

Opinion: Eastern District deserves full slate of judges

By Carl Tobias

Last week, Eastern District of California Judge Anthony Ishii assumed senior status after 15 years of valuable service. This means that the Eastern District will experience two openings in six judgeships. The Administrative Office of the U.S. Courts has designated both as emergencies because of the substantial caseloads that the district's judges carry.

These vacancies, which are one-third of the Eastern District positions, undermine justice. Thus, President Obama must swiftly nominate, and the Senate promptly confirm, judges for the empty seats.

Obama has robustly sought advice from Republicans and Democrats where openings arise before nominations. He has proposed nominees of even temperament, who are intelligent, ethical, industrious, independent and diverse in terms of ethnicity, gender and ideology. A quintessential example is Eastern District Judge Kimberly J. Mueller.

Sen. Patrick Leahy, D-Vt., the Judiciary Committee chair, has expeditiously scheduled hearings and votes, forwarding nominees to the floor where many languish for months. On Aug. 3, the Senate recessed without acting on 22 qualified nominees whom the panel reported because the GOP would not vote and again on Sept. 22 without considering 19 exceptional nominees.

Republicans should cooperate more. The major bottleneck is the floor. Sen. Mitch McConnell, R-Ky., the minority leader, has rarely agreed to votes. Most troubling has been GOP unwillingness to move noncontroversial, strong nominees – inaction that conflicts with Senate traditions. When the chamber has ultimately voted, it easily approved most

nominees, like Stephanie Rose, who won 89-1 appointment on Sept. 10.

The two Eastern District vacancies are essential. Obama has nominated one well-qualified individual. He should keep cooperating with Leahy and Sen. Harry Reid, D-Nev., the majority leader, who sets floor votes, and their Republican analogues to facilitate confirmation while nominating a superb candidate for Judge Ishii's opening.

Obama must also continue working closely with California Democratic Sens. Dianne Feinstein and Barbara Boxer. Each has created merit selection commissions, which seek applications, interview prospects and make suggestions to the senators who correspondingly forward recommendations to the White House.

These efforts led Obama to nominate on June 25, Sacramento County Superior Court Judge Troy Nunley for the seat that opened when Judge Garland Burrell assumed senior status on July 4. The nominee earned the qualified American Bar Association rating. Nunley served as a deputy district attorney in Alameda County from 1991 to 1994 and in Sacramento County from 1996 to 1999 and served as deputy attorney general in the California Attorney General's Office from 1999 to 2002 when he joined the bench.

Leahy expeditiously scheduled a Sept. 19 hearing for Nunley at which Feinstein and Boxer voiced their strong support. Sen. Charles Grassley, R-Iowa, the ranking member, questioned the nominee, who acquitted himself well, and Grassley seemed satisfied with the judge's responses. However, the Judiciary Committee has not voted on Nunley because the Senate recessed on Sept. 22.

When senators return on Nov. 13, the panel must swiftly vote and McConnell must agree to a prompt vote on the nominee because he is well-qualified and the Eastern District desperately needs all six judges to effectively resolve its

enormous docket. Eastern District judges have carried twice the average caseload of judges in the remaining 93 federal districts for many years. The U.S. Judicial Conference, the courts' policy-making arm, has recommended that Congress authorize six new judgeships for the district. These suggestions are premised on conservative estimates of case and work loads. However, more judgeships will help little, if the Senate cannot confirm nominees.

Obama should rapidly nominate a talented candidate for Ishii's vacancy. The White House is not currently evaluating suggestions from the California senators, so the administration might encourage Feinstein and Boxer to quickly tender names. Once the president has nominated a fine candidate, the Senate must expeditiously process the nominee.

The two Eastern District of California openings undermine justice. Thus, Obama must swiftly nominate and senators must promptly approve excellent judges, so that the court can deliver justice.

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