

United States Senate  
WASHINGTON, DC 20510-3203

March 21, 2024

The Honorable David C. Godbey  
Chief Judge, U.S. District Court for the Northern District of Texas  
1100 Commerce Street, Room 1504  
Dallas, Texas 75242-1003

Dear Chief Judge Godbey:

I write to you today encouraging the District Court for the Northern District of Texas to implement the Judicial Conference’s new policy regarding judge shopping<sup>1</sup> as soon as possible. This follows my first letter on this subject dated April 27, 2023,<sup>2</sup> in which I called on you to alter the District Court’s method of assigning cases in relation to single-judge divisions that effectively allow litigants to choose which judge will hear their case. You expressed that you could not unilaterally make that change without agreement from the other judges on your court.<sup>3</sup> Now, the Judicial Conference is calling for a new policy directly related to this particular judge-shopping issue.<sup>4</sup>

In your response letter dated May 16, 2023, you acknowledged the “public perception of improper judge-shopping in single-judge divisions.”<sup>5</sup> However, you then pointed out a number of reasons for which the “random assignment of all civil cases across [your] District would present logistical challenges,” and you listed a number of considerations including “the number and type of civil and criminal cases filed in a division”; “the convenience of the jurors, witnesses, parties, and attorneys”; “the desire of communities to have local judges”; and “the burden of travel on court personnel.” Interestingly, though, you went on to express that the “random assignment of a small slice of civil cases”<sup>6</sup> may not pose the same challenges.

Thankfully, the Judicial Conference’s new policy requires random assignment for—to use your phrase—just “a small slice of civil cases”: only those civil actions seeking to bar or mandate statewide or nationwide enforcement of a state or federal law.<sup>7</sup> Accordingly, it is not clear that implementing this updated policy would present any of the “logistical challenges” in your district that you mentioned or harm any of the considerations you raised previously in your letter. First, the number of applicable civil actions may be small compared to total actions filed. Second, as the Judicial Conference noted, “the value of trying a civil case in the nearest court division becomes

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<sup>1</sup> United States Courts, “Conference Acts to Promote Random Case Assignment,” press release, March 12, 2024, <https://www.uscourts.gov/news/2024/03/12/conference-acts-promote-random-case-assignment>.

<sup>2</sup> Letter to the District Court for the Northern District of Texas, April 27, 2023, [https://www.democrats.senate.gov/imo/media/doc/following\\_devastating\\_decisions\\_on\\_abortion\\_lgbt\\_protections\\_and\\_immigration\\_majority\\_leader\\_schumer\\_pushes\\_to\\_end\\_contemptible\\_practice\\_of\\_texas\\_forum\\_shopping.pdf](https://www.democrats.senate.gov/imo/media/doc/following_devastating_decisions_on_abortion_lgbt_protections_and_immigration_majority_leader_schumer_pushes_to_end_contemptible_practice_of_texas_forum_shopping.pdf).

<sup>3</sup> Letter to Majority Leader Charles E. Schumer from Chief Judge David C. Godbey, May 23, 2023.

<sup>4</sup> United States Courts, “Conference Acts to Promote Random Case Assignment,” press release, March 12, 2024, <https://www.uscourts.gov/news/2024/03/12/conference-acts-promote-random-case-assignment>.

<sup>5</sup> Letter to Majority Leader Charles E. Schumer from Chief Judge David C. Godbey, May 23, 2023.

<sup>6</sup> Letter to Majority Leader Charles E. Schumer from Chief Judge David C. Godbey, May 23, 2023.

<sup>7</sup> United States Courts, “Conference Acts to Promote Random Case Assignment,” press release, March 12, 2024, <https://www.uscourts.gov/news/2024/03/12/conference-acts-promote-random-case-assignment>.

less important when the impact of a ruling might be felt statewide or even nationally.” Third, your judges, as well as jurors and court personnel, may not have to travel at all since there is no compelling need for actions with statewide or nationwide implications to be heard in a particular division.

You also noted that the Northern District is “geographically large” and “encompasses more than 96,000 square miles,”<sup>8</sup> suggesting that its size was a barrier to random case assignment, but that may prove to be of trivial importance in this case. In response to a similar policy update from the Judicial Conference in 2022, the Western District of Texas changed its case-assignment rules for patent actions filed in Waco (another small slice of civil cases) so that such cases are now randomly assigned among all of the active judges in that district.<sup>9</sup> That change promoted fairness in our patent system and restored some faith in our judiciary. Furthermore, the Western District is next door to you and encompasses a similar size and population; the business of that district has continued in good fashion in spite of the change. I believe the operations of the Northern District will continue fine if this change to assignment practices is adopted, as well.

Congress continues to consider whether new legislation is necessary to address procedural issues in the judiciary. In order to better understand how your court might respond to this new rule and to better assess the concerns and factors you described in your response letter, I request responses to the following questions by April 4, 2024:

1. In calendar year 2023, how many civil actions seeking to bar or mandate statewide or nationwide enforcement of a state or federal law were filed in the District Court of the Northern District of Texas? What percentage of total civil actions filed in the district did this number represent? What percentage of total actions filed in the district altogether did this number represent?
  - a. Please also provide the same figures for each division of the District Court of the Northern District of Texas.
2. Local Civil Rule 83.3 for the Northern District of Texas states that “district judges shall determine the method by which all cases are assigned to individual judges.”<sup>10</sup> Please describe that determination process, including (i) whether these determinations are made by unanimous agreement, majority vote, or other method; and (ii) whether any related rule is given “appropriate public notice and an opportunity for comment” before taking effect, as required by 28 U.S.C. 2071(b).
3. How does your court implement or address public comments?
4. When will the District Court of the Northern District of Texas adopt the Judicial Conference’s new policy on judge shopping? Is there an annual or quarterly meeting to address possible changes to your local rules? Could such a meeting be called at any time?

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<sup>8</sup> Letter to Majority Leader Charles E. Schumer from Chief Judge David C. Godbey, May 23, 2023.

<sup>9</sup> 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>.

<sup>10</sup> Civil Rules, United States District Court of Northern District of Texas, <https://www.txnd.uscourts.gov/civil-rules>.

5. Could your court implement the Judicial Conference's new rule without requiring judges to travel?

Sincerely,



Charles E. Schumer  
United States Senator

cc: N.D. Tex. District Judges  
The Honorable Priscilla Richman,  
Chief Judge of the Court of Appeals for the 5<sup>th</sup> Circuit

David Best