



Federal Bar Association

2015 Public Policy Priorities

The mission of the Federal Bar Association is to strengthen the federal legal system and the administration of justice by serving the interests and needs of the federal practitioner, both public and private, the federal judiciary and the public they serve. With 17,000 members, the FBA is the foremost bar association serving the federal practitioner. The FBA continues to encourage Congress to observe the following comments in conjunction with the exercise of its appropriation, legislative and oversight responsibilities concerning the federal courts.

Our Federal Courts Need Adequate Funding

The Federal Bar Association supports the Federal Judiciary's FY 2016 budget request and urges Congress to provide the funds necessary for the federal courts to fulfill their constitutional and statutory responsibilities. The request equals \$7.0 billion in discretionary appropriations, and an increase of 3.9 percent over the FY 2015 enacted level. The request also includes \$571.1 million in mandatory appropriations. Funding for the Third Branch represents less than one-tenth of one penny of a taxpayer's dollar.

The Senate Should Consider All Judicial Nominees Without Delay

The Federal Bar Association urges the Senate to work in a bipartisan fashion to promptly provide an up-or-down vote to qualified judicial nominees to Federal district and appeals court judgeships. High numbers of vacancies on the Federal bench harm the delivery of justice, the economic interests of litigants before the courts, and respect for our courts and the law. Delays in litigation caused by vacancies especially slow the speed of civil trials and judgments. Delays translate into costs for litigants.

Vacancies also harm businesses whose financial viability rests on the timely resolution of commercial disputes. Our economy depends on courts to enforce contracts, protect property and determine liability. Delay results in uncertainty that discourages growth and investment, hurting our economy.

The President and the Senate have a Constitutional obligation to assure that the Federal courts are sufficiently staffed with sufficient numbers of judges to promptly administer justice. Home state Senators have a duty to promptly identify and recommend candidates for judicial nomination by the White House.

Even when the bench is fully staffed, there remains a pressing need for more federal judges in some federal districts with extraordinarily high and sustained workloads, especially in the: Eastern District of California; Eastern District of Texas; Western District of Texas; District of Arizona; and District of Delaware.

Concerns about Legislation that Needlessly Mandates Court Rules and Practices

The Federal Bar Association supports efforts to curb perceived abusive litigation practices, but shares concerns about legislation that mandates rules and practices outside of the traditional Rules Enabling Act procedures and infringes on judicial independence and discretion in adjudicating patent disputes.

The FBA opposes the Lawsuit Abuse Reduction Act (H.R. 758, S. 401) because it would unnecessarily eliminate judicial discretion by prematurely mandating the imposition of sanctions and preventing a party from withdrawing challenged pleadings on a voluntary basis within a reasonable time. If enacted, the Lawsuit Abuse Reduction Act would likely repeat an unwelcome decade of litigiousness from 1983 to 1993, spawned by a version of Rule 11 that is strikingly similar to the provisions of the Lawsuit Abuse Reduction Act. The experience of three decades ago confirms that requiring sanctions for every violation of Rule 11 can quickly become a tool of abuse in civil litigation. If enacted into law, the Lawsuit Abuse Reduction Act will likely only increase unnecessary gamesmanship and satellite civil litigation.

The FBA shares similar concerns over efforts in the House and Senate to address perceived abuses in patent litigation, most prominently through the Innovation Act, H.R. 9. The Federal Bar Association supports legislation that curbs abusive patent litigation practices to improve the quality and clarity of patents. But FBA opposes legislation that reduces judicial discretion in adjudicating patent actions or circumvents the Rules Enabling Act by mandating changes that depart from the Federal Rules of Civil Procedure in patent cases. The FBA urges Congress to await the imminent changes by the Federal Judiciary to the Federal Rules of Civil Procedure that will provide remedies akin to those in H.R. 9, including heightened pleading requirements and discovery limitations focused on the costs proportionality in the case. Recent patent-related decisions of the United States Supreme Court also are expected to generate a positive influence that may make Congressional action unnecessary.

Establishment of an Article I Immigration Court

The Federal Bar Association supports the transfer of responsibilities for the adjudication of immigration claims from the Executive Office of Immigration Review within the Department of Justice to a specialized Article I court, as established by Congress, for the adjudication of claims under the Immigration and Naturalization Act. EOIR's adjudication of immigration appeals is costly and more expensive than the interests of justice require. Congress should change the system to assure the federal government's administration of these responsibilities is administered in ways that assure justice, work better and cost less. Without an effective and efficient immigration court system, immigration reform will not fulfill its promise.

For Further Information:

Contact Bruce Moyer, Counsel for Government Relations to the Federal Bar Association

Email: grc@fedbar.org Phone: 301-452-1111