



Federal Bar Association

July 7, 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

Circuit and District Judicial Vacancies

The Federal Judiciary website reported the following Article III vacancies and pending nominees as of July 7, 2017:

	Current Vacancies	Nominees Pending
Courts of Appeal	20	7
District Courts	108	6
US Ct of International Trade	2	0
US Ct of Federal Claims	<u>6</u>	<u>2</u>
Total	136	15

Fifty-two of the vacancies are considered “judicial emergencies” by the Judicial Conference, the policy-making body of the Federal Judiciary.

Six months into the Trump presidency, the Senate has confirmed two judicial nominees: Associate Justice Neil M. Gorsuch to the U.S. Supreme Court and Judge Amul Thapar to the Sixth Circuit Court of Appeals. Fifteen other Article III nominees remain pending:

Name	Court	Nomination Date
David Stras	Eighth Circuit	May 8, 2017
Amy Coney Barrett	Seventh Circuit	May 8, 2017
John K. Bush	Sixth Circuit	May 8, 2017
Kevin C. Newsom	Eleventh Circuit	May 8, 2017
Allison H. Eid	Tenth Circuit	June 7, 2017
Ralph R. Erickson	Eighth Circuit	June 7, 2017
Stephanos Bibas	Third Circuit	June 19, 2017
David Nye	D. Idaho	May 8, 2017
Scott L. Palk	W.D. OK	May 8, 2017
Dabney L. Friedrich	D.D.C.	June 7, 2017

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Timothy J. Kelly	D.D.C.	June 7, 2017
Trevor N. McFadden	D.D.C.	June 7, 2017
Claria Horn Boom	E.D./W.D. KY	June 12, 2017
Damien Michael Schiff	Claims Court	May 8, 2017
Stephen S. Schwartz	Claims Court	June 7, 2017

Outside groups on the left and the right are pouring money into television ads promoting or challenging some of these nominees. Senate Judiciary Committee Chairman Chuck Grassley previously pledged he will not provide a hearing or move on judicial nominees without the okay from their home state senators through the return of their blue slips, although Grassley has signaled he might reevaluate that practice in the future, especially as to circuit court seats. Grassley already has decided to downplay the role of American Bar Association ratings on judicial nominees, scheduling nomination hearings for two district court nominees before the ABA had completed its respective reviews. The nominees are Timothy J. Kelly and Trevor McFadden, both picked to serve as federal judges for the D.C. district court.

FY 2018 Funding for the Federal Judiciary

The House Financial Services and General Government (FSGG) Appropriations Subcommittee on June 29 completed its markup of its FY 2018 measure, approving it on an 8-5 vote. The Subcommittee provided a favorable funding mark for the Federal Judiciary, providing \$7.1 billion in discretionary appropriations for FY 2018, a 2.4 percent (\$167 million) increase above FY 2017. The House level is \$100 million below the Judiciary's re-estimated FY 2018 request, with the majority of the reduction in the courts' Salaries and Expenses account.

Although the Subcommittee's overall allocation among the twelve appropriations subcommittees was cut 6.0 percent (\$1.3 billion) below FY 2017, the Subcommittee found resources to satisfy most of the Judiciary's funding request. Several other agencies in the bill, particularly the General Services Administration and the Internal Revenue Service, received steep cuts below the FY 2017 enacted level (GSA by nearly \$1 billion, IRS by \$149 million).

The House bill includes one-year extensions for eight temporary district judgeships and seven temporary bankruptcy judgeships. The extended district judgeships are in Arizona, California-Central, Florida, Kansas, Missouri-Eastern, New Mexico, North Carolina-Western and Texas-Eastern. The extended bankruptcy judgeships are in Delaware (2), Florida-Southern (2), Michigan-Eastern, Puerto Rico and Virginia-Eastern.

The funding bill also authorizes a pilot courthouse security program involving Marshalls Service personnel in place of current Homeland Security-managed arrangements.

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The House full appropriations committee has not scheduled markup of the measure, nor has the Senate FSGG subcommittee announced its markup.

The Federal Bar Association on June 29, 2017 sent the attached correspondence to the Senate FSGG subcommittee in support of the Federal Judiciary's funding request.

The outlook for final Congressional action on the Federal Judiciary's spending request, and more broadly FY 2018 spending decisions, is uncertain. Potential controversial policy riders within the FSGG spending bill, like mandating that the IRS cease enforcement of the ACA individual mandate, could become obstacles. Other big legislative priorities are also involved. Legislative progress on health care and tax reform measures will depend on offsetting cuts in mandatory and discretionary government spending achieved through the "reconciliation process," and House and Senate adoption of a concurrent budget resolution. But the future of the budget resolution in both chambers over the coming weeks, beginning with the House, is complicated.

The Congressional budget resolution process itself is complicated. The budget resolution allocates top-line spending numbers to the 12 appropriations subcommittees for each fiscal year and directs authorizing committees to achieve cuts in spending areas within their jurisdiction. If the spending and revenue levels in the budget resolution require changes in existing law, the resolution instructs committees to report legislation containing such statutory changes. Whether for tax increases or decreases, deficit reduction, mandatory spending increases or decreases or adjustments in the public debt limit, approval of the budget resolution, at many points, can falter, especially since it is a non-binding budget blueprint. This explains why Congress has been unable to adopt a budget resolution in any of the past ten years. However, the streamlined nature of the budget reconciliation process, requiring only 51 votes in the Senate, lends to its current appeal, particularly among Senate Republicans. In the meantime, continued disagreements over spending and budget cuts between Democrats and Republicans, and particularly among Republican lawmakers, will threaten progress over the coming weeks on the FY 2018 budget, health care and tax reform. Raising the debt limit later this fall, combined with the prospect of a government shutdown, could present political challenges.

Attachments



Federal Bar Association

June 30, 2017

The Honorable Shelley Capito
Chairman
Appropriations Subcommittee on
Financial Services and General Government
United States Senate
Washington, DC 20510

The Honorable Chris Coons
Ranking Member
Appropriations Subcommittee on
Financial Services and General Government
United States Senate
Washington, DC 20510

Re: FY 2018 Funding for the Federal Judiciary

Dear Chairman Capito and Ranking Member Coons:

We write to express our strong support for the funding request of the Federal Judiciary for Fiscal Year 2018. We urge the Subcommittee to make these funds available to assure the Federal courts are able to fulfill their constitutional and statutory responsibilities as a co-equal branch of government.

Our Association's national membership of nearly 20,000 attorneys represents a core constituency of the Federal court system. Attorneys who practice in our federal courts look to Congress to assure that our court system is adequately funded to efficiently dispense justice. Attorneys and their clients, whether plaintiffs or defendants, turn to the courts with an expectation that disputes will be fairly and promptly heard.

The Judiciary's FY 2018 request of \$7.2 billion in discretionary appropriations will maintain current services across the Judiciary, and enable further investment in cybersecurity measures and other important program initiatives to support judicial operations. The House Financial Services and General Government Subcommittee on June 29 approved its FY 2018 Appropriations measure, providing the Judiciary with \$7.1 billion in discretionary appropriations for FY 2018, a 2.4 percent (\$167 million) increase above FY 2017. The House bill also includes one-year extensions for eight temporary district judgeships and seven temporary bankruptcy judgeships.

We are deeply appreciative of your Subcommittee's past support for the Federal Judiciary's funding needs. We ask your Subcommittee to take into account the commendable actions taken by the Judiciary to contain costs and implement more efficient ways to administer justice. Members of the Federal Bar are committed to doing everything we can to provide support for the Judiciary's efforts to administer justice and serve as a good steward of taxpayer resources.

Thank you for your consideration of our comments.

Sincerely yours,



Stacy King
Executive Director



W. West Allen
Chair, Government Relations Committee

cc: Members of the Senate Appropriations Subcommittee on Financial Services and General
Government
The Honorable Julia S. Gibbons, Chair, Judicial Conference Committee on the
Budget
The Honorable James Duff, Director, Administrative Office of the U.S. Courts