



May 10, 2016

TO: Government Relations Committee
FROM: Bruce Moyer
SUBJ: Update on Recent Developments

Capitol Hill Day on May 19

Approximately 60 FBA leaders from across the country will participate in FBA Capitol Hill Day in Washington, D.C. on May 19. The event will feature meetings by FBA leaders with their Congressional Representatives and Senators to promote support for adequate funding for the Federal courts, filling judicial vacancies and establishing additional judgeships, and authorizing the establishment of an Article I immigration court.

Judicial Vacancies

	Current Vacancies	Nominees Pending
Supreme Court	1	1
Courts of Appeal	9	7
District Courts	67	44
US Ct of International Trade	4	4
US Court of Federal Claims	<u>6</u>	<u>5</u>
Total	87	61

Since last month district court vacancies increased by 3 vacancies, while pending nominees increased by 11. The 33 percent increase in pending district court nominees came about through the President's nomination of eleven judicial candidates during April

to address judicial vacancies in Idaho, Washington Western District (2), North Carolina Eastern, Nevada, Colorado, Florida Middle (2), Florida Northern and District of Columbia (2). There is considerable uncertainty whether any of these nominees will clear the confirmation process. Relatively little time in the Congressional calendar also remains. Republican home state Senators also are unlikely to provide their blue slips, blocking those nominations from going forward.

The nomination of Chief Judge Merrick Garland to the Supreme Court continues to remain a stalemate, despite a sustained campaign by the White House and Democratic-aligned interest groups. They are targeting GOP senators in close reelection contests in nine states (Arizona, Illinois, Iowa, Missouri, New Hampshire, North Carolina, Ohio, Pennsylvania and Wisconsin) to spotlight their opposition to action on the Garland nomination.

Federal Judiciary Funding

The Federal Judiciary's Fiscal Year 2017 spending request remains pending before House and Senate appropriations subcommittees. The \$7.0 billion discretionary funding request appears to be in good shape in terms of its merits. Its greatest obstacles lie in intra-party and partisan disagreements over the budget and funding process, particularly in the House. Four of the twelve Senate appropriations subcommittees have already reported out bills, an unusual development since the Senate traditionally begins to move spending bills *after* the House. Continued disagreements in the House, however, over overall budget caps have stalled appropriations action in that chamber. Senate action on appropriations bills may also falter eventually, likely leading to a continuing resolution in September that continues spending at current spending levels into the new fiscal year starting October 1.

Current Federal Judiciary discretionary spending lies at \$6.8 billion. Definitive outcomes on FY 2017 funding levels, including the courts', could come about later this year during a lame duck session in December or early next year after a new Congress takes office, depending on the outcome of November's elections.

Courthouse Construction

The General Services Administration on April 18 sent congressional appropriations and authorizing committees a proposal to build or repair eight federal courthouse projects. The projects have been long sought by the Federal Judiciary.

The new courthouses are planned for Nashville, Tenn.; Des Moines, Iowa; Greenville, S.C.; Anniston, Ala.; and San Antonio, Texas. New courthouse annexes are planned in Toledo, Ohio; Charlotte, N.C.; and Savannah, Ga., along with renovations of the James M. Ashley and Thomas W.L. Ashley U.S. Courthouse in Toledo, the Charles R. Jonas Federal Building and U.S. Courthouse in Charlotte, N.C. and the Tomochichi U.S. Courthouse in Savannah, Georgia.

The new construction will cost \$787 million and the repairs and alterations \$160 million. The spending plan includes \$29.5 million for continued feasibility studies and preparation work for Judiciary housing needs in Harrisburg, Pa. Congress must give its okay for the package, except in the case of the one pre-funded project, the Nashville Federal Courthouse.

“This investment in our federal courthouses will serve as a catalyst for economic development in these local communities, while addressing the space constraints and security challenges in these aging facilities,” said GSA Administrator Denise Turner Roth.

James Duff, director of the Administrative Office of the U.S. Courts, said “This is a much needed and welcomed step in replacing unsafe, overcrowded and inefficiently designed courthouses.” “We are grateful that Congress has appreciated that our judiciary-wide cost containment initiatives have saved money, and has also recognized our most serious needs.”

“The majority of the funded projects have been on the Judiciary’s construction priority list for more than 15 years,” said Judge D. Brooks Smith, chair of the Judiciary’s Space and Facilities Committee. “Working with the GSA, we have planned appropriate facilities that satisfy the housing and security needs of these courts in an innovative and cost-efficient manner.”

According to the Administrative Office, the projects will proceed in accordance with the U.S. Courts Design Guide, will meet the 10-year space needs of the court and court-related agencies, and be consistent with the application of courtroom sharing policies.

Immigration Court Restructuring

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.

The Government Accountability Office is engaged in a review of the current immigration court system and proposals to restructure the system, including the establishment of an Article I court. GAO’s study of the immigration courts, requested by the Rep. Trey Gowdy (R-SC) and Rep. Zoe Lofgren (D-CA), chair and ranking member of the House Immigration Subcommittee, is likely to lead to a report issued in early 2017. The GAO is in the early stages of the project, reaching out and sitting down with experts and groups associated with the immigration courts in order to gather information and data.

On April 9, Christine Poarch of the FBA Immigration Section and Government Relations Counsel Bruce Moyer met by telephone with the GAO project team to discuss FBA's views on immigration court restructuring and the merits of an Article I immigration court.

FBA Provides Views to European Officials on Anti-Government Corruption

Government Relations Counsel Bruce Moyer represented the FBA in a May 3 meeting of American civil society representatives with a European team of members of parliaments, judges and prosecutors engaged in a European-American comparative review of corruption prevention.

The meeting focused on federal anti-corruption regulatory and statutory measures addressing potential corruption by prosecutors and judges at the federal level, as well as the legislative branch. The review is being conducted under the auspices of GRECO, the French acronym for Group of States against Corruption, established in 1999 by the council of Europe. GRECO is a follow-up mechanism for monitoring, through mutual evaluation and peer pressure, the observance by member countries of the Council of Europe's Twenty Guiding Principles for the Fight against Corruption. Other civil society representatives participating in the meeting included officials from the American Bar Association, Common Cause, Public Citizen, Project on Government Oversight and the Campaign Legal Center.

GRC Outreach

Government Relations Counsel Bruce Moyer spoke to the South Florida Chapter on April 9 at its monthly meeting in Miami. He addressed the state of federal judicial vacancies, including those in Florida, and the impact of election-year politics on judicial nominations within a historical context.

Government Relations Chair West Allen and Bruce Moyer will present a Government Relations orientation session to incoming chapter and section/division leaders during FBA's annual Leadership Training program, May 20-21.