



Federal Bar Association

January 17, 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

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](#).

The FBA Government Relations Committee receives all nominations and, with the help of pertinent sections and divisions, recommends action on the nominations to the FBA Board of Directors. Issues appearing on the current Issues Agenda are considered for automatic renewal and do not require renomination. New issues of importance to the practice of federal law, federal jurisprudence and the federal legal profession may be nominated by any FBA member, chapter, section or division.

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

Registration is [now open](#) for FBA Capitol Hill Day 2018. Plan to participate in this acclaimed event on Thursday, April 26, 2018, 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](#).

Article III Judicial Vacancies and Confirmations

The number of Article III judicial vacancies increased by five since our December 6 report to a total 149 vacancies, and the number of pending judicial nominees remained the same at 47, as reported on the Federal Judiciary [website](#).

Current Article III Vacancies

	Vacancies	Nominees Pending
Supreme Court	0	0
Courts of Appeal	17	6
District Courts	124	40
US Ct of International Trade	2	0
US Ct of Federal Claims	<u>6</u>	<u>1</u>
Total	149	47

Senate Confirmations of Trump Article III Nominees

Supreme Court	1
Courts of Appeal	12
District Courts	6
US Ct of International Trade	0
US Ct of Federal Claims	<u>0</u>
Total	19

Three circuit nominees were confirmed within a three-day span in December. They were:

- Leanard Steven Grasz to the 8th Circuit Court of Appeals (confirmed Dec. 12, 2017)
- Don R. Willett to the 5th Circuit Court of appeals (confirmed December 13, 2017)
- James C. Ho to the Fifth Circuit Court of Appeals (confirmed December 14, 2017)

Also, during a 10-day span in December, three judicial nominees withdrew their names, amid concerns over their credentials. A video of the confirmation hearing of one of the nominees, Matthew Petersen, went viral. Despite the controversy, President Trump's record on filling judicial circuit vacancies has far outdistanced his predecessors at this point in a presidency. His confirmation of 12 circuit nominees is more than any president in his first year, and more than Presidents Obama and George W. Bush combined. Senate action on district court judicial nominations has fallen behind, largely because of the priority attached to circuit nominees.

Funding for the Federal Judiciary

Congress has kicked off 2018 with another looming government shutdown, due to a Continuing Resolution that runs out on Friday, January 19. Another CR extending to February 16 is likely, though partisan pressures could delay Senate agreement until the final hours on Friday. Congressional leaders have failed to make progress so far this month on an agreement to lift top-line budget sequestration numbers on fiscal 2018 and 2019 defense and non-defense spending levels, a key first step toward approval of an omnibus fiscal 2018 spending package.

The partisan standoff has been compounded by a growing immigration dispute over the future of the Deferred Action for Childhood Arrivals (DACA) program. The Trump Administration contends that President Barack Obama exceeded his authority when he created the DACA program in 2012, and that Congress must pass legislation protecting “dreamers” if they are to be allowed to stay. The Trump administration also has appealed a federal judge’s injunction of Trump’s plan to phase out DACA, and the Department of Justice has indicated it intends to petition the Supreme Court to intervene in the case, an unusual action that would allow the government to bypass the Ninth Circuit altogether.

Chief Justice Roberts’ Annual Report

Much of Chief Justice Roberts’ recent year-end report on the state of the federal judiciary dealt with emergency preparedness and how the federal courts remained open and administered justice following the devastating hurricanes in Puerto Rico, the Virgin Islands, Texas and Florida. The last two paragraphs of the report highlighted the “new challenge” of sexual harassment in the workplace and announced the creation of an internal task force to assess current procedures within the federal courts to protect law clerks and other court personnel from sexual harassment. Roberts also wrote: “I have great confidence in the men and women who comprise our judiciary. I am sure that the overwhelming number have no tolerance for harassment and share the view that victims must have clear and immediate recourse to effective remedies.”

In reporting on the workload of the federal judiciary over the past year, the Chief Justice noted a series of declines in case filings at the Supreme Court, the appeals courts and the district courts:

- At the Supreme Court, the total number of cases filed decreased by 2.63 percent to 6,305 filings in the 2016 term, which extended to June 2017. Seventy-one cases were argued and 68 were disposed of in 61 signed opinions. This compares to 82 cases argued and 70 disposed of in 62 signed opinions in the 2015 term.
- Filings fell 16 percent to 50,506 in the federal Courts of Appeals. Civil appeals increased one percent. Criminal appeals fell 14 percent, appeals of administrative agency decisions decreased 5 percent and bankruptcy appeals declined 4 percent.
- Civil case filings in the federal district courts fell 8 percent to 267,769. Cases with the United States named as a defendant decreased 29 percent. Filings for criminal defendants changed little, falling less than 1 percent to 77,018. Defendants accused of immigration violations declined two percent, with the southwestern border districts receiving 77 percent of national immigration defendant filings. Drug crime defendants, who accounted for about one-third of total filings, fell

one percent, although defendants accused of crimes associated with drugs other than marijuana rose four percent. Filings for defendants prosecuted for firearms and explosives offenses rose 11 percent. Increases also occurred in filings related to regulatory offenses.

- Petitions filed in federal bankruptcy courts fell 2 percent to 790,830. Fewer petitions were filed in 56 of the 90 bankruptcy courts. Consumer petitions dropped two percent and business petitions fell six percent. Filings declined two percent under Chapter 7 and five percent under Chapter 11. Filings under Chapter 13 decreased one percent. The 2017 total for bankruptcy petitions is the lowest since 2007, which was the first full year after the Bankruptcy Abuse Prevention and consumer Protection Act of 2005 took effect.
- Finally, the number of persons under post-conviction supervision by the federal courts fell two percent over the past year to 134,731 persons.

These sweeping declines in the federal judiciary's workload over the past year come on the heels of a [proposal](#) by Northwestern University law professor Steven Calabresi to considerably expand the size of the federal judiciary, at least by one-third more judges. The proposal from Calabresi, a co-founder of the Federalist Society, has received criticism from both ends of the political and judicial spectra.