



Christine O. Gregoire

ATTORNEY GENERAL OF WASHINGTON

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July 14, 1998

Daniel J. Meador
Executive Director
Commission on Structural Alternatives for the Federal Courts of Appeals
Thurgood Marshall Federal Judiciary Building
One Columbus Circle NE
Washington, D.C. 20544

Re: Additional Comments of Attorney General Christine O. Gregoire

Dear Mr. Meador:

When I testified before the Commission in Seattle on May 27, 1998, I was asked to comment on a proposal by Sanford Svetcov that the Ninth Circuit be divided into two divisions. I was not familiar with this proposal and the Chairman graciously agreed to let me review the proposal and provide my comments later in writing. My staff and I have now reviewed Mr. Svetcov's written and oral testimony and I offer these comments for the Commission's consideration.

As you know, Mr. Svetcov's proposal would divide the Ninth Circuit into two divisions. The northern division would include the northern and eastern districts of California and the five northwestern states. The southern division would consist of the remaining California districts and the remaining Ninth Circuit states. Panels would consist of two judges from the division in which the case arose, plus one judge from the other division. Each division would be bound by any panel decision in the circuit, regardless of the division in which it was issued. Conflicts would be resolved by a limited en banc panel consisting of the Chief Judge and five judges from each division.

After considering Mr. Svetcov's proposal, I continue to believe that the geographic size of the Ninth Circuit and the exploding population of the western United States require the creation of a new circuit. I do not believe that Mr. Svetcov's plan would solve the problems of the Ninth Circuit. For example, the size of the circuit imposes time and travel costs, as well as issues of collegiality among the members of such a large bench. The proposal to form panels composed of two members of the northern or southern division and one member of the other division may



ATTORNEY GENERAL OF WASHINGTON

July 14, 1998

Page 2

reduce travel costs, but it will also necessarily reduce the collegiality between the members of the northern and southern divisions. Keeping up with Ninth Circuit decisions is also a serious problem. This proposal does nothing to address the fact that Ninth Circuit Judges will still need to keep up with the panel decisions coming out of both divisions, because the decision of any panel is binding throughout the circuit.

Ultimately, I believe Mr. Svetcov's proposal would be a stop-gap measure. As you know, the old Fifth Circuit attempted to divide itself into administrative units. However, this did not solve the problem and the circuit was divided to create a new Eleventh Circuit. I also do not believe a decision to divide the Ninth Circuit portends further expansion of the number of circuit courts around the country. Given the unique geographic size and population of the Ninth Circuit, I believe the only way to address its problems is to create a new circuit. The Commission should move in that direction, rather than adopting an interim solution such as that proposed by Mr. Svetcov.

In closing, I want to thank the Chairman for allowing me to supplement my testimony before the Commission. I hope these comments will be of assistance.

Sincerely,



CHRISTINE O. GREGOIRE
Attorney General

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