



UNITED STATES COURT OF APPEALS for the NINTH CIRCUIT

Chief Judge Alex Kozinski • Cathy A. Catterson, Circuit & Court of Appeals Executive • Molly C. Dwyer, Clerk of Court

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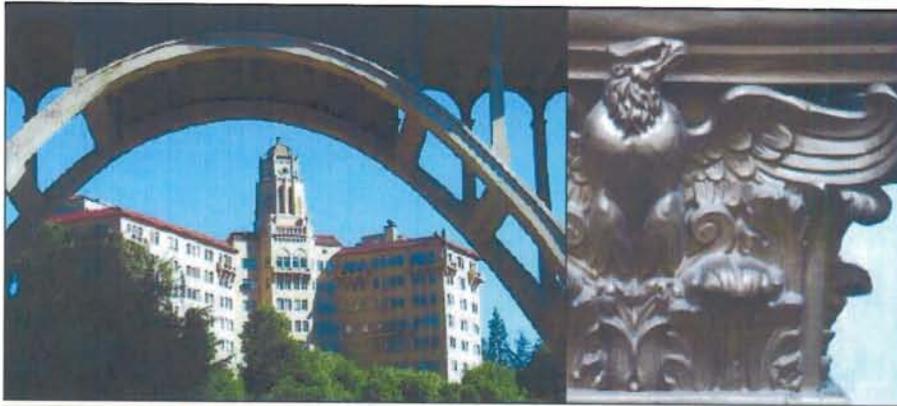
[Audio Recordings](#)

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Cases of Interest

- (11/25/09) 09-17241, 09-17551 - Perry v. Schwarzenegger - Order
- (11/20/09) Perry v. Schwarzenegger No. 09-17241, 09-17551 - Order
- (11/19/09) In the matter of Karen Golinski, No. 09-80173 - Order (2)
- (11/19/09) In the matter of Karen Golinski, No. 09-80173 - Order (1)
- (11/18/09) In the Matter of Brad Levenson, No. 09-80172 - Order
- (11/10/09) In Re Gerald R. Smith, No. 09-80163 - Order For Publication
- (11/05/09) USA v Hinkson, No. 05-30303 - Opinion
- (10/22/09) Doe v Reed, No. 09-35818 - Opinion
- (10/15/09) Doe v Reed, No. 09-35818 - Order

Announcements

- (11/20/09) New rule revisions go into effect 12/1/09
- (11/02/09) Court of Appeals Mourns Loss of Senior Circuit...
- (11/12/09) Memorial Scholarship to Honor Late Senior...

Ninth Circuit Judicial Conference Videos



[Conversation with Solicitor General Elena Kagan](#)

[Remembering Lincoln and Grant: A Fictional Dialogue](#)

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Welcome to the new website for the United States Court of Appeals for the Ninth Circuit. [more >>](#)



- Chief Judge Alex Kozinski

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WHAT IS THE 9th CIRCUIT

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JUDICIAL MISCONDUCT

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PUBLICATIONS

- Annual Report 2008
- Annual Report 2007

NEWS

Ninth Circuit Law Clerks Get Surprise Visitor



The United States Court of Appeals for the Ninth Circuit welcomed dozens of new law clerks this week with an orientation program at the James R. Browning U.S. Courthouse in San Francisco. They also got a surprise visit from Associate Justice Anthony M. Kennedy of the Supreme Court of the United States, who was visiting the court on other business.

[View Larger Photos](#)

Ninth Circuit Judicial Conference: Video

NEW November 19, 2009 Order, Employment Dispute Resolution for the Ninth Circuit Court of Appeals

NEW November 18, 2009 Order, Employment Dispute Resolution Plan for Ninth Circuit Federal Public Defenders & Staff

NEW Memorial Scholarship to Honor Late Senior Circuit Judge Melvin T. Brunetti

NEW Invitation for Public Comment: Reappointment of U.S. Bankruptcy Judge Paul B. Snyder

NEW Court of Appeals Mourns Loss of Senior Circuit Judge Melvin T. Brunetti

NEW Bankruptcy Judgeship Opportunity in Northern District of California

Bankruptcy Judgeship Opportunity in Western District of Washington

 2008 Annual Report is Now Available Online!

February 2, 2009 Order, Employment Dispute Resolution Plan for Ninth Circuit Federal Public Defenders & Staff

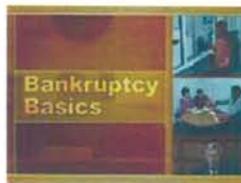
January 13, 2009 Order, Employment Dispute Resolution Plan for the Ninth Circuit Court of Appeals

New Rules for Judicial-Conduct and Judicial-Disability Proceedings will go into effect April 10 in the Ninth Circuit

Judicial Misconduct, Disability Orders Will Be Posted Online

Around the Circuit

New ABA Web Site to Highlight Rulings by Federal Appellate Courts
[Click here for details.](#)



The Administrative Office of the United States Courts created a video presentation which provides general information about the basics in the bankruptcy process. Please note that the AO cannot provide legal or financial advice, and this presentation should not substitute for the advice of competent legal counsel.

[View the videos >>](#)

In an effort to improve public understanding of the Federal Court System, the Public Information and Community Outreach (PICO) Committee has created a short video. Introduction and narration by District Judge Marilyn Huff from the Southern District of California.



[\(watch video\)](#)

Chief Judge Alex Kozinski



Welcome to the web site of the United States Courts for the Ninth Circuit. This site will provide

you with general information about the federal judicial system and specific information about federal courts in the Ninth Circuit, which encompasses nine western states and two Pacific Island jurisdictions.

Public Access to Court Electronic Records



Judicial Council

2009-2010 Judicial Council

This site is maintained by the Office of the Circuit Executive (OCE) as authorized by the Judicial Council of the Ninth Circuit, the chief policy-making body for all of the courts in the circuit. [» More](#)



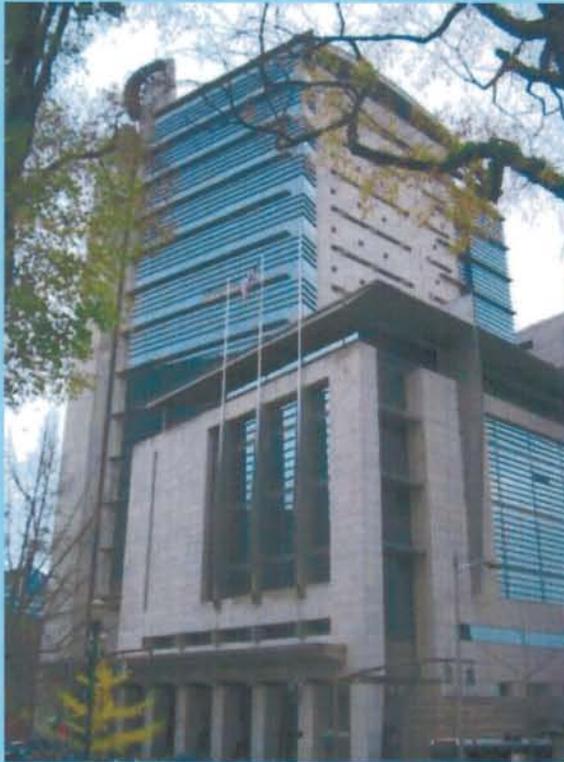
NINTH CIRCUIT LIBRARY

SERVING THE UNITED STATES COURTS
FOR THE NINTH CIRCUIT

Welcome

The Library primarily serves the nearly 400 judges and 6,000 court staff in the Ninth Circuit. Headquartered in San Francisco, we have [branches](#) throughout the nine most western states. In addition to serving the federal courts, we provide limited service to other federal agencies, state and local courts, members of the bar, and the public.

Featured Courthouse



Mark O. Hatfield United States Courthouse Portland, Oregon

The Mark O. Hatfield United States Courthouse was named in honor of former U.S. Senator Mark O. Hatfield. Completed in 1997, it houses the United States District Court for the District of Oregon. Its design is a collaboration between the architecture firms Kohn Pedersen Fox Associates of New York, and Broome, Oringdolph, Randolph, and Associates (BOORA) of Portland, Oregon.

The Library

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The Ninth Circuit

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Research

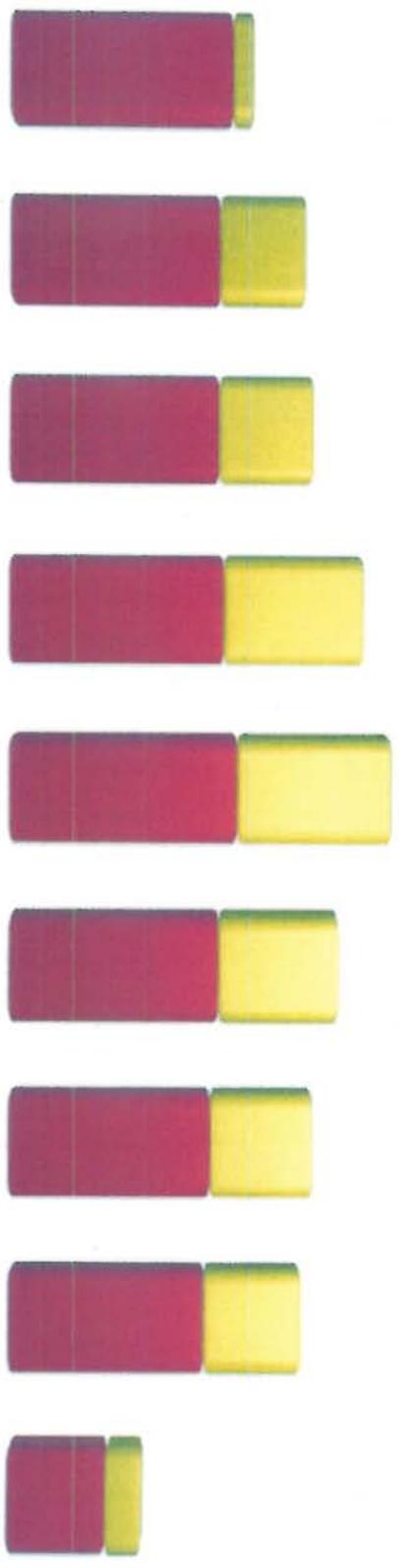
- General Research Links
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- Ninth Circuit State & Local Resources
- Law Libraries in the Ninth Circuit

The Judiciary

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- History of the Federal Judiciary
- Journalist's Guide to the Federal Judiciary
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Ninth Circuit Immigration Calendar Year Filings

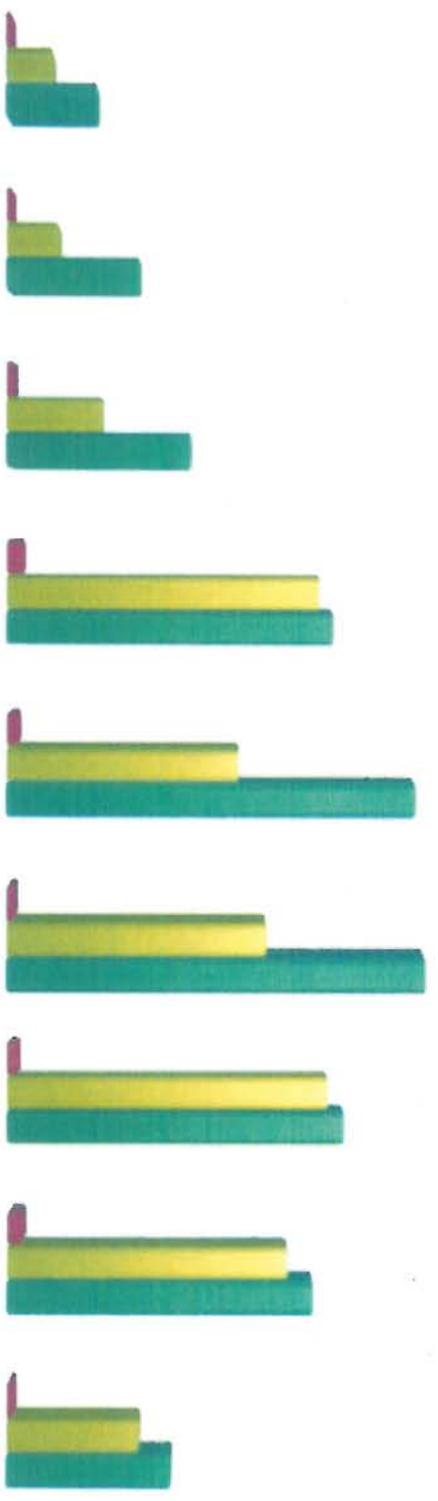
Year	2001	2002	2003	2004	2005	2006	2007	2008	2009
BIA Filings	9%	29%	31%	40%	40%	36%	34%	33%	27%
Other Filings	911	3665	4019	5944	6555	5095	4358	4118	1551
Total	10369	12597	12933	15091	16277	14036	12892	12396	5730



Ninth Circuit BIA and Other Filings

Ninth Circuit Immigration Calendar Year Terminations (BIA Only)

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009
Opinion	4% 43	3% 38	3% 54	2% 112	2% 79	1% 50	1% 70	3% 114	2% 44
Memorial Order	33% 345	27% 381	33% 703	48% 2299	35% 1704	38% 1904	48% 2355	46% 2058	44% 972
Order	63% 673	70% 981	64% 1358	50% 2394	63% 2995	61% 3069	51% 2470	51% 2241	54% 1213
Total	1061	1400	2115	4805	4778	5023	4895	4413	2229



Ninth Circuit CY Terminations (BIA)

United States Court of Appeals for the Ninth Circuit
Court Year Filings for the period ending December 31, 2008 (District & Casetype / BIA)

Dist/Casetype	AK	AZ	C.CA	Ea.CA	No.CA	So.CA	GU	HI	ID	MT	NV	NMI	S.CT. NMI	OR	E.WA	W.WA	TOTAL
CIVIL	51	216	718	184	349	136	3	83	46	72	187	6	0	143	57	191	2,442
CRIMINAL	40	281	347	84	61	219	4	35	31	162	98	4	0	73	79	83	1,601
AGENCY:	13	312	2,238	5	863	324	6	19	12	1	100	0	0	50	0	246	4,189
<i>of agency BIA:</i>	10	310	2,215	1	825	323	6	18	12	0	92	0	0	39	0	246	4,097
PRISONER	25	240	738	730	359	154	3	38	41	56	237	0	0	152	44	142	2,959
ORI.Proc.	4	69	364	121	115	52	2	8	17	8	39	0	0	18	9	51	877
Bnkruptcy-DC	0	13	26	10	15	6	0	2	1	0	5	0	0	6	0	2	86
BAP	1	4	5	9	3	1	0	0	0	1	1	0	0	1	1	0	27
TAX	9	0	2	0	4	0	0	1	0	0	1	0	0	1	1	0	19
MISC.Proc.	0	3	9	4	7	2	0	0	0	0	2	0	0	0	1	1	29
																	12,229
TOTAL:	143	1,138	4,447	1,147	1,776	894	18	186	148	300	670	10	0	444	192	716	12,229

Source: AIMS, includes miscellaneous cases

Court Year Filings by District (BIA) - September 30th 1997 to 2007

YEAR	AK	AZ	C.CA	Ea.CA	No.CA	So.CA	GU	HI	ID	MT	NV	NMI	S.CT. NMI	OR	E.WA	W.WA	INS TOTAL	DIST. TOTAL
1997	172	856	2,697	747	1,428	696	68	228	108	188	476	8	3	630	176	617		9,098
BIA	5	71	511	0	204	114	3	11	1	1	9	0	0	8	1	70	1,009	
1998	174	823	3,097	795	1,401	847	47	205	152	189	471	9	4	514	161	658		9,547
BIA	4	67	544	3	256	138	1	9	1	0	4	0	0	8	0	61	1,096	
1999	184	795	2,811	862	1,350	799	51	411	146	203	511	15	5	564	152	697		9,556
BIA	12	61	387	0	215	163	0	6	1	0	16	0	0	9	0	73	943	
2000	138	877	2,970	839	1,282	800	65	197	119	162	537	25	3	479	162	686		9,341
BIA	4	116	348	3	182	142	21	18	0	1	17	0	0	10	4	54	920	
2001	157	1,015	3,270	1,074	1,283	864	33	231	137	205	678	19	0	582	263	673		10,484
BIA	0	113	428	3	181	134	4	7	1	1	24	0	0	6	3	51	956	
2002	121	1,046	3,978	1,014	1,742	908	34	234	142	262	582	16	0	587	175	668		11,509
BIA	3	192	1,312	1	665	262	8	28	3	3	49	0	0	21	0	118	2,665	
2003	119	1,186	4,609	888	2,013	929	32	217	168	264	680	18	4	559	210	736		12,632
BIA	6	260	1,949	0	1,105	334	13	65	1	18	84	0	0	51	0	264	4,150	
2004	116	1,083	5,329	837	2,467	984	67	228	167	325	829	17	2	555	259	748		14,013
BIA	1	201	2,669	0	1,422	428	27	50	1	2	147	1	0	63	0	219	5,231	
2005	165	1,212	5,704	916	3,406	1,181	40	264	151	325	799	10	0	647	273	964		16,057
BIA	4	262	3,021	3	2,231	462	3	47	4	2	155	0	0	68	0	265	6,527	
2006	131	1,220	5,218	915	2,789	1,106	35	269	179	355	759	19	0	600	259	811		14,665
BIA	4	339	2,757	5	1,717	476	6	48	3	5	135	0	0	69	0	236	5,800	
2007	103	1,118	4,816	905	2,125	804	20	210	140	375	557	14	0	480	187	752		12,606
BIA	3	237	2,335	2	1,050	265	3	27	5	0	59	0	0	38	0	175	4,199	
																	33,496	129,508

**OFFICE OF THE CIRCUIT EXECUTIVE
NINTH CIRCUIT CURRENT AND FUTURE VACANCY TABLE**

Court	Vacancy in Authorized Judgeship	Date Vacancy Created	By Reason of	Nominee (If Any)	Date Nominated	Status of Nomination Last Action (such as referred to Senate Jud. Com.)
Court of Appeals	Stephen S. Trott Pub. L 110-177 Michael D. Hawkins	12-31-04 1-21-09 2-12-10	Senior Status New Position Senior Status	No nominee No nominee No nominee		
Arizona	Frank R. Zapata	8-3-10	Senior Status	No nominee		
Cent. Cal.	Nora M. Manella George P. Schiavelli Alicemarie H. Stotler Florence-Marie Cooper Stephen G. Larson	5-22-06 10-5-08 1-5-09 3-15-10 11-2-09	Resigned Resigned Senior Status Retired Resigned	Jacqueline H. Nguyen Dolly M. Gee No nominee No nominee No nominee	7-31-09 8-6-09	Vote placed on Senate Executive Calendar Vote placed on Senate Executive Calendar
East. Cal	Frank C. Damrell, Jr.	12-31-08	Senior Status	No nominee		
No. Cal.	Martin J. Jenkins Ronald M. Whyte Maxine M. Chesney Marilyn Hall Patel	4-4-08 3-2-09 6-30-09 10-30-09	Resigned Senior Status Senior Status Senior Status	Edward M. Chen No nominee Richard Seeborg No nominee	8-6-09 8-6-09	Vote placed on Senate Executive Calendar Vote placed on Senate Executive Calendar
So. Cal	M. James Lorenz Jeffrey T. Miller Thomas J. Whelan	10-25-09 6-6-10 8-15-10	Senior Status Senior Status Senior Status	No nominee No nominee No nominee		

Last updated 11-18-09

Court	Vacancy in Authorized Judgeship	Date Vacancy Created	By Reason of	Nominee (If Any)	Date Nominated	Status of Nomination Last Action (such as referred to Senate Jud. Com.)
Hawaii	Helen W. Gillmor	6-30-09	Senior Status	No nominee		
Nevada	Brian E. Sandoval	9-15-09	Resigned	No nominee		
Oregon	Garr M. King Ancer L. Haggerty	1-30-09 8-26-09	Senior Status Senior Status	No nominee No nominee		
East. Wa.	Fred Van Sickle Robert H. Whaley	5-1-08 7-12-09	Senior Status Senior Status	Rosanna M. Peterson No nominee	10-13-09	Jud. Com. hearing 11-18-09

Last updated 11-18-09

Electronic Devices Policy

As a preliminary matter, the subcommittee recognizes the inherent authority of a judge presiding over a proceeding to control activities in his or her courtroom, including the use of electronic devices capable of wireless communications.

While keeping this principle in mind, the subcommittee does not endorse any policy that broadly restricts possession and use of electronic devices within a courthouse. Given the expanding wireless communications infrastructure and the extent to which the public now depends on this technology, the subcommittee does not believe a broad ban is desirable and may not be feasible.

The subcommittee recognizes there are legitimate concerns about the potential for misuse of this technology, including by persons summoned for juror service. To address these concerns, the subcommittee believes each district court should develop its own policy on use of electronic devices, and disseminate the policy widely to the bar, public and media. To assist the district courts in developing a policy, the subcommittee offers the following principles/best practices.

General considerations:

1. Anyone should be allowed to bring a cell phone, a Blackberry or other personal digital assistant (PDA), a laptop computer or similar functioning device into the courthouse.
2. Except for courtrooms, persons may use such devices in public areas of the courthouse to make telephone calls or to transmit and receive data communications. For reasons of privacy, safety, and security, use of these devices to take photographs or for audio or video recording or transmission should be prohibited in the courthouse (exceptions for court staff, authorized vendors or for educational or ceremonial events).
3. In courtrooms, persons may use such devices to take notes and to transmit and receive data communications. Persons may not use these devices for telephone calls, photographs or audio or video recording or transmission. The judge may prohibit or further restrict use of such devices if they interfere with the administration of justice, the security of the proceeding or the integrity of the process.

The subcommittee makes no recommendations associated with allowing designated news media to use cameras in the courtroom. The Judicial Council of the Ninth Circuit recently addressed this issue by way of a Ninth Circuit Judicial Conference resolution, which was forwarded to the JCUS Committee on Court Administration and Case Management.

4. It should be anticipated that reporters, bloggers and other observers seated in the courtroom may use these devices to prepare and post online news accounts and commentary during the proceedings. Judges should instruct counsel to instruct witnesses who have been excluded or subject to exclusion agreements not to receive or view accounts of other witnesses' testimony prior to giving their testimony.
5. Every effort should be made to inform the public about where and how electronic devices may be used in the courthouse. Notices should be posted in the courthouse and on the court's web site.

For jurors:

Considering the difficulty the judiciary has in finding jurors, courts should not make the prospect of jury service even less attractive and more cumbersome by prohibiting use of wireless communications devices. The subcommittee suggests the following:

1. Persons summoned for jury service should be allowed to bring a cell phone, a Blackberry or other personal digital assistant (PDA), a laptop computer or similar functioning device into the jury assembly area, and to use these devices in the same manner as allowed in other public areas of the courthouse.
2. During voir dire, trial, and deliberations, a juror may use an electronic device only in accordance with the instructions delivered by the judge at the commencement of jury selection.
3. Judges should clearly admonish jurors not to use these devices to read news accounts of the trial, conduct research related to the case, ask legal questions of anyone, discuss the case with anyone, or express their views online via blogs, Twitter accounts, instant messaging systems, text messaging or other means. The admonition should include an explanation of why these

prohibitions are necessary, and should be delivered in addition to and not as a substitute for the Model Jury Instructions, 9th Cir. Crim. Jury Instr. 1.9 (2003) and 9th Cir. Civ. Jury Instr. 1.12 (2007).

4. Courts should be aware that jurors may desire to take notes on electronic devices. The subcommittee does not believe this will be feasible in most courthouses without upgraded infrastructure, additional staff support and technological safeguards for the electronic data. Until then, courts should not be obligated to provide jurors with anything more than the means to take notes in writing. Meanwhile, courts should monitor the development of methods by which jurors can utilize electronic devices for taking notes.
5. Courts should be cognizant of Ninth Circuit Model Jury Instruction 2.14 Evidence in Electronic Format, which calls for courts to provide a computer and associated equipment in the jury deliberation room for viewing of electronic exhibits. Courts also should consider permitting deliberating jurors to have electronic access to the final jury instructions in addition to providing each juror with a printed copy of the final instructions.

As to other use of electronic devices during the course of deliberations -- i.e., while the jurors are discussing among themselves what the verdict should be -- there is an additional concern that courts should take into account. Ongoing jury deliberations must remain not only confidential and private, but devoid of potentially chilling features. For a juror to take notes on an electronic device about what other jurors are saying would create such a risk of intimidation, and if the juror were allowed to remove his electronically-recorded notes from the jury room, it might also enhance the risk that the jury's deliberations would be widely disclosed at the end of the case.

Accordingly, at the very least courts should take appropriate steps to assure that if such electronic note-taking is not prohibited altogether, then whatever has been placed on an electronic device during the course of deliberations may not be removed from the jury room at any time and will be destroyed at the conclusion of the jurors' service (as the subcommittee understands is the current practice as to handwritten notes).

6. Every effort should be made to instruct properly and inform citizens summoned for jury duty, through summons, questionnaires or the court's website, as to where and how wireless communications devices may be used in the courthouse. This would include information on use in the jury

assembly room, while on trial breaks or lunch hours, and before and/or during deliberations.



JUDICIAL COUNCIL OF THE NINTH CIRCUIT
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

James R. Browning United States Courthouse
95 Seventh Street
San Francisco, California 94103



Cathy A. Catterson
Circuit & Court of Appeals Executive

(415) 355-8299

May 7, 2009

Honorable John R. Tunheim
Chair
U.S. Judicial Conference Committee on
Court Administration & Case Management
13E United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Re: *Cameras in the Courtroom*

Dear Judge Tunheim:

I write on behalf of the Judicial Council of the Ninth Circuit to ask that the Committee on Court Administration and Case Management consider the resolution approved at the July 2007 Ninth Circuit Judicial Conference recommending that the Judicial Conference of the United States (JCUS) change its policy "to permit photographing, recording and broadcasting non-jury, civil cases before the district courts." The Ninth Circuit Judicial Council considered the resolution at a number of meetings following the 2007 Conference but deferred action to await possible developments at the national level. The Council recently concluded that it is appropriate to forward the resolution now and ask that it considered by your Committee at its June meeting.

Enclosed please find the materials that were considered by the Judicial Council. Please let me know if you have any questions or wish to receive any additional materials. Thank you.

Sincerely,


Cathy A. Catterson

c: Ninth Circuit Judicial Council

2007 Ninth Circuit Judicial Conference

RESOLUTION

Recommending a change to the Judicial Conference of the United States' policy to permit photographing, recording and broadcasting non-jury, civil cases before the district courts.

Should the Ninth Circuit encourage the Judicial Conference of the United States to reconsider its position and permit circuits to adopt a rule allowing photographing, recording, and broadcasting non-jury, civil proceedings before the District Courts?

Judges			Lawyers			Overall		
<i>Yes</i>	<i>No</i>	<i>No Vote</i>	<i>Yes</i>	<i>No</i>	<i>No Vote</i>	<i>Yes</i>	<i>No</i>	<i>No Vote</i>
90	63	0	81	33	0	171	96	0

RESOLUTION 1

INSTITUTING A CIRCUIT RULE PERMITTING PHOTOGRAPHING, RECORDING AND BROADCASTING IN NON-JURY, CIVIL CASES BEFORE THE DISTRICT COURTS

WHEREAS, a study conducted by the Federal Judicial Center from July 1, 1991, to June 30, 1993, using the guidelines approved by the Judicial Conference of the United States, resulted in a recommendation that district judges be allowed to permit photographing, recording, and broadcasting of civil proceedings consistent with those guidelines; and

WHEREAS, the Judicial Conference of the United States has authorized each court of appeal to decide for itself whether to permit the taking of photographs and radio and television coverage of appellate arguments since 1996, but specifically urged each circuit judicial council to adopt an order to prohibit such electronic coverage in the United States District Courts; and

WHEREAS, the Judicial Council of the Ninth Circuit voted to adopt the policy of the Judicial Conference of the United States regarding the use of cameras in courtrooms on May 24, 1996; and

WHEREAS, the Chief Judge of the Ninth Circuit issued an Order in June 1996 to allow photographing, recording and broadcasting in its appellate courtrooms, subject to the discretion of the presiding judges, and under guidelines approved by the Judicial Conference of the United States, but specifically prohibited similar electronic coverage in the United States District Courts; and

WHEREAS, Ninth Circuit panels have permitted electronic coverage more than 130 times between 1991 and 2005 in appellate proceedings; and

WHEREAS, an overwhelming majority of the Ninth Circuit judges who have allowed photographing, recording and broadcasting of their proceedings have had a positive experience with such coverage; and

WHEREAS, significant technological advances have been made to allow electronic coverage of courtroom proceedings with minimally invasive equipment since the Ninth Circuit last considered whether to permit electronic coverage in the United States District Courts; and

WHEREAS, it is recognized that providing the public with greater access to the working of the courts through electronic coverage of civil court proceedings would promote greater public understanding of the role and function of the federal judiciary; and

WHEREAS, the Lawyer Representatives Coordinating Committee ("LRCC") supports a rule that would permit the photographing, recording and broadcasting of non-jury, civil proceedings before the District Courts of the Ninth Circuit, subject to the discretion of the presiding judge and under guidelines similar to those approved by the Judicial Conference.

Now, therefore, be it **RESOLVED**:

- 1) The Ninth Circuit should encourage the Judicial Conference of the United States to reconsider its prior position concerning the photographing, recording, and broadcasting of non-jury, civil proceedings before District Courts, and to the extent permitted by Judicial Conference procedures, this Circuit should adopt a Rule that would allow the photographing, recording, and broadcasting of non-jury, civil proceedings before the District Courts in the Ninth Circuit.
- 2) The proposed Rule would apply guidelines consistent with those already in place and used by the Ninth Circuit in its appellate proceedings.
- 3) Before the next Circuit Conference, a committee should be appointed by the Chief Judge of the Ninth Circuit to prepare a presentation to the Judicial Conference of the United States setting forth this position and recommendation for change.

Article III Vacancies -- As of 11/30/2009			
Court	Vacancies	Nominees Pending	Nominees Pending for Future Vacancies
US Court of Appeals	19	9	0
US District Courts	78	7	1
US Court of International Trade	0	0	0
Total	97	16	1

Article III Judgeships -- As of 11/30/2009		
Court	No	Number of Judgeships
Supreme Court		9
<u>Court of Appeals:</u>		
Regional Courts of Appeals	167	
Federal Circuit	12	179
<u>District Courts:</u>		
<u>Article III</u>	675	
Territorial Courts	4	679
<u>Court of International Trade</u>		9
TOTAL		876