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CHIEF JUDGE
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UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

November 7, 1990

Hon. Charles Clark
Chief Judge
U.S. Court of Appeals
for the Fifth Circuit
245 East Capitol Street
Room 302
Jackson, Mississippi 39201

Re: Judicial Councils, 28 U.S.C. § 332(a)

Dear Charles:

I recently attended the First Circuit Judicial Conference. At that time I received a copy of the Biden legislation which included a revision of 28 U.S.C. § 332(a) relating to the formation of judicial councils. The effect of the legislation is to repeal 332(a) (1) and (3). The legislation now amended requires the membership of the judicial council to be elected by all active judges of the circuit. By repealing subsection 3, which provided that the number of judges to sit on judicial councils be determined by the judges of the court of appeals, the resultant effect is that all active judges will determine the circuit judge members as well as the district judge members. This means that the constituency of the council will be an equal number of circuit and district judges (plus the chief judge of the circuit), but it also means that the majority of district judges shall determine the judges who will serve on the council.

For example, in a circuit which has ten active circuit judges such as ours, unless the district judges would vote to elect twenty judges to the council (which in my opinion would be unwieldy), it means that the district judges shall determine how many and which circuit judges will serve. I think this will breed resentment and political infighting such as we have never seen before.

Bill Burchill indicated to me that he thought the origin of the language of the amendment came from the Executive Committee of the Judicial Conference. I do not fault the Executive Committee any more than I fault the entire Judicial Conference for letting this matter slip through on the consent calendar. I think it is imperative that the number of council members be determined by the circuit court and that once the number is determined the district judges should be able to vote for their members and the

Hon. Charles Clark
November 7, 1990
Page two

circuit judges vote for their members. I do not fault the concept of equality.

There may be varying ideas about this. I do not know what procedures can be used to get the act amended before we need to reconstitute the councils. It is my understanding that the act is effective immediately. I would appreciate your advises.


D.P.L.

cc: Hon. William H. Rehnquist
All Chief Circuit Judges
Mr. L. Ralph Mechem ✓
Mr. William R. Burchill, Jr.