

## President's Message

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### Judicial Vacancies—Is There a Crisis?

**I**N PREPARING MY third message as your Association's President, I am reflecting on the high number of judicial vacancies currently pending in our federal court system. As of mid-November 2010, the Judicial Conference, the policy-making body of the federal

judiciary, had designated over forty-five percent of the existing vacancies in the U.S. Courts of Appeals and the District Courts as "judicial emergencies."

A "judicial emergency" is defined in the circuit court context:

- as any vacancy in a court of appeals where adjusted filings per panel are in excess of 700; and
- any vacancy in existence more than 18 months where adjusted filings are between 500 to 700 per panel.

In the district court context, a "judicial emergency" is defined:

- any vacancy where weighted filings are in excess of 600 per judgeship;
- any vacancy in existence more than 18 months where weighted filings are between 430 to 600 per judgeship; and
- any court with more than one authorized judgeship and only one active judge.

As of mid-November, those designated judicial emergency vacancies numbered 50 in the district and circuit courts out of 106 vacancies and include the 2nd, 4th, 5th, 9th and 11th circuits, and district courts in New York, Massachusetts, Pennsylvania, D.C., Maryland, Virginia, North Carolina, Tennessee, Florida, Georgia, Mississippi, Louisiana, Arkansas, Texas, Arizona, Colorado, Illinois, Minnesota, Wisconsin, Oregon, and California.

Such vacancies afflict the federal courts and those who practice in the federal court system and the public who seek justice in the federal court system for their cases. Judicial vacancies undermine the capacity of the circuit and district courts to function at their optimal and authorized strength. This, in turn, creates detrimental delay in the effective and prompt administration of justice.

Part of the FBA's mission is to advance the federal judicial system and promote effective legal practice before the federal courts and federal agencies. To pursue that mission, the Association maintains an active presence in the nation's capital, monitoring

and participating in the policy-making processes in Congress, the Executive Branch and the federal judiciary. Your Association through the efforts of the Governmental Relations Committee (GRC) ably led by its Chair, Larry Westberg, and assisted by Bruce Moyer, the FBA's government relations counsel, have been calling upon Senate leaders of both parties to promptly address this problem and develop strategies to reduce the time required to fill judicial vacancies. [See Bruce Moyer's article "Vacancy Signs at the Federal Courthouse" in *The Federal Lawyer*, October 2010, Vol. 57, Number Nine] Reducing the number of federal judicial vacancies to a more tolerable level is one of the main action items on the FBA's 2010-2011 Issues Agenda.

The phrase "Justice delayed is justice denied" describes the situation we are facing in a number of circuits and districts throughout the country. The increasing number of federal judicial vacancies in the federal court system is straining the capacity of federal courts to administer justice in an adequate and timely manner. As Congress began its "lame-duck" session in mid-November, there are 20 judgeships unfilled in the circuit courts and 86 judgeships unfilled in the district courts. Forty-seven judicial nominees, 13 nominees to the circuit court of appeals and 34 nominees to the district courts are pending as of mid-November. Of those 47 nominees, 23 nominees (6 circuit and 17 district) have been reported out of the Senate Judiciary Committee and are awaiting the Senate floor vote. Seventeen of these nominees were approved without controversy by the Senate Judiciary Committee. It is uncertain as of mid-November 2010 whether the 23 nominees that have cleared the Senate Judiciary Committee will receive a final vote prior to the Senate recessing for the holidays. All nominations still pending when the "lame-duck" Congress adjourns at the end of 2010 would have to be resubmitted in 2011.

The case for accelerated action on judicial vacancies is further highlighted by the need for The Federal



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#### Endnotes

<sup>1</sup>American Bar Association, Statement by the Commission on the Impact of the Economic Crisis in the Profession and Legal Needs at 1, available at [www.abanet.org/op/lamm/docs/accomplishments-for-website.pdf](http://www.abanet.org/op/lamm/docs/accomplishments-for-website.pdf).

<sup>2</sup>Debra Cassens Weiss, *Law Schools Grow As Jobs Shrink, Producing Irate Unemployed Lawyers*, available at [www.abajournal.com/news/article](http://www.abajournal.com/news/article).

<sup>3</sup>Nathan Koppal, *Bar Raised For Law Grad Jobs*, (May 5, 2010), available at [online.wsj.com/article/SB1000424052748704866204575224309177184416.html](http://online.wsj.com/article/SB1000424052748704866204575224309177184416.html).

<sup>4</sup>NALP, *Market For Law Graduates changes With Recession: Class of 2009 Faced New Challenges* at 1, available at [www.nalp.org](http://www.nalp.org).

<sup>5</sup>*Id.*

<sup>6</sup>*Id.* at 2.

<sup>7</sup>NALP, *Class of 2009 Faced New Challenges With Recession; Overall Employment Masks Job Market Weakness* at 2, available at [www.nalp.org](http://www.nalp.org).

<sup>8</sup>Debra Cassens Weiss, *As 'Troubling Indicators' Mount for 2010 Law Grads, An ABA Expert Issues a Warning*, available at [www.abajournal.com/news/articles](http://www.abajournal.com/news/articles).

<sup>9</sup>*The Value Proposition of Attending Law School*, available at [www.abanet.org/lsd/legaled/value.pdf](http://www.abanet.org/lsd/legaled/value.pdf). Dean Van Zandt's calculation assumes the student would earn \$60,000 per year in an alternative occupation, that law school tuition is \$30,000 per year, that the student works for 30 years as a lawyer and that the discount rate is 5 percent.

<sup>10</sup>Weiss, *supra* note 2.

<sup>11</sup>Joseph Stiglitz, *Why Easier Money Won't Work*, WALL STREET JOURNAL, Oct. 23, 2010.

<sup>12</sup>Karen Sloan, *ABA May Join Push For Law School Transparency*, THE NATIONAL LAW JOURNAL (Oct. 18, 2010); Debra Cassens Weiss, *ABA Weighs Required Disclosure of Law School Job Stats, More Rigorous Reporting*, available at [www.abajournal.com/weekly/article/aba\\_weighs](http://www.abajournal.com/weekly/article/aba_weighs). See *The Value Proposition of Attending Law School*, available at [www.abanet.org/sd/legaled/value.pdf](http://www.abanet.org/sd/legaled/value.pdf).

<sup>13</sup>Sloan, *supra* note 12.

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Judgeship Act (S. 1653, H.R. 362) supported by the Judicial Conference and the FBA to add 12 new circuit judgeships and 51 new district judgeships. Unfortunately, the case for these additional judgeships, which rest upon rising case loads and insufficient resources throughout parts of the federal court system, rests on the assumption that all judgeships are already filled and that no vacancies exist. Similarly, Senate approval of legislation to add 13 permanent bankruptcy judgeships and make permanent 22 temporary bankruptcy judgeships has stalled.

The Federal Bar Association as a matter of policy takes no position on the credentials or qualifications of specific nominees to the federal bench. The FBA's foremost interest lies in the assurance of prompt, dispositive action by the President in nominating qualified federal judicial candidates and the Senate in either confirming or not confirming them in a prompt manner. Such action will ultimately reduce the number of vacancies to a more tolerable level.

The FBA seeks the fair and swift administration of

justice for all litigants in the federal courts. The large number of judicial vacancies prevents the prompt and timely administration of justice in the federal courts, where our members practice. This is causing unnecessary hardship and increased costs on individuals and business with lawsuits pending in the federal courts. Accordingly, on Nov. 19, 2010, as your President, I sent a letter to the Senate leadership urging the Senate to vote up-or-down on those 17 noncontroversial judicial candidates cleared by the Judiciary Committee and especially 7 of those nominees associated with vacancies designated as "judicial emergencies." (See the FBA's letter on [www.fedbar.org/advocacy](http://www.fedbar.org/advocacy).) The FBA continues to "raise its voice" and urge action and the development of strategies to strengthen the effective and prompt administration of justice for our members, the judiciary and the public. **TFL**

*Ashley L. Belleau*

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