt that the ECJD is the most under-judged district in the state. Its shortage is larger than the total statewide shortage. Its shortage is double the shortage of second most under-judged district in the state (the Northeast Central Judicial District, with a shortage of 1.21 judicial officers). Even with this transfer, the ECJD will still be nearly two judges short of its need. Basic tenets of fairness, to say nothing of the stated goal of effective administration of justice, mandate this transfer.

[¶ 20] Therefore, we, the Judges of the ECJD, respectfully request that the Supreme Court enter its order transferring the present Judgeship No. 2, with chambers in Valley City, North Dakota, SEJD, to the ECJD, as Judgeship No. 10, with chambers in Fargo, North Dakota, ECJD.

Respectfully submitted,



The block contains ten handwritten signatures in blue ink, arranged in two columns. The signatures are: John C. Juby (top right), an illegible signature (top left), Steven L. Marquart (middle left), D. R. O. (middle right), Stephen W. Abel (bottom left), Susan Bailey (bottom right), and Reid Ry (bottom right).

**NOTICE OF CONSULTATION
JUDGESHIP REPORT**
East Central Judicial District
Judgeship No. 4 with Chambers in Fargo, ND
(Term Expires December 31, 2022)

The following report regarding criteria concerning disposition of the vacancy in Judgeship No. 4 is submitted pursuant to North Dakota Supreme Court Administrative Rule 7.2, Section 4.

1. **Population**

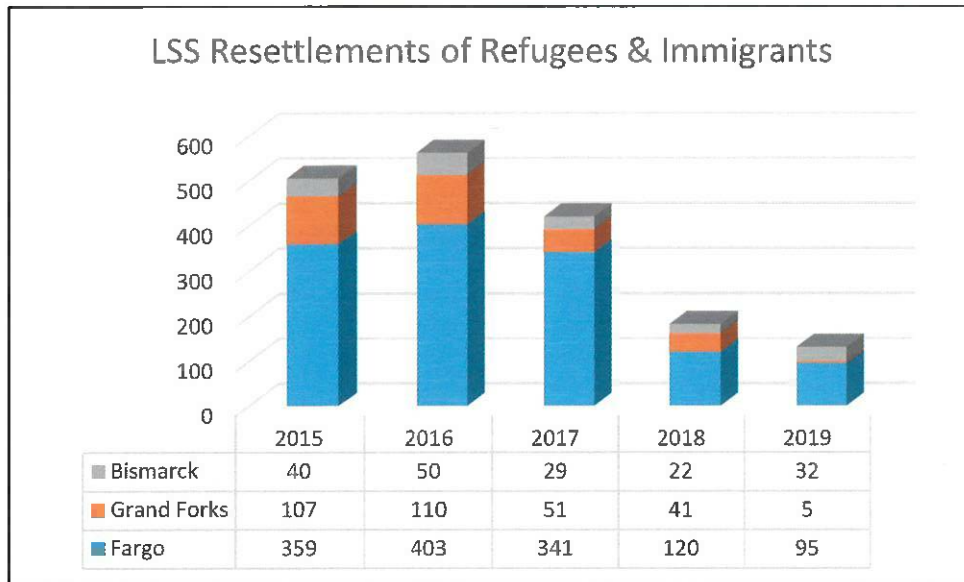
The East Central Judicial District is comprised of Cass, Steele and Traill Counties. The population figures from the 2010 and 2020 US census set forth in the table below¹:

County	Year	
	2010	2020
Cass	149,778	184,525
Steele	1,975	1,798
Traill	8,121	7,997
District Total	159,874	194,320

According to information provided by Lutheran Social Services, in the latest 5 years of available data (ending in September, 2019) they have helped an average of 361 refugees per year resettle in North Dakota. The information shows refugees were from Afghanistan, Angola, Bhutan, Columbia, Democratic Republic of Congo, Eritrea, Ethiopia, Iran, Iraq, Mexico, Rwanda, Somalia, Sudan, Syria and Ukraine. Of the 1,805 refugees resettled in North Dakota, 73 percent are settled in the Fargo metropolitan area.²

¹ reached via <https://www.census.gov/library/visualizations/interactive/2020-population-and-housing-state-data.html>

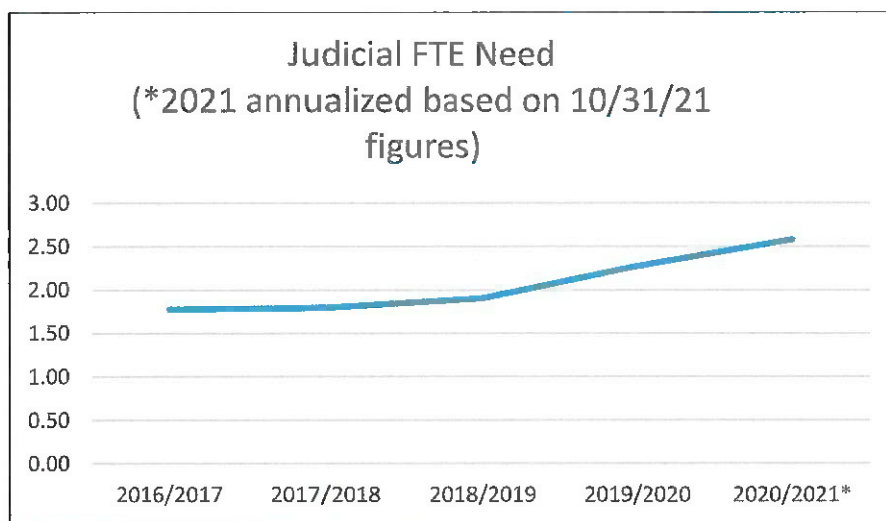
² Arrival Statistics: 1997-2019 accessed via <https://www.lssnd.org/refugee-resettlement>



2. Caseloads and Unusual Case Types

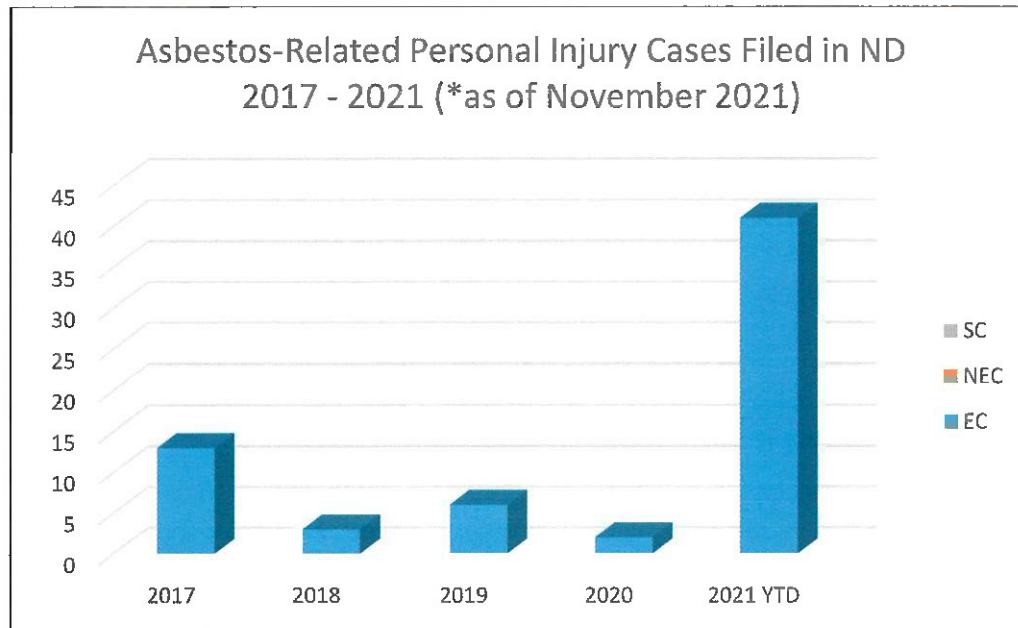
State Court Administration data and the annualized 2021 weighted caseload study shows the East Central Judicial District has a need for 13.78 judicial FTE's. Currently there are 11 judicial FTE's resulting in a shortage of 2.78 judicial FTE's.

The average shortage of judicial FTE's in the East Central Judicial District in 2016/2017 was 1.77, in 2017/2018 was 1.79, in 2018/2019 was 1.90, in 2019/2020 was 2.27 and in 2020/2021 (annualized estimate for 2021) was 2.58. As shown in the chart below, the need for judicial officers has steadily increased with a sharp increase in the last three years.



Source: Weighted Caseload Reports

Cass County is home to corporate offices and has several large law firms in the area. This leads to the filing of more complex civil litigation cases in the district. While previously also filed in other judicial districts, all asbestos-related personal injury cases filed in the state of North Dakota in the last five years have been filed in Cass County with a significant number of new filings received in 2021. These cases consume a large amount of judge time.



Source: Case Index Report

Cass County also has participants in one juvenile and two adult drug courts.

Judgeship No. 4 is chambered in Fargo and is currently responsible for a share of the caseload in Cass, Steele, and Traill Counties.

3. Trends in Population and Caseloads

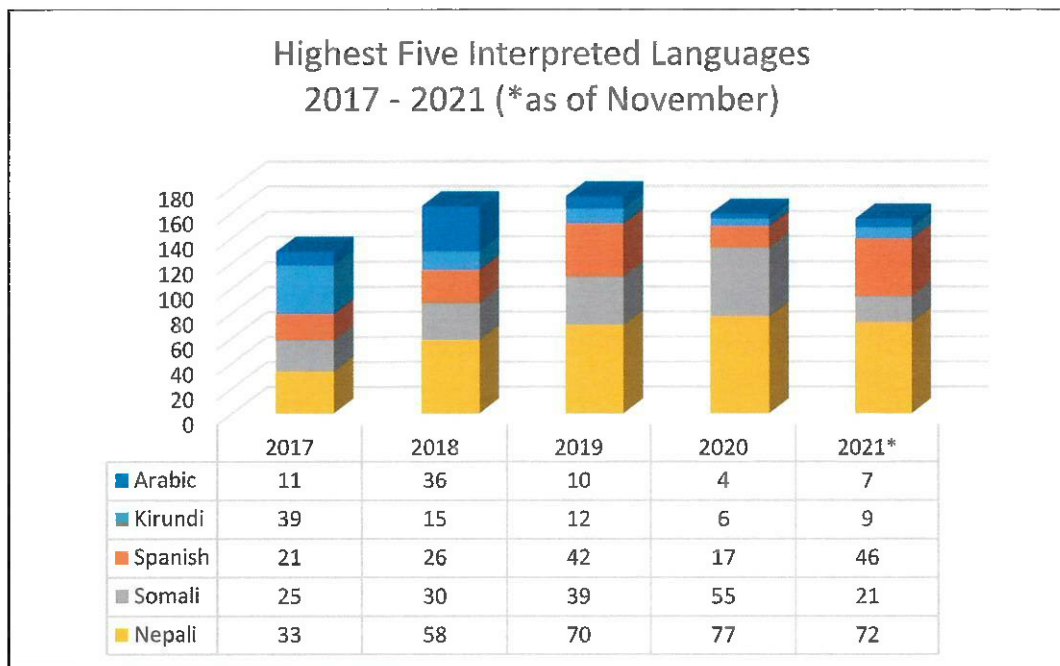
As seen from the chart under criteria 1 above, the population of the district is increasing. While the population of Traill and Steele counties has declined slightly (301 people overall), Cass County is showing an additional population of 34,747 which is an increase of 23.2%.

As previously discussed, Cass County is home to refugees from many countries and other non-English speaking people. This requires that the court use interpreters in many of its hearings which necessitates more time be given to the proceedings. Statistics show that over the last five years interpreters were needed for 28 different languages.

Languages Used – 2017 through November 2021			
Amharic	2	Madi	6
Arabic	68	Mandarin	7
Bosnian	59	Nepali	310
Cambodian	1	Oromo	1
Chinese	3	Portuguese	1
Creole	6	Russian	7
Dinka	3	Somali	170
French	2	Spanish	152
Hindi	2	Sudanese	17
Japanese	2	Swahili	51
Kinyarwanda	7	Tigrinya	6
Kirundi	81	Twi	30
Krahn	2	Vietnamese	18
Kurdish	20		
Liberian	19	TOTAL	1053

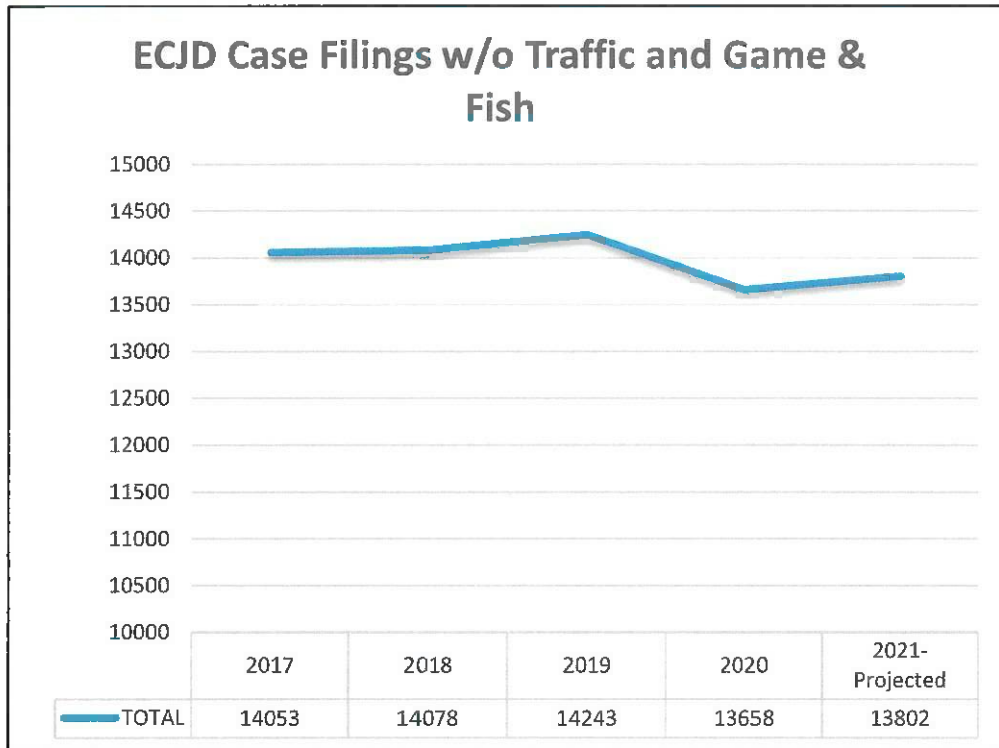
Source: Interpreter Statistics Report

The following chart outlines data for the five languages showing the highest need for interpreters over a five-year span ending in November for 2021.



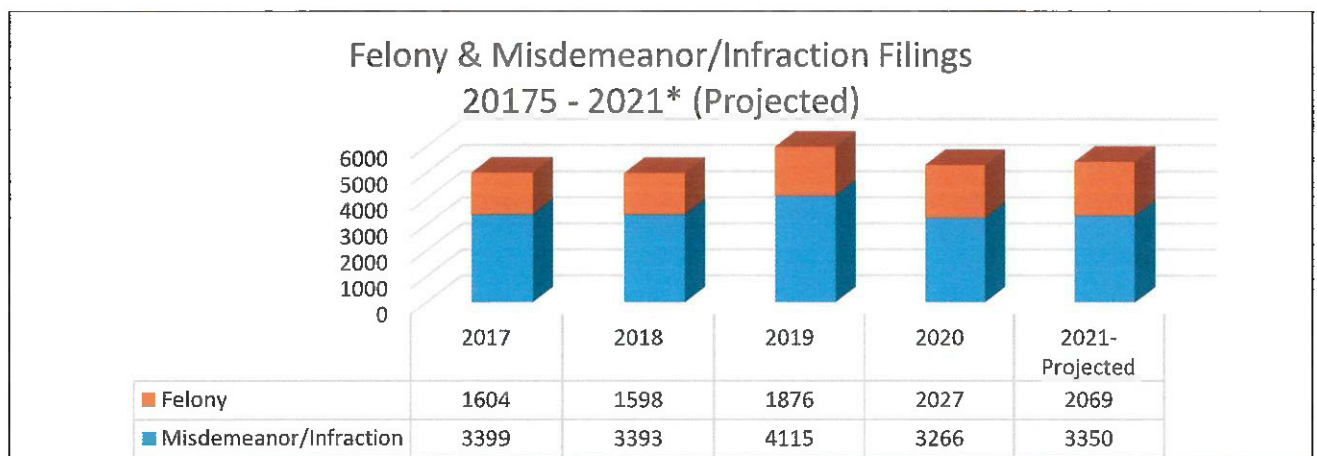
Source: Interpreter Statistics Report

As seen in the following charts, State Court Administration data also shows that overall filings in the district were slightly increasing pre-pandemic. During the Covid pandemic, overall filings fluctuated slightly and are now increasing as courts, agencies, and the public are slowly released from pandemic-era restrictions.



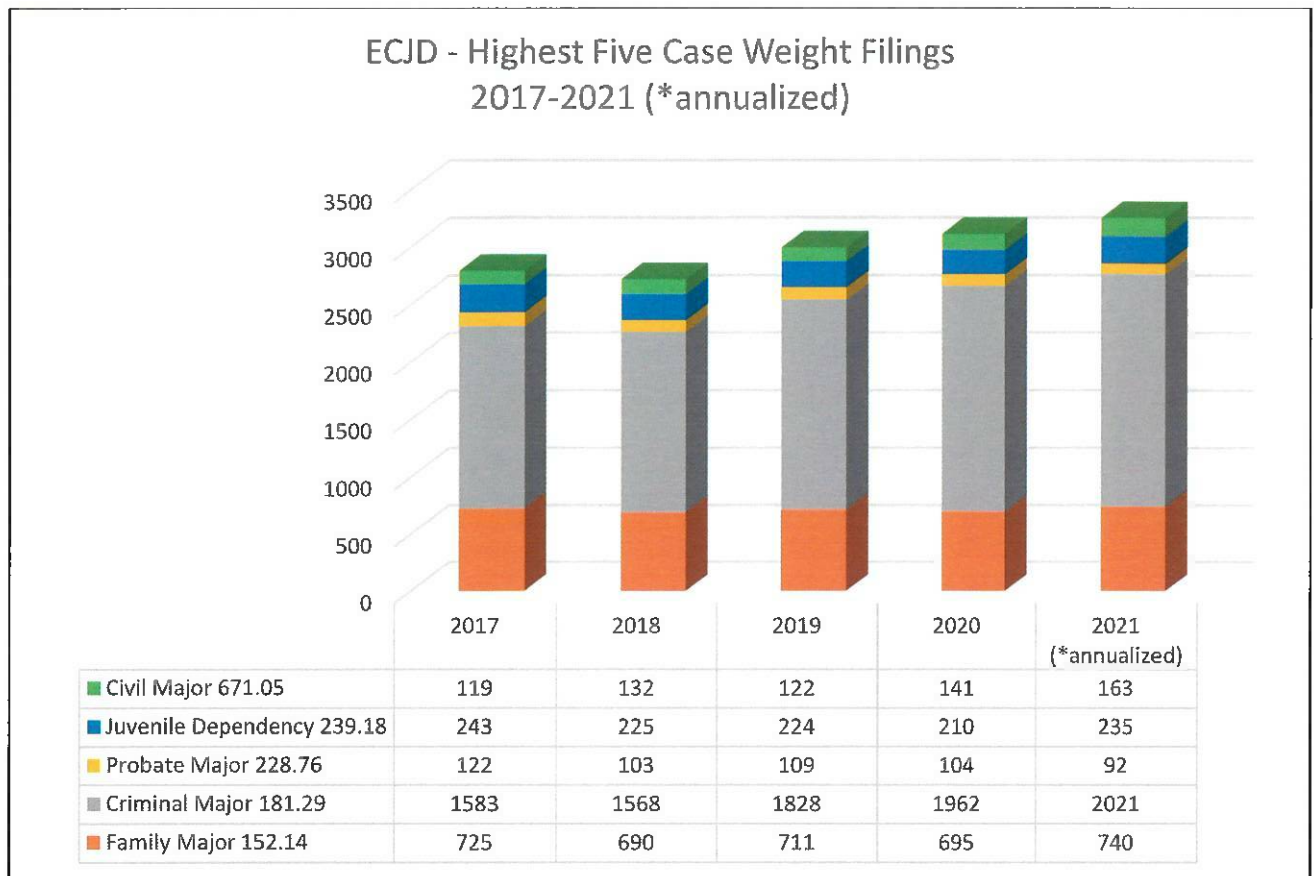
Source: Case Filing Statistics Reports

Some trends are apparent when examining specific case types. Analysis shows misdemeanors and infractions show a spike in 2019 but have otherwise remained consistent. The more complex felony cases are steadily increasing.



Source: Case Filing Statistics Reports

The filings within the five categories of the weighted caseload with the highest case weights are depicted below and are shown to be trending upward with the exception of cases in the 'Major Probate' category which are down slightly.



Source: Weighted Caseload Reports

4. Impact on Travel Requirement

The East Central Judicial District consists of Cass, Steele and Traill Counties. All East Central judges are assigned cases through the district.

5. Age or Possible Retirement of Remaining Judges

There are no immediate plans for retirement of any of the other judges in the East Central Judicial District.

Judges Olson and Irby have reached retirement age. The next judge to reach retirement age is Judge McCullough, who will turn 65 in 2027.

Judgeship #	Name	Birth Year	Year Turn 65	Re-election Year
1	Susan L. Bailey	1963	2028	2026
2	Tristan Van de Streek	1976	2041	2022
3	Steven E. McCullough	1962	2027	2022
4	Steven L. Marquart (retiring)	1954	2019	2022
5	Reid Brady	1973	2038	2026
6	Thomas R. Olson	1952	2017	2026
7	Wade L. Webb	1970	2035	2026
8	John C. Irby	1956	2021	2024
9	Stephannie N. Stiel	1978	2043	2026

Source: North Dakota Supreme Court at <https://www.ndcourts.gov/district-court/district-court-judges>

6. Availability of Facilities

A. Court Facilities

Each county in the district maintains court facilities with security in the courtrooms when requested. Cass County has full-time security at the entrance to the courthouse. They are also able to utilize three courtrooms with access to additional security and segregated travel paths for in-custody appearances. Traill and Steele Counties provide law enforcement screening outside the courtroom on days when court is scheduled. All counties in the district have upgraded their facilities as part of the Court Facilities Improvement Fund.

B. Correctional Facilities

Each of the counties listed below have cities with a correctional facility. Grade one means a correctional facility for confining inmates not more than one year. Grade two means a correctional facility for confining inmates not more than ninety days.³

County	Facility	Classification
Cass	Cass County Jail	Grade 1
Traill	Traill County Jail	Grade 2

Source: personal contact with jail staff

³ NDCC § 12-44.1-06 Jails and Regional Correctional Centers

C. Law Enforcement

Each chambered city has adequate law enforcement officials.

8. Conclusion

Elimination of Judgeship No. 4 would have a profound impact on the district. The workload in the district is stable and weighted caseload statistics from the State Court Administrator's office show that the district is consistently short judicial FTE's with the 2021 report showing an anticipated shortage of 2.78 FTE's.

Maintaining Judgeship No. 4 is necessary to provide adequate judicial services to the people of the East Central Judicial District. Eliminating the judgeship would require the remaining 8 judges in the East Central Judicial District to assume an increased caseload and increased travel time in the district. Not only would this hinder services in the local counties, it would also reduce the dispositional rate of cases.



Rodney Olson
Trial Court Administrator
State of North Dakota – Administrative Unit Two

**NOTICE OF CONSULTATION
JUDGESHIP REPORT**
East Central Judicial District
Judgeship No. 6 with Chambers in Fargo, ND
(Term Expires December 31, 2026)

The following report regarding criteria concerning disposition of the vacancy in Judgeship No. 6 is submitted pursuant to North Dakota Supreme Court Administrative Rule 7.2, Section 4.

1. **Population**

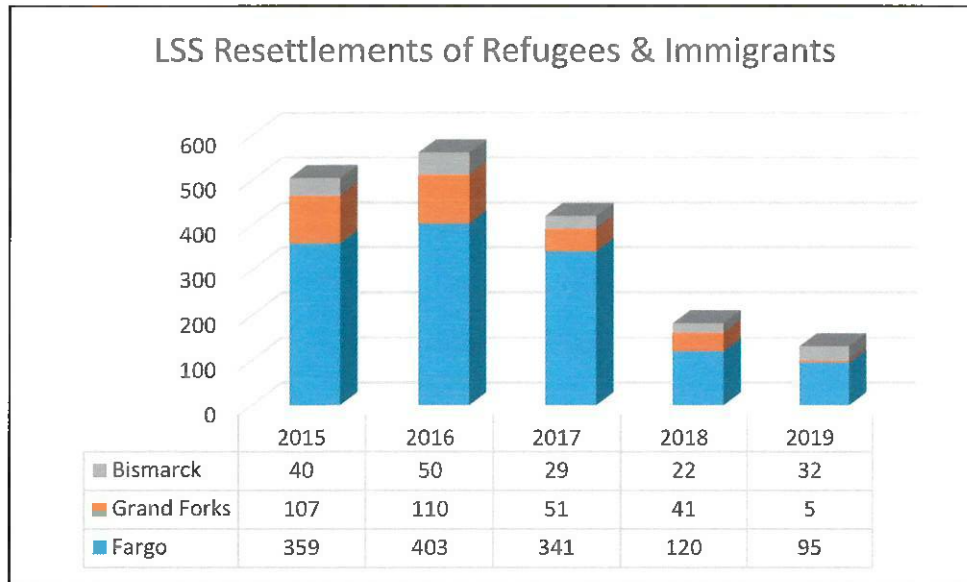
The East Central Judicial District is comprised of Cass, Steele and Traill Counties. The population figures from the 2010 and 2020 US census set forth in the table below¹:

County	Year	
	2010	2020
Cass	149,778	184,525
Steele	1,975	1,798
Traill	8,121	7,997
District Total	159,874	194,320

According to information provided by Lutheran Social Services, in the latest 5 years of available data (ending in September, 2019) they have helped an average of 361 refugees per year resettle in North Dakota. The information shows refugees were from Afghanistan, Angola, Bhutan, Columbia, Democratic Republic of Congo, Eritrea, Ethiopia, Iran, Iraq, Mexico, Rwanda, Somalia, Sudan, Syria and Ukraine. Of the 1,805 refugees resettled in North Dakota, 73 percent are settled in the Fargo metropolitan area.²

¹ reached via <https://www.census.gov/library/visualizations/interactive/2020-population-and-housing-state-data.html>

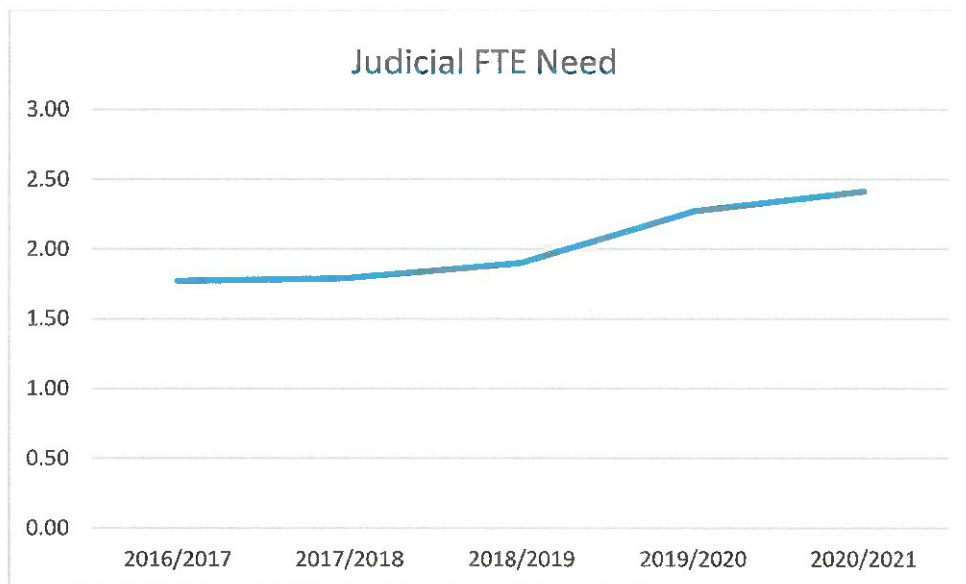
² Arrival Statistics: 1997-2019 accessed via <https://www.lssnd.org/refugee-resettlement>



2. Caseloads and Unusual Case Types

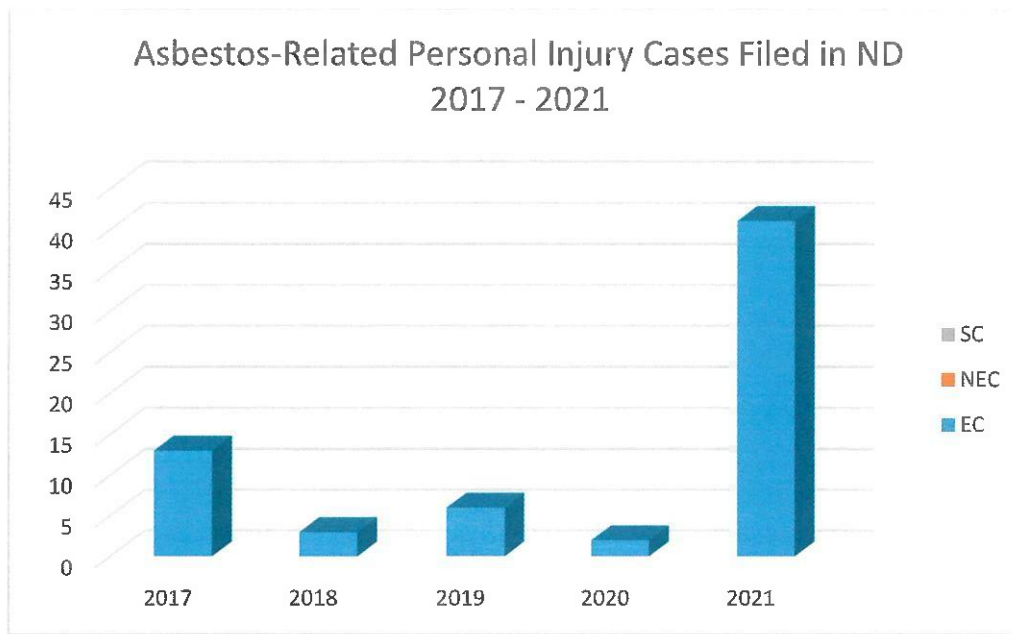
State Court Administration data regarding the weighted caseload study shows the East Central Judicial District has a need for 13.44 judicial FTE's. Currently there are 11 judicial FTE's resulting in a shortage of 2.44 judicial FTE's.

The average shortage of judicial FTE's in the East Central Judicial District in 2016/2017 was 1.77, in 2017/2018 was 1.79, in 2018/2019 was 1.90, in 2019/2020 was 2.27 and in 2020/2021 was 2.41. As shown in the chart below, the need for judicial officers has steadily increased with a sharp increase in the last three years.



Source: Weighted Caseload Reports

Cass County is home to corporate offices and has several large law firms in the area. This leads to the filing of more complex civil litigation cases in the district. While previously also filed in other judicial districts, all asbestos-related personal injury cases filed in the state of North Dakota in the last five years have been filed in Cass County with a significant number of new filings received in 2021. These cases consume a large amount of judge time. There have been no new filings made thus far in 2022.



Source: Case Index Report

Cass County also has participants in one juvenile and two adult drug courts.

Judgeship No. 6 is chambered in Fargo and is currently responsible for a share of the caseload in Cass, Steele, and Traill Counties.

3. Trends in Population and Caseloads

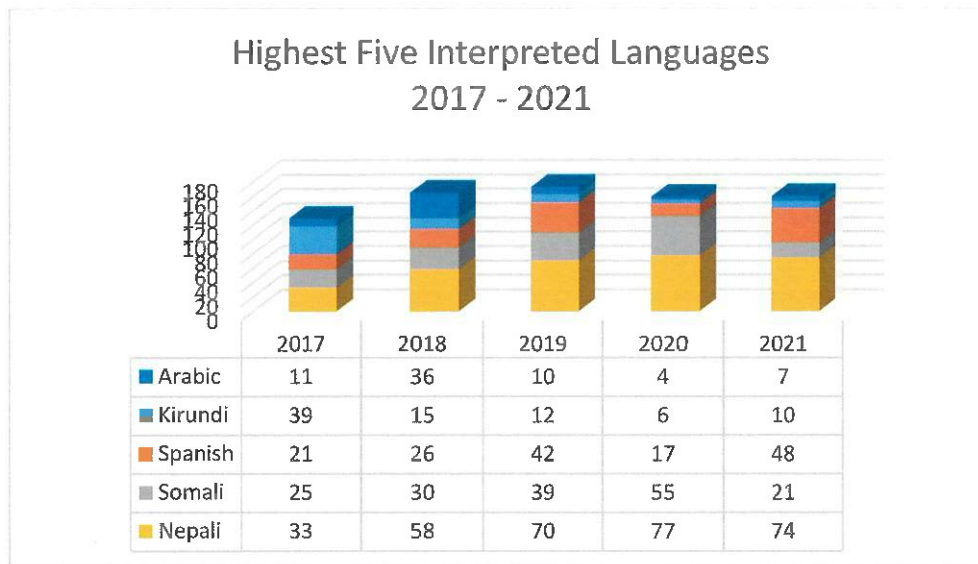
As seen from the chart under criteria 1 above, the population of the district is increasing. While the population of Traill and Steele counties has declined slightly (301 people overall), Cass County is showing an additional population of 34,747 which is an increase of 23.2%.

As previously discussed, Cass County is home to refugees from many countries and other non-English speaking people. This requires that the court use interpreters in many of its hearings which necessitates more time be given to the proceedings. Statistics show that over the last five years interpreters were needed for 29 different languages.

Languages Used – 2017 through 2021				
Amharic	2		Liberian	19
Arabic	68		Madi	6
Bosnian	59		Mandarin	7
Cambodian	1		Nepali	312
Chinese	3		Oromo	1
Creole	6		Portuguese	1
Dari	1		Russian	7
Dinka	3		Somali	170
French	4		Spanish	154
Hindi	2		Sudanese	17
Japanese	2		Swahili	55
Kinyarwanda	8		Tigrinya	8
Kirundi	82		Twi	30
Krahn	2		Vietnamese	18
Kurdish	23		TOTAL	1071

Source: Interpreter Statistics Report

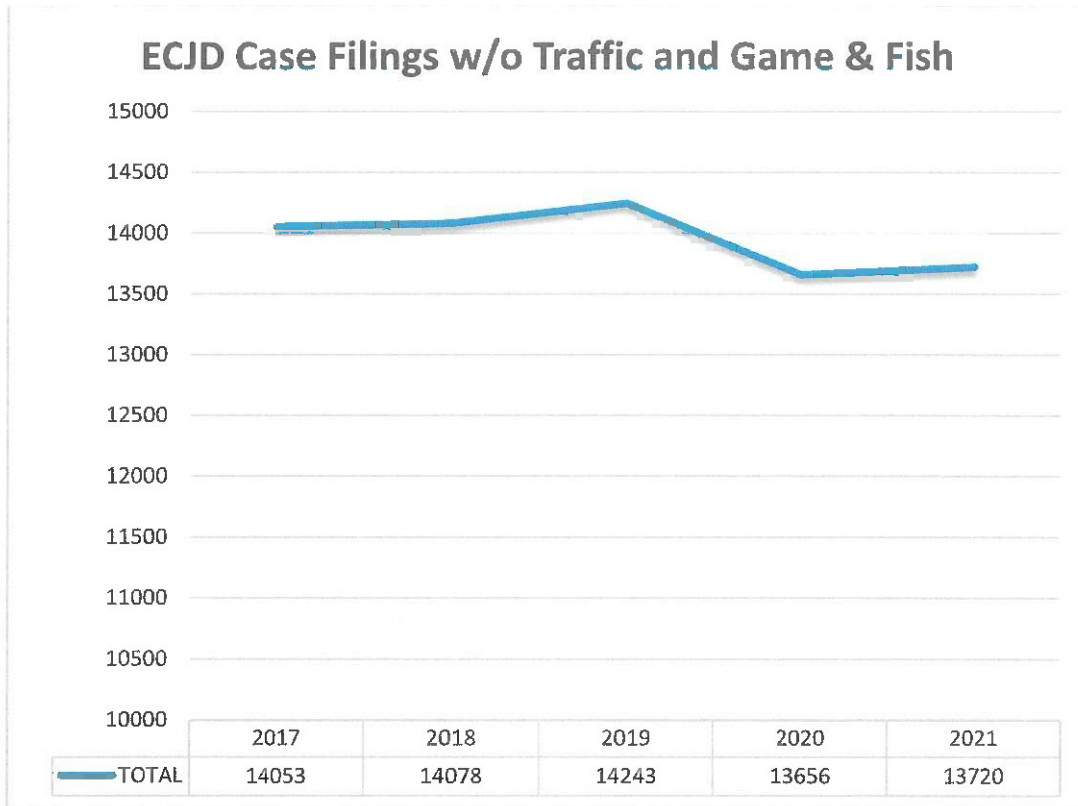
The following chart outlines data for the five languages showing the highest need for interpreters over a five-year span ending in 2021.



Source: Interpreter Statistics Report

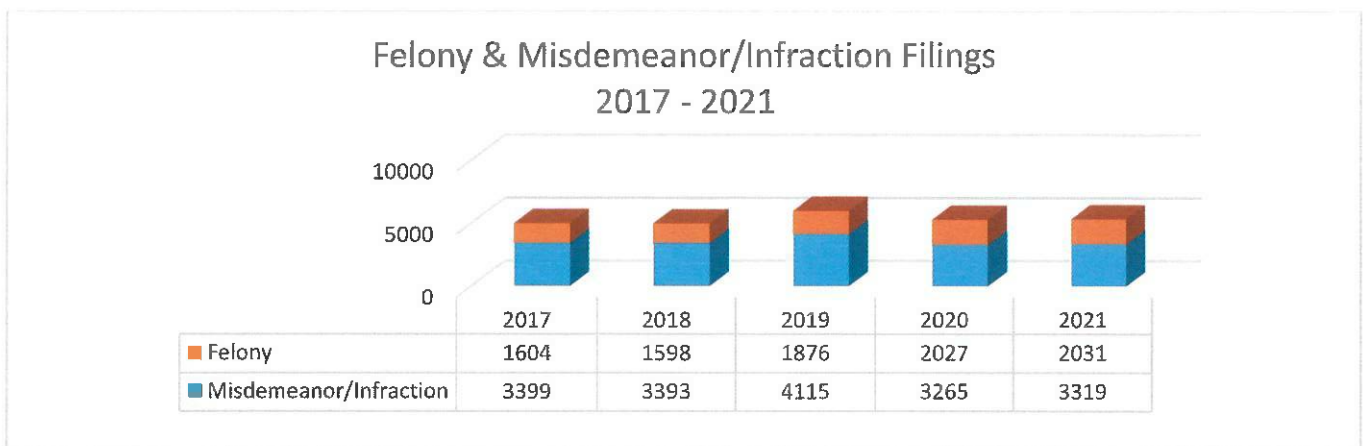
As seen in the following charts, State Court Administration data also shows that overall filings in the district were slightly increasing pre-pandemic. During the Covid pandemic,

overall filings fluctuated slightly and are now increasing as courts, agencies, and the public are slowly released from pandemic-era restrictions.



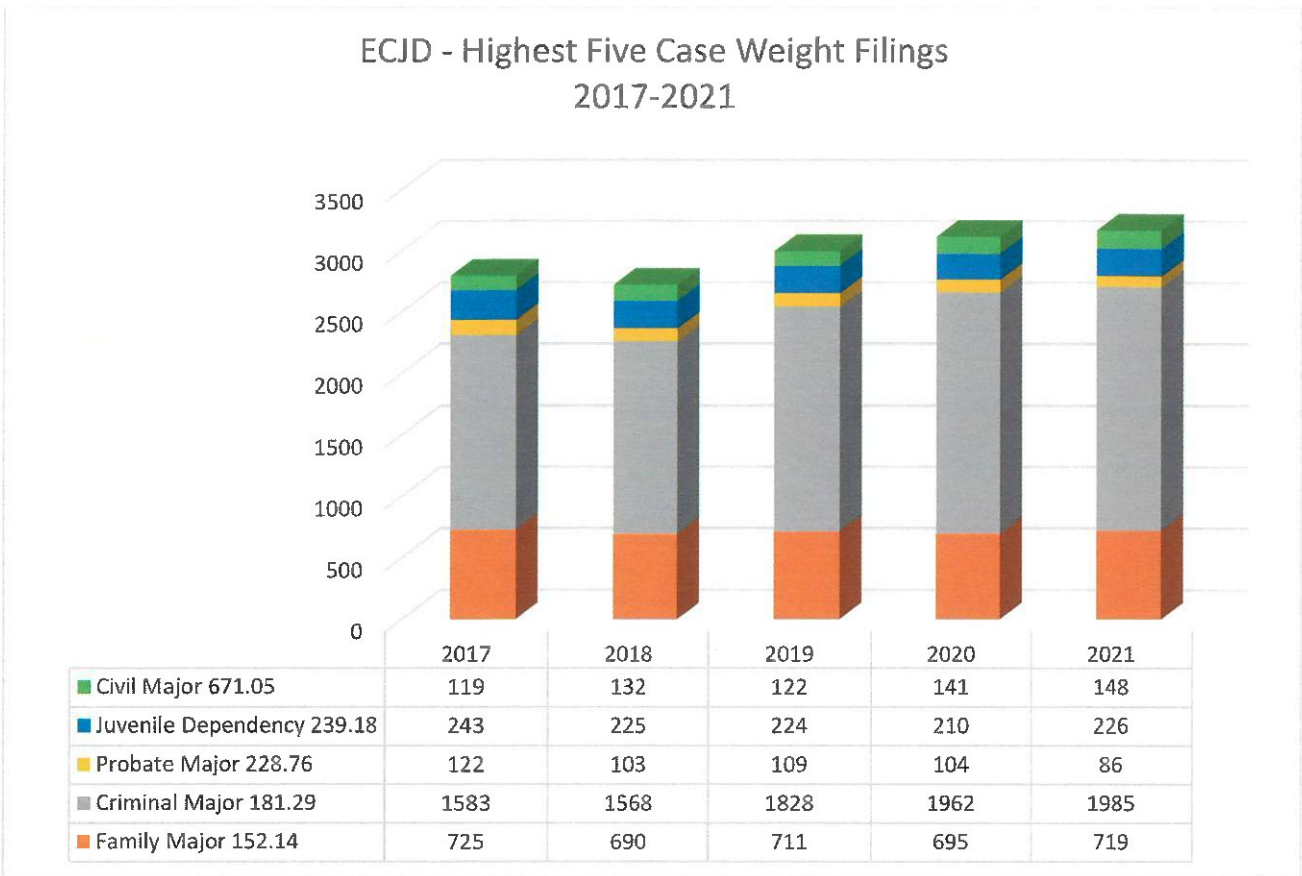
Source: Case Filing Statistics Reports

Some trends are apparent when examining specific case types. Analysis shows misdemeanors and infractions spiked slightly in 2019 but have otherwise remained consistent. The more complex felony cases are steadily increasing.



Source: Case Filing Statistics Reports

The filings within the five categories of the weighted caseload with the highest case weights are depicted below and are shown to be trending upward with the exception of cases in the 'Major Probate' category which are down slightly.



Source: Weighted Caseload Reports

4. Impact on Travel Requirement

The East Central Judicial District consists of Cass, Steele and Traill Counties. All East Central judges are assigned cases through the district.

5. Age or Possible Retirement of Remaining Judges

Judge Marquart has announced his intention to retire on 12/31/22 which is the end of his term. On December 22, 2021, the Court determined that vacancy would be filled by election (see Supreme Court Opinion No. 20210311). There are no immediate plans for retirement of any of the other judges in the East Central Judicial District.

Judge Irby has reached retirement age. The next judge to reach retirement age is Judge McCullough, who will turn 65 in 2027.

Judgeship #	Name	Birth Year	Year Turn 65	Re-election Year
1	Susan L. Bailey	1963	2028	2026
2	Tristan Van de Streek	1976	2041	2022
3	Steven E. McCullough	1962	2027	2022
4	Steven L. Marquart (retiring 12/31/22)	1954	2019	2022
5	Reid Brady	1973	2038	2026
6	Thomas R. Olson	1952	2017	2026
7	Wade L. Webb	1970	2035	2026
8	John C. Irby	1956	2021	2024
9	Stephannie N. Stiel	1978	2043	2026

Source: North Dakota Supreme Court at <https://www.ndcourts.gov/district-court/district-court-judges>

6. Availability of Facilities

A. Court Facilities

Each county in the district maintains court facilities with security in the courtrooms when requested. Cass County has full-time security at the entrance to the courthouse. They are also able to utilize three courtrooms with access to additional security and segregated travel paths for in-custody appearances. Traill and Steele Counties provide law enforcement screening outside the courtroom on days when court is scheduled. All counties in the district have upgraded their facilities as part of the Court Facilities Improvement Fund.

B. Correctional Facilities

Each of the counties listed below have cities with a correctional facility. Grade one means a correctional facility for confining inmates not more than one year. Grade two means a correctional facility for confining inmates not more than ninety days.³

County	Facility	Classification
Cass	Cass County Jail	Grade 1
Traill	Traill County Jail	Grade 2

³ NDCC § 12-44.1-06 Jails and Regional Correctional Centers

C. Law Enforcement

Each chambered city has adequate law enforcement officials.

8. Conclusion

Elimination of Judgeship No. 6 would have a profound impact on the district. The workload in the district is stable and weighted caseload statistics from the State Court Administrator's office show that the district is consistently short judicial FTE's with the 2021 report showing an anticipated shortage of 2.44 FTE's.

Maintaining Judgeship No. 6 is necessary to provide adequate judicial services to the people of the East Central Judicial District. Eliminating the judgeship would require the remaining 8 judges in the East Central Judicial District to assume an increased caseload and increased travel time in the district. Not only would this hinder services in the local counties, it would also reduce the dispositional rate of cases.



Rodney Olson
Trial Court Administrator
State of North Dakota – Administrative Unit Two