



# Federal Bar Association

Journal of the  
Chattanooga Chapter  
Spring Edition 2022

## THE FEDERAL BAR ASSOCIATION—CHATTANOOGA CHAPTER

### A JUDICIAL CONFIRMATION PRIMER

The nomination of federal appellate judge Ketanji Brown Jackson to the United States Supreme Court is one of the top national stories being covered in the media today. With this nomination receiving so much media coverage, it is an excellent time for a primer on the nomination and confirmation process of Supreme Court justices. The same basic process applies to all Article III federal judges, whether for the trial-level district courts, the circuit courts of appeals, or the Supreme Court. The process also demonstrates one of the ways in which the three different branches of our federal government serve as checks and balances on each other.

#### **A Vacancy Occurs.**

The confirmation process requires, first of all, a vacancy. Vacancies can occur because of a sitting judge's retirement, impeachment, or death—or for lower courts, the sitting judge's elevation to a higher court. President Joe Biden nominated Judge Jackson to fill an anticipated vacancy on the Supreme Court created by Justice Stephen Breyer's announcement that he will retire at the end of the current Supreme Court term. If Judge Jackson is confirmed to the Supreme Court, that will in turn create a vacancy in her current seat on the Court of Appeals for the District of Columbia Circuit. It is common for the nomination process to begin upon announcement of an upcoming vacancy.

#### **The President Receives Recommendations.**

The Constitution gives the President the sole power to appoint justices and judges to federal

## Message from the President, Jenna W. Fullerton

I am honored to serve as President of the Federal Bar Association Chattanooga Chapter in 2022. I am excited to announce that our chapter plans to restart and revitalize many of the in-person events we had to discontinue in 2020 and 2021. For example, we will hold in-person lunch and learns with our local judges again. These events have always been a wonderful opportunity for the bench and bar to get to know one another on a more personal level.

Some of you may also remember the small lunches hosted by federal judges for attorneys in their first few years of practice. Our own Judge Curtis Collier kicked off a new season of these “Off the Bench” lunches, and there will be more to come. “Off the Bench” opportunities are open to FBA members in their first three years of practice.

The Chapter will continue its strong civics outreach and education efforts in Chattanooga and the surrounding area. In August, we will host a Teachers’ Law School to help the public learn more about the federal judiciary. In September, we will hold our annual public reading of the Constitution—an event many of our members look forward to all year. If you are interested in being involved in any of these activities, please reach out to me or any other board member.

This year, our chapter will be more connected with its members than ever before. In addition to virtual newsletters, the Chapter will be posting on its Facebook page to keep our membership informed on chapter news and events throughout the year. Be sure to “Like” our page at <https://fb.me/chattanoogaafba> to stay informed.



Jenna Fullerton

## FBA ANNUAL MEETING

On November 9, 2021, members gathered for the FBA Chattanooga Chapter Annual Meeting at the Chattanooga Hotel with a keynote address by the Honorable Chief Justice Jeffery S. Sutton. The day included the Annual Sixth Circuit Review encompassing practice updates from Criminal, Civil, and Bankruptcy Law and the presentation of various awards. The Honorable Travis R. McDonough Chief U.S. District Judge for the Eastern District of Tennessee gave State of the Judiciary remarks. The day concluded with a panel plenary session with Eastern District Judges.



Zac Greene, former President of the FBA Chattanooga Chapter, delivers remarks during the Chapter's Annual Meeting

[Cont. on p. 5]

courts, but only with the advice and consent of the United States Senate: “[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . , Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for . . . .” U.S. Const. art. II, § 2. When a vacancy occurs or is announced, the President receives recommendations from a wide variety of people. Recommendations from Senators carry the most weight, as do recommendations from members of the President’s own political party.

### **The President Narrows the Candidates to a Manageable List**

The President relies on key staff members in his or her administration to manage this early part of the process. These staff members conduct informal investigations on the various candidates’ backgrounds, gathering information on the candidates’ integrity, intellectual capacity, judicial temperament, and health. The staff also check for embarrassing information on candidates that might hinder confirmation or bring discredit on the administration’s judgment. Based on these informal investigations, what started as a long list of candidates is narrowed to a manageable few. The key at this phase is the strength of support from Senators and important members of the President’s party.

### **The Top Candidates are Subjected to More Searching Investigations and Interviews.**

With a shorter list of candidates, more comprehensive investigations follow. First, each candidate is asked to fill out an exhaustive questionnaire on his or her professional experience, personal background, and financial condition. The FBI, the IRS, and the American Bar Association then conduct searching investigations on each candidate. The investigations are so thorough that even a candidate’s kindergarten teacher might receive a visit. After the investigations, the President interviews the top candidates for the Supreme Court personally, and may interview candidates for lower court positions personally, as well. [Cont. on p. 9]

# 2021 FBA ANNUAL MEETING



Left: The Honorable Jeffrey Sutton delivers remarks regarding the state of the judiciary at the Chapter's Annual Meeting.



Right: The Honorable Travis McDonough delivers remarks during the Chapter's Annual Meeting.



Above: Carrie Stefaniak delivers remarks at the Annual Meeting after accepting the President's Award.



Above/Below: Members gathered for a reception following the conclusion of the Annual Meeting.



Above: James Brooks delivers remarks at the Annual Meeting after accepting the Bill Carter Civility Award.



## FBA ANNUAL MEETING

On September 16, 2021, the Chapter held its annual Constitution Day celebration at the Federal Courthouse. Students, practitioners, and citizens from Chattanooga and surrounding areas celebrated our status as “We the People,” commemorating the document and law that formed our country with a public reading of the United States Constitution on the steps of the Courthouse.



# CHATTANOOGA CHAPTER HOSTS INAUGURAL COURT CIVICS BOWL

On April 14, 2022, thirteen students participated in the inaugural Court Civics Bowl at the United States District Court for the Eastern District of Tennessee. The event was sponsored by the Chattanooga FBA for the Chattanooga Urban League's National Achievers Society (NAS). The NAS is a group of high school students from various schools focusing on college and life preparation.

The students were given a list of civics questions to research and study in advance. They were divided into two teams and took turns competing to answer the questions posed by Judge Curtis Collier. After an enthusiastic competition, the Roaring Independents pulled off a come-from-behind win against The Justice League.



## SIXTH CIRCUIT OPINION UPDATE: Kentucky v. Biden, 23 F.4th 585 (6th Cir. 2022).



**By: Katherine Rogers**

Even after the Supreme Court published major decisions concerning the enforceability of the OSHA and Healthcare COVID-19 vaccine mandates, questions still remain for employers with federal contracts or subcontracts. In January of 2022, the Sixth Circuit Court of Appeals was the second court to consider the issue, denying a stay and prohibiting enforcement of the federal contractor vaccine mandate in Tennessee, Kentucky, and Ohio. The case is one of several challenges to the federal contractor mandate, and current appeals of those decisions are pending in the Fifth, Eighth, and Eleventh Circuits.

In September of 2021, President Biden issued Executive Order 14042 mandating vaccination for employees of federal contractors. This executive order was later clarified by Guidance issued by the Safer Federal Workforce.

The Guidance provided that employees of federal contractors in “covered contracts” with the federal government be fully vaccinated unless the employee is legally entitled to an exemption. Additionally, the guidance did not contain a testing exemption and required compliance with other workplace safety measures such as masking in certain circumstances.

Tennessee, Kentucky, Ohio, and two Ohio sheriff’s offices brought suit, and the Eastern District of Kentucky issued a preliminary injunction enjoining enforcement of the mandate, and denied the government’s motion to stay the injunction pending appeal. The government then filed an interlocutory appeal and moved for a stay of the injunction.

Ultimately, the Court rejected the stay, basing their decision largely on a lack of authority under the cited authority for the mandate, the Federal Property and Administrative Services Act of 1949. The Court found a lack of textual authority for the mandate, and the Court determined that the Act authorized the president to procure “an economical and efficient system” in federal contracting, which did not include authority to implement a vaccine mandate.

The Court explained that the Property Act was passed after World War II in response to governmental agencies entering “duplicative contracts supplying the same items and creating a massive post-war surplus.” The Act’s purpose, the Court concluded, was to implement systems making the government’s entry into contracts less duplicative and inefficient. The Act did not permit the President to impose a mandate on employees to enhance efficiency after the contract was entered into.

The Court further noted that the mandate would significantly alter the balance between federal and state power, and would have far reaching implications on the government’s ability to regu-

## **The President Submits the Name of His or Her Selection to the U.S. Senate.**

Once the President settles on a nominee, the person's name is submitted to the United States Senate, where the nomination is referred to the Senate Judiciary Committee. The nominee completes another exhaustive questionnaire for the Judiciary Committee, and the committee's staff conducts yet another investigation. The nomination is then scheduled for a public hearing at which the nominee is expected to answer questions from Senators. For a Supreme Court nominee, all of the committee Senators attend and ask questions. For lower court nominees, generally not all committee Senators are present.

## **Judicial Committee Refers the Nomination to the Full Senate for a Vote.**

At the conclusion of the hearing, the Judiciary Committee votes on whether to recommend confirmation to the full Senate. If a majority of the committee members vote in favor, or in some instances where the committee is evenly split, the nomination goes to the full Senate. The full Senate does not take evidence or conduct a hearing. It does allow the Senators to argue their positions for or against the nomination. Limitations may be placed on how long Senators can argue. When it comes time for a vote, the positive votes of a majority of the one hundred Senators are necessary for confirmation.

## **President Signs Commission.**

If the Senate votes in favor of confirmation, it sends the President a formal notice of its action. The President then signs a commission designating the candidate a federal judge. Once the commission is delivered to the candidate, he or she can take the oath of office, becoming a federal judge. Article III of the Constitution provides that “[t]he Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour . . . .” U.S. Const. art. III, § 1. The newly confirmed judge thus continues to serve until his or her resignation, death, or impeachment begins the process once again.

Written by:

Curtis L. Collier  
United States District Judge  
Chair, Eastern District of Tennessee Civics and Outreach Committee

Carrie Brown Stefaniak  
Law Clerk to the Honorable Curtis L. Collier  
Past President, Chattanooga Chapter of the Federal Bar Association

Kristen A. Dupard  
Law Clerk to the Honorable Curtis L. Collier

## JUDGE RACHEL MANCL SWORN IN AS BANKRUPTCY JUDGE FOR GREENVILLE DIVISION



**Judge Rachel Ralston Mancl**

The United States Bankruptcy Court for the Eastern District of Tennessee and the Chattanooga Chapter of the FBA welcomes **Rachel Ralston Mancl** as a newly appointed United States Bankruptcy Judge to the district. District Judge Clifton L. Corker administered the oath of office to Judge Mancl in a private ceremony on April 25, 2022. Judge Mancl will serve as the primary judge for the Greenville Division. She succeeds Chief Judge Rucker who has been the acting bankruptcy judge in Greenville since former Chief Bankruptcy Judge Marcia Phillips Parsons retired in September 2020.

Prior to her appointment, Bankruptcy Judge Mancl spent her legal career in private practice with the law firm of Hunter, Smith & Davis, LLP with offices in Johnson City and Kingsport. Prior to joining the firm, Judge Mancl served as a law clerk for Judge Parsons. She earned her Doctor of Jurisprudence and Master of Business Administration from the University of Tennessee and is a member of the bars of both Tennessee and North Carolina. Judge Mancl is a former President of the Tennessee Bar Association Young Lawyers' Division, a former member of the Board

of Governors for the Tennessee Bar Association, and a former President of the Kingsport Bar Association. She has received several Access to Justice awards for extraordinary pro bono service.

### [Clerk's Corner](#)

#### **United States District Court, Eastern District of Tennessee COVID-19 Restrictions**

The Court revised its Comprehensive Order Regarding Current Court Operations Under the Exigent Circumstances Created by COVID-19 by Standing Order 22-04 on March 15, 2022. Under the new comprehensive order, naturalization ceremonies and other non-essential judicial activities, such as attorney admissions ceremonies, may resume. Additionally, visitors are not required to wear a mask while in the court buildings, although individual judges may require masks or other health and safety precautions while in their courtrooms. The requirements of each judge are available on the Court's public website. The authorization for video and audio teleconferencing pursuant to the CARES Act has been extended through June 16, 2022. While this authorization continues, call-in information for the public or media will continue to be listed on the Court's public calendar, available on the Court's public website, for all public hearings that are held by video or teleconference.

## UPCOMING FBA EVENTS



The FBA Chattanooga Chapter  
presents

### LUNCH & LEARN

with  
The Honorable Christopher H. Steger  
United States Magistrate Judge

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May 11, 2022 at 12:00 p.m.

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- **FBA SUMMER SOCIAL (JUNE 2022)**
- **TEACHERS' LAW SCHOOL (AUGUST 3, 2022)**
- **"OFF THE BENCH" LUNCHES WITH FEDERAL JUDGES (TBD)**

\$50 to participate and includes one hour of CLE credit. Lunch will also be provided. Space will be limited. To sign up, email Russ Swafford at [russ.swafford@millermartin.com](mailto:russ.swafford@millermartin.com) and include your Tennessee Bar number

*Stay tuned for more details regarding upcoming FBA events!*



To join the Federal Bar Association, or to renew your membership, please contact our Membership Chair Logan Threadgill at [LThreadgill@chamblisslaw.com](mailto:LThreadgill@chamblisslaw.com) or visit the website: [www.fedbar.org/Chattanooga](http://www.fedbar.org/Chattanooga) and be sure to "like" the Chattanooga FBA Facebook page to stay up to date on recent events



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late the public health, a traditional state police power. The Court stated that “[w]hat the contractor mandate seeks to do, in effect, is to transfer this traditional prerogative from the states to the federal government under the guise of a measure to make federal contractors more ‘economical and efficient.’”

In addition to noting the implications on federalism, the Court emphasized the expansiveness of the guidance in that it covered 1/5 of the nation’s workforce, remote employees, and employees working “in connection with” such contracts even if the “employees of covered contractors who are not themselves working on or in connection with a covered contract.” The Court found little credence in the government’s argument that the mandate would make federal contractors more “economical and efficient” by reducing work absenteeism, noting that many diseases such as the flu and common cold affected the employees of federal contractors in the past. Finally, in denying the stay, the Court decided the government’s claim of irreparable injury was undermined by the fact that vaccines had been available for some time before the mandate and by the continued delay of compliance deadlines.

In his Dissent, Judge Guy Cole disagreed with the Court’s grant of standing to the plaintiffs and concluded that the President was acting well within his authority under the Property Act. He expounded that the guidance was not encroachment on an area traditionally left to the states but was within the government power to bilaterally modify federal contracts. He also disagreed with the Court’s finding of a lack of irreparable harm, concluding that productivity loss from infected workers, scheduling delays, and reduced performance quality were significant.

Notably, the Sixth Circuit’s decision has little practical effect, as shortly before the decision was published, the 11<sup>th</sup> Circuit denied the government’s request to stay a nationwide injunction of the mandate. The 11<sup>th</sup> Circuit injunction was appealed, and oral arguments were recently heard, and so employers should not expect to comply until later this year, if at all. Thus far, there has been a consistent trend of finding for the mandate challengers with every lower court deciding against the mandate. Until the 11<sup>th</sup> Circuit reaches its decision on the nationwide injunction, employers with federal contracts can delay complying with the vaccine mandate.

*Katherine “Kiki” Rogers is a Labor & Employment Associate at Chambliss, Stophel, & Bahner, P.C. Kiki is from Chattanooga, and graduated from the University of Tennessee College of Law and the University of Georgia.*



# **Federal Bar Association**

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To join the Federal Bar Association, or to renew your membership, please contact our Membership Chair Logan Threadgill at [LThreadgill@chamblisslaw.com](mailto:LThreadgill@chamblisslaw.com) or visit the website: [www.fedbar.org/Chattanooga](http://www.fedbar.org/Chattanooga)

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