



Federal Bar Association

February 13, 2017

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

The first three weeks of the Trump Administration have been bold and turbulent, giving birth to many of the actions that candidate Trump promised during his campaign, with 20 executive orders in ten days. One of them, imposing a temporary travel ban on the flow of immigrants and refugees into the United States, precipitated the first major legal challenges to the new Administration. The President nominated Circuit Judge Neil Gorsuch to become associate justice to the United States Supreme Court, and Sen. Jeffrey Sessions was confirmed by the Senate as Attorney General. Judicial vacancies on the federal bench remained at high levels.

The Gorsuch Nomination

President Trump on January 31 nominated [Judge Neil M. Gorsuch](#) of the Denver-based Tenth Circuit Court of Appeals to the United States Supreme Court, succeeding the late Justice Antonin Scalia. Now it is up to the Senate again to give its "[Advice and Consent.](#)" and Senate Judiciary Committee Chairman Chuck Grassley (R-IA) has indicated he will convene hearings on the nomination by mid-March, in line with the timeline since the 1980's for Supreme Court nomination hearings. Since 1900, the Senate has given hearings to every Supreme Court nominee except for two who withdrew and Judge Merrick Garland.

The Senate unanimously approved Judge Gorsuch's nomination to the Tenth Circuit in 2007, but a contentious path to confirmation yet remains. Democratic opposition, compounded by frustration over Republican obstruction over the Garland nomination last year, will more likely delay confirmation than defeat it. If confirmed, the 49-year old appeals court judge would be the first conservative addition to the Supreme Court in a decade and the youngest justice since Clarence Thomas. Judge Gorsuch also would be the first former law clerk to serve on the bench alongside his or her old boss, Justice Anthony Kennedy.

Whether Senate Republicans invoke the so-called nuclear option and remove the 60-vote requirement on ending filibusters on Supreme Court nominations is unclear. Democrats ended the requirement on district and circuit nominations in November 2013 when they controlled the

Senate. President Donald Trump on February 1 said Senate Republicans should "go for it" and invoke the nuclear option.

The Sessions Confirmation

In other action, the Senate Judiciary Committee on February 8 confirmed the nomination of Sen. Jeff Sessions (R-AL) as Attorney General, 52-47, almost entirely along party lines. Observers attributed the vote to a reflection of Sessions' long conservative voting record and the hyper-partisanship of contemporary politics. A recent Pew Research Center [poll](#) showed that 86 percent of people describe the country as more politically divided today than in the past, while 61 percent anticipate bickering between the two political parties to increase in the year ahead.

Circuit and District Judicial Vacancies

As of February 13, in addition to an open Supreme Court seat, 117 Article III judicial vacancies await nomination by the President, including 18 seats on the federal courts of appeals and 91 federal district court seats. That is more than twice as many vacancies that existed when President Obama took office in 2009, providing considerable opportunity to the new Administration to populate and reshape the federal bench.

The Federal Judiciary [website](#) reported the following Article III vacancies as of February 13, 2017:

	Current Vacancies	Nominees Pending
Supreme Court	1	1
Courts of Appeal	18	0
District Courts	91	0
US Ct of International Trade	2	0
US Ct of Federal Claims	<u>6</u>	<u>0</u>
Total	118	1

Forty-four of the vacancies are considered "judicial emergencies" by the Judicial Conference, the policy-making body of the Federal Judiciary.

Bankruptcy Filings

The Federal Judiciary [reported](#) on January 25, 2017 that filings in federal bankruptcy courts during 2016 declined by 5.9 percent. The number of filings – 794,960 cases – represented the lowest number of filings for any calendar year since 2006, and the sixth consecutive calendar year that filings have fallen. Observers predict that a decline in bankruptcy filings over the next 12-24 months will continue, but at a slower pace, followed by a rise in filings as interest rates continue to creep up.

Recently-Introduced Judgeships Legislation

The Federal Bar Association supports the authorization and establishment of additional permanent and temporary federal judgeships, including bankruptcy judgeships, along with support personnel, as proposed by the Judicial Conference of the United States, when rising caseloads in the federal courts threaten the prompt delivery of justice.

The Judicial Conference is expected next month to transmit its biennial recommendations to Congress for the establishment of additional federal judgeships in alignment with current caseload demands. On April 20 during FBA Capitol Hill Day, FBA leaders and members will educate Congress about how overwhelming caseloads threaten the ability of the Third Branch to effectively administer justice.

In the meantime, several bills have been introduced in the 115th Congress to establish additional district judgeships, realign the Ninth Circuit Court of Appeals, and convert or add additional bankruptcy judgeships. They include:

H.R. 136 - Bankruptcy Judgeship Act of 2017

Introduced by Rep. John Conyers (D-MI) on January 3, 2017.

Referred to House Subcommittee on Regulatory Reform, Commercial and Antitrust Law.

H.R. 196 - Ninth Circuit Court of Appeals Judgeship and Reorganization Act of 2017

Introduced by Rep. Michael Simpson (R-ID) on January 3, 2017.

Referred to the House Subcommittee on Courts, Intellectual Property, and the Internet.

H.R. 250 - Judicial Administration and Improvement Act

Introduced by Rep. Andy Biggs (R-AZ) on January 4, 2017.

Referred to the House Subcommittee on Courts, Intellectual Property, and the Internet.

S. 209, H.R. 197 and H.R. 503 – Idaho Judgeship Legislation

H.R. 197 was introduced by Rep. Michael Simpson (R-ID) on January 3, 2017 and referred to the Senate Judiciary Committee.

H.R. 503 was introduced by Rep. Raul Labrador (R-ID) on January 12, 2017 and referred to the House Subcommittee on Courts, Intellectual Property, and the Internet.

S. 209 was introduced by Sen. Mike Crapo (R-ID) on January 23, 2017 and referred to the Senate Judiciary Committee.

Call for Nominations to the 2018 FBA Issues Agenda

The deadline for nominations to the FBA FY 2018 Issues Agenda has been extended to March 31, 2017.

The Federal Bar Association Issues Agenda provides the road map for FBA's government relations advocacy to Congress and the Executive Branch. It is the prioritized list of policy

issues to which the FBA will devote time and resources to advance federal jurisprudence and improve our federal legal system. Through the Issues Agenda, FBA members and components have a voice in the future of FBA's advocacy.

Issue Agenda nominations should be related to the FBA's primary mission and focus on its principal areas of concern: (1) the federal administration of justice, (2) federal jurisprudence, and (3) federal legal policy.

New issues may be nominated by any FBA member, chapter, section or division. The current 2017 Issues Agenda is [here](#). To submit a nomination for the Issues Agenda, please complete [this form](#). Again, nominations will be accepted up to and through the new deadline of March 31.

Future Government Relations Events

FBA Mid-Year Meeting – Saturday, March 18, Capital Hilton Hotel, Washington, D.C.

The Government Relations Committee, with the assistance of the Foundation of the Federal Bar Association, will sponsor a timely panel discussion, 'Protecting the Homeland and Honoring Civil Liberties: How Can the Constitution Guide Us?' The panel will explore the delicate balance between national security and Constitutional rights amid the war against Islamic radicalism, featuring government and legal experts.

Jeffrey Rosen, professor of law at George Washington University Law School and CEO/President of the National Constitution Center, will deliver the luncheon keynote address.

FBA Capitol Hill Day – Thursday, April 20, 2017

Plan to participate in this acclaimed annual event as FBA leaders and members from across the country meet with House and Senate offices to discuss important legislative issues that impact the administration of justice and the federal courts. During meetings on Capitol Hill, FBA participants will discuss issues critical to the Third Branch, including: adequate funding for the federal courts, filling judicial vacancies promptly, and sufficient judgeships to render justice.

Visit <http://www.fedbar.org/CapitolHill17> for additional information and to register online.