

Why the Ninth Circuit Shouldn't Be Split

We asked appellate lawyers to share their best arguments for preserving the nation's largest—and most controversial—appeals court.

February 08, 2017 at 08:12 PM By **ALM Staff**

SAN FRANCISCO—The Ninth Circuit's liberal-leaning reputation and California-heavy docket have long made it a favorite target of conservative lawmakers from other Western states who would like to see their appeals routed elsewhere. Since President Donald Trump's inauguration, Republican senators from [Arizona](#), [Alaska](#) and [Montana](#) have backed legislation aimed at splitting the U.S. Court of Appeals for the Ninth Circuit.

Critics have long maintained that the court's size—it's the nation's largest appeals court—and caseload make it unwieldy and slow to issue rulings. But in the wake of the renewed call to split the Ninth Circuit, The Recorder reached out to practitioners to let them make their best arguments for keeping the circuit as it is. Here's what they had to say:



Rex Heinke.

Photo: Jason Doiy

"Those who know the [court] best have opposed splitting it, including almost all the judges of the Ninth Circuit, whatever their political affiliation, and most bar associations. A split will increase costs significantly: In 2005, the Administrative Office of the Courts estimated the cost of splitting as around \$96 million plus annual operating expenses of \$16 million a year for the New Circuit. While the Ninth Circuit is not as fast as other circuits in deciding cases, this appears to be due to chronic delays in appointing new judges: 14 percent of the positions are vacant."—*Rex Heinke, Akin Gump Strauss Hauer & Feld*



Anna-Rose Mathieson.

Photo: Jason Doiy

"The more minds the merrier. There's no real way to divide the circuit up into smaller blocks that each contain uniform sets of judges, and no real reason to try—diversity helps judges figure out

the right answers." — *Anna-Rose Mathieson, California Appellate Law Group*



Benjamin Shatz.

"Tellingly, the court itself isn't asking to be split based on being overburdened—which you'd think it would do, if there really were efficiency problems. From the public's point of view, sure, it does take a long time for appeals to be resolved. But appeals generally take a long time in any system. It's not the public generally or the legal community in particular, nor the court system itself, that's clamoring for a split. The hue and cry seems to be coming from the politicians. That's a sign that it's a political, rather than administration of justice, issue."— *Benjamin Shatz, Manatt, Phelps & Phillips*



Jeffrey L Bleich.

"There is no sensible way of splitting the Ninth Circuit and no reason to do so. California is so much larger than all of the other states included that either you have to split the state in half—meaning that you could have citizens of the same state getting different outcomes—or you make California its own independent legal jurisdiction. That would eliminate the valuable diversity that comes from multi-state jurisdictions, create an unusually small and non-contiguous circuit, and would not improve efficiency."— *Jeffrey Bleich, Dentons*



Ben Feuer.

Photo: Victoria Smith

"Efficiencies of scale support larger rather than smaller circuits. The Ninth Circuit has already established courthouses and administrative procedures, has an efficient organizational system, has decisional law and in-court rules, and has highly trained and proficient staff based in its headquarters in San Francisco. Adding a new circuit would require doubling the bureaucrats hired, developing a new headquarters and system for running the circuit, obtaining new property and space to administer a separate circuit, and create other costs in managing a new bureaucracy."— *Ben Feuer, California Appellate Law Group*

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