



Federal Bar Association

February 13, 2018

MEMORANDUM

TO: Federal Bar Association

FROM: West Allen, Chair, Government Relations Committee
Bruce Moyer, Counsel for Government Relations

SUBJ: Update on Government Relations and Public Policy Developments

Article III Judicial Vacancies and Confirmations

As of February 12, the number of Article III judicial vacancies stood at 146 vacancies, with the number of pending judicial nominees increasing to 50, with 29 future vacancies expected. The number of vacancies considered “judicial emergencies” by the Judicial Conference of the United States continues to grow and now stands at 73 vacancies. Here are the overall numbers:

Current Article III Vacancies

	Vacancies	Nominees Pending
Supreme Court	0	0
Courts of Appeal	17	5
District Courts	121	43
US Ct of International Trade	2	0
US Ct of Federal Claims	<u>6</u>	<u>2</u>
Total	146	50

Senate Confirmations of Trump Article III Nominees

Supreme Court	1
Courts of Appeal	13
District Courts	10
US Ct of International Trade	0
US Ct of Federal Claims	<u>0</u>
Total	24

One circuit court nominee and four district court nominees were confirmed in January. They were:

- Judge David Stras to the Eleventh Circuit Court of Appeals (January 30, 2018)
- William L. Campbell to the Tennessee Middle District (confirmed January 9, 2018)
- Thomas Lee Robinson Parker to the Tennessee Western District (confirmed January 10, 2018)
- Walter David Counts III to the Western District of Texas (confirmed January 11, 2018)
- Michael Lawrence Brown to Northern District of Georgia (confirmed January 11, 2018)

The confirmation on January 30 of Minnesota State Supreme Court Justice David Stras to the Eighth Circuit Court of Appeals represented the first time in 30 years that the Senate went ahead with a committee hearing and a vote on a judicial nominee despite the lack of return of the corresponding blue slip from one of his home-state senators.

On January 18, the Senate Judiciary Committee reported out 17 of President Trump's judicial nominees, an exceptionally large number of nominees to be approved at one time. Of the 17 nominees, three were nominated to circuit court seats, and 14 to district court seats. Eight nominees were approved on 11-10, party-line votes, with only two winning unanimous support.

On January 23 and February 12, President Trump announced his tenth and eleventh waves of judicial nominees. The January 23 announcement of 12 nominees included one circuit nominee, eight district nominees and three nominees to non-Article III courts (the Court of Appeals for Veterans Claims, the Tax Court and the Court of Federal Claims). Five were for emergency vacancies in Texas and Louisiana. The February 12 announcement included four circuit nominees — including one for the Ninth Circuit, two for the Seventh Circuit and one for a Fifth Circuit vacancy — and five district nominees.

Overall, Trump nominations to circuit court and district court vacancies in Republican-majority states continue to take precedence, while vacancies pile up in Democratic states like California, New York and New Jersey. The most recent February 12 announcement may signal a thaw in White House relationships with Senate Democrats, with three of the four circuit nominees coming from states represented by Democratic Senators (one from Hawaii and two from Illinois).

The results of the Trump Administration's efforts to restock the federal bench will be lasting. As David Lat in "Above the Law" recently [noted](#), "Many of President Trump's initiatives might get stuck in Congress, struck down by courts, or undone by his successor — but his appointees to the federal bench, appointed for life, will be around for a long, long time (especially given the administration's focus on youth when selecting nominees)."

Funding for the Federal Judiciary

President Trump on February 9 signed into law a sweeping \$320 billion budget agreement, reached by Congress after months of negotiations, including two brief government shutdowns. The legislation continues stopgap funding for the federal courts and the rest of the federal government through March 23. Between now and March 23, House and Senate appropriators

will work to craft the twelve fiscal 2018 spending bills for inclusion in a final “omnibus” measure. Funding for the federal judiciary, which is contained within the funding bill for financial and general government agencies, is likely to be approved at the \$7 billion annualized mark, a level slightly above 2017 spending levels.

On February 12, President Trump sent to Congress a \$4.4 trillion federal budget for fiscal 2019, calling for increased military and border spending and cuts to some domestic programs, with a projected increase of more than \$4 trillion in the federal deficit over the next decade. Congress is expected to elevate spending even higher, in light of the two-year budget agreement reached a week earlier. The federal judiciary’s budget request, included within the Trump budget, requests \$7.2 billion, reflecting a 3.2 percent increase above the assumed fiscal 2018 appropriation to support the Constitutional and statutory mission of the federal courts. According to the Administrative Office of the United States Courts, the request will maintain current services across the federal judiciary and sustain progress on several ongoing initiatives, including cybersecurity and space reduction. The request addresses staffing and workload needs in the courts and federal defender offices, improves security at federal court facilities, and funds several new initiatives needed to support judicial operations.

Senate Judiciary Leaders Poise Questions Regarding Sexual Harassment in the Courts

The Republican and Democratic leaders of the Senate Judiciary Committee have requested further details from the federal judiciary on its efforts in addressing sexual misconduct and harassment in the courts. Committee Chairman Chuck Grassley (R-IA) and Ranking Member Dianne Feinstein (D-CA), in a [February 9 letter](#) to James C. Duff, Director of the Administrative Office of the United States Courts, wrote that they were “deeply troubled” by news reports and allegations of sexual harassment and inappropriate workplace behavior in the federal courts. They requested answers to questions regarding a working group that Duff is heading to examine whether changes are needed in the judiciary’s standards of conduct and procedures for investigating and correcting inappropriate behavior in the judiciary.

The senators also cited a [CNN investigative report](#) that analyzed data from the Administrative Office and found that only four of the more than 1,300 complaints filed in the 12 months preceding September 30, 2016, were referred to a special committee for the most serious level of investigation, and that only four of the more than 1200 complaints the year before received such a referral. CNN found that in several high-profile cases, judges resigned while a complaint was pending though they remained eligible, if of retirement age, to a full pension of roughly \$200,000 annually (the amount differs for district court and appeals court judges based on their annual salary). Disciplinary proceedings are also typically halted once the subject of a complaint leaves the bench, CNN said.

Call for Nominations to the FBA 2019 Issues Agenda

The Federal Bar Association annually updates its Issues Agenda and invites members, chapters, sections and divisions to nominate issues for addition to the Issues Agenda. **The deadline for Issues Agenda nominations is Friday, March 30, 2018.**

The Issues Agenda is the blueprint for the FBA's government relations and advocacy efforts. It is a prioritized list of legal and public policy issues that are of significant interest and concern to the FBA because of their impact on the federal legal system and their relationship to federal jurisprudence. The current Issues Agenda is [here](#). To nominate an issue for the Issues Agenda, please use the FBA Issue Nomination Form, which is available [here](#), and transmit the nomination by email to grc@fedbar.org.

Register for Capitol Hill Day: Thursday, April 26, 2018

Register now for FBA Capitol Hill Day, April 26, 2018. Plan to participate in this acclaimed event as FBA leaders from across the country meet with House and Senate offices to discuss important FBA legislative issues that impact the administration of justice and the federal courts. During meetings on Capitol Hill, FBA participants will discuss issues most critical to our Third Branch of government. FBA Capitol Hill Day is becoming more popular each year. Don't miss out on this opportunity to help broaden the FBA's visibility and influence in Congress. More information on the event is available [here](#).