



Federal Bar Association

October 23, 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

Article III Judicial Vacancies

The number of Article III judicial vacancies continue to rise to historic highs, with 150 vacancies as of October 23, 2017. With 890 authorized Article III judgeships and 150 vacancies, nearly 17 percent of the federal bench is currently vacant, placing added caseload burdens on current judges and senior judges. Sixty-two of the vacancies are considered “judicial emergencies” by the Judicial Conference of the United States, the policy-making body of the federal judiciary.

	Current Vacancies	Nominees Pending
Courts of Appeal	21	11
District Courts	121	37
US Ct of International Trade	2	0
US Ct of Federal Claims	<u>6</u>	<u>3</u>
Total	150	51

At the same time, the pace of judicial nominations, as announced by the White House, has picked up with nearly twenty nominations sent to the Senate in the last month; fifteen were district court nominees.

Also in the last month, blue slip obstacles emerged in the Senate over two nominees to circuit judgeships in the Eighth and Ninth circuits. The “blue slip” is a one-page form, written on blue Senate letterhead, about a judicial nominee by a Senator from the state where the federal judicial nominee resides, reflecting the Senator’s support or disapproval of the nominee. In September Senator Al Franken (MN-D) announced he would withhold his blue slip over the nomination of Minnesota Supreme Court Justice David Stras to the Eighth Circuit Court of Appeals, and Oregon’s two Democratic Senators, Ron Wyden and Jeff Merkley, announced their intent to withhold their blue slips in connection with the nomination of Assistant United States Attorney Ryan Bounds to the U.S. 9th Circuit Court of

Appeals. All three Senators pointed to insufficient cooperation by the Trump administration with their judicial screening process.

After earlier delay, Democratic Senators in Pennsylvania and Colorado returned their blue slips involving circuit nominees in the Third and Tenth Circuits (Bilbas and Eid), while a standoff continues over the longest vacancy on the Article III federal bench. Sen. Tammy Baldwin (D-WI) has yet to indicate whether she will return her blue slip on the nomination of Milwaukee County Judge Michael Brennan to a Seventh Circuit judgeship that has remained vacant for eight years. Senate Judiciary Committee Chairman Chuck Grassley earlier warned this summer that he would consider revision of the blue slip practice if Democratic abuse of the use of the blue slip emerged as a problem. Delay in return of the blue slip and the Senate's 30-hour floor debate rule are the two remaining procedural devices available for obstruction in the confirmation process.

Funding for the Federal Judiciary

In mid-September, the unexpected emergence of a budget deal between President Trump and Democratic Congressional leaders represented the first expression of major bipartisanship since Trump entered the White House. The Continuing Resolution on the FY 2018 budget, passed by the House (by a 316-90 vote) and Senate (by a 80-17 vote), funds the government and the courts through December 8, 2017 and temporarily suspends the debt limit through December 8. It also provides emergency hurricane funding.

Decisions by the House and the Senate over the shape of the FY 2018 budget are currently being addressed through budget resolutions in both chambers, the first steps in an arcane revenues/spending process called "reconciliation," that requires only a 51 Senate-vote threshold. The GOP leadership's current plan is to include tax reform legislation in the final reconciliation package.

Hurricane Recovery and Puerto Rico Relief

FBA National in recent weeks has sought to educate FBA members on the state of the law and potential legislation impacting hurricane recovery efforts in Puerto Rico, Texas, Louisiana and Florida, provide on-the-ground accounts from our members in Puerto Rico, and promote support for FBA-sponsored assistance efforts. Please consult the FBA website for further information.