Federal Judicial Vacancies and Confirmations

Judicial vacancies continue to decline in the circuit and district courts. Vacancies are 35% lower than they were in December 2015. Seventy-nine vacancies remain, and the vast majority (70) are district judgeships. Forty-two judicial emergencies in vacancies remain, based on caseload and/or the length of the vacancy, according to the Administrative Office of the U.S. Courts. More than half (24) of the judicial emergency vacancies are in the Ninth Circuit, with fifteen in California’s district courts.

The fast pace of judicial confirmations continues to change the landscape of the federal courts, especially in the appellate courts with 50 appointments to date during the Trump presidency, along with the appointment of Supreme Court justices Neil Gorsuch and Brett Kavanaugh. Comparatively, by this point in President Obama’s first term, Obama had secured the confirmation of 25 circuit judges and 55 circuit judges by the end of his second term. The latest FBA Judiciary Tracker (Jan. 16, 2020) provides further details.

Since the beginning of the Trump presidency, 187 judges have been appointed to the federal bench. One of every four of the circuit appeals judges have taken their place on the federal bench in the last three years. Trump’s appointments have flipped three circuit courts to majority GOP-appointed judges.

As last year’s Senate session ended, the Senate confirmed 13 district nominees on December 19 in rapid order in a pre-recess bipartisan arrangement, with four of the judicial nominees from Blue States, where the highest numbers of judicial vacancies still remain.

At the conclusion of the Senate session, twenty-two judicial nominations that were pending before the Senate Judiciary Committee expired, requiring their return under Senate rules to the White House for re-transmittal. Sixteen judicial nominees await a final Senate floor vote. To date, President Trump has retransmitted only three of the 22 nominations.

No judicial nominations action is expected to occur within the Senate Judiciary Committee or on the Senate floor during the conduct of the Senate impeachment trial.
**CURRENT VACANCIES**  
*(as reported by the US Courts website on January 21, 2020)*

<table>
<thead>
<tr>
<th>Court</th>
<th>Vacancies</th>
<th>Nominees Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Courts of Appeal</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>District Courts*</td>
<td>70</td>
<td>15</td>
</tr>
<tr>
<td>US Ct of International Trade</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>US Ct of Federal Claims*</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>79</strong></td>
<td><strong>19</strong></td>
</tr>
</tbody>
</table>

* Judges in territorial courts (Virgin Islands, Guam, and Northern Mariana Islands) and the U.S. Court of Federal Claims are Article I judges with term appointments.

**Senate Confirmations of Trump Nominees in the 116th Congress**  
*(as reported by the US Courts website on January 21, 2020)*

<table>
<thead>
<tr>
<th>Court</th>
<th>Vacancies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court</td>
<td>0</td>
</tr>
<tr>
<td>Courts of Appeal</td>
<td>21</td>
</tr>
<tr>
<td>District Courts</td>
<td>79</td>
</tr>
<tr>
<td>US Ct of International Trade</td>
<td>2</td>
</tr>
<tr>
<td>US Ct of Federal Claims</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>107</strong></td>
</tr>
</tbody>
</table>

**Senate Confirmations of Article III Judicial Nominees During the Trump Presidency**

<table>
<thead>
<tr>
<th>Court</th>
<th>Vacancies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court</td>
<td>2</td>
</tr>
<tr>
<td>Courts of Appeal</td>
<td>50</td>
</tr>
<tr>
<td>District Courts</td>
<td>133</td>
</tr>
<tr>
<td>US Ct of International Trade</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>187</strong></td>
</tr>
</tbody>
</table>
# Judicial Confirmations Last Month

During December 2019, the Senate confirmed two circuit court nominees and 21 district judge nominees:

<table>
<thead>
<tr>
<th>Nominee</th>
<th>Confirmation Date</th>
<th>Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Komitee, Eric Ross</td>
<td>12/03/2019</td>
<td>02 - NYE</td>
</tr>
<tr>
<td>Sinatra Jr., John L.</td>
<td>12/04/2019</td>
<td>02 - NYW</td>
</tr>
<tr>
<td>Cole, Douglas Russell</td>
<td>12/04/2019</td>
<td>06 - OHS</td>
</tr>
<tr>
<td>Pitlyk, Sarah E.</td>
<td>12/04/2019</td>
<td>08 - MOE</td>
</tr>
<tr>
<td>Barlow, David B.</td>
<td>12/04/2019</td>
<td>10 - UT</td>
</tr>
<tr>
<td>Huffaker Jr., R. Austin</td>
<td>12/04/2019</td>
<td>11 - ALM</td>
</tr>
<tr>
<td>Myers II, Richard Ernest</td>
<td>12/05/2019</td>
<td>04 - NCE</td>
</tr>
<tr>
<td>Lydon, Sherri A.</td>
<td>12/05/2019</td>
<td>04 - SC</td>
</tr>
<tr>
<td>Bumatay, Patrick Joseph</td>
<td>12/10/2019</td>
<td>09 - CCA</td>
</tr>
<tr>
<td>VanDyke, Lawrence J.C.</td>
<td>12/11/2019</td>
<td>09 - CCA</td>
</tr>
<tr>
<td>McFarland, Matthew Walden</td>
<td>12/18/2019</td>
<td>06 - OHS</td>
</tr>
<tr>
<td>Brown, Gary Richard</td>
<td>12/19/2019</td>
<td>02 - NYE</td>
</tr>
<tr>
<td>Liman, Lewis J.</td>
<td>12/19/2019</td>
<td>02 - NYS</td>
</tr>
<tr>
<td>Vyskocil, Mary Kay</td>
<td>12/19/2019</td>
<td>02 - NYS</td>
</tr>
<tr>
<td>Gallagher, John M.</td>
<td>12/19/2019</td>
<td>03 - PAE</td>
</tr>
<tr>
<td>Marston, Karen Spencer</td>
<td>12/19/2019</td>
<td>03 - PAE</td>
</tr>
<tr>
<td>Colville, Robert John</td>
<td>12/19/2019</td>
<td>03 - PAW</td>
</tr>
<tr>
<td>Davis, Stephanie Dawkins</td>
<td>12/19/2019</td>
<td>06 - MIE</td>
</tr>
<tr>
<td>Traynor, Daniel Mack</td>
<td>12/19/2019</td>
<td>08 - ND</td>
</tr>
<tr>
<td>Riggs, Kea Whetzal</td>
<td>12/19/2019</td>
<td>10 - NM</td>
</tr>
<tr>
<td>Dishman, Jodi W.</td>
<td>12/19/2019</td>
<td>10 - OKW</td>
</tr>
<tr>
<td>Jones, II, Bernard Maurice</td>
<td>12/19/2019</td>
<td>10 - OKW</td>
</tr>
<tr>
<td>Singhal, Anuraag</td>
<td>12/19/2019</td>
<td>11 - FLS</td>
</tr>
</tbody>
</table>

We note with congratulations that Jodi Dishman, Past President of the FBA Oklahoma City Chapter, was confirmed by the Senate, by a 75-17 vote, on December 19, 2019.

---

## Impeachment Trial and the Chief Justice's Role

As the historic Senate impeachment trial begins in Washington, Chief Justice John G. Roberts’ authority to preside over the proceedings will be more limited than that of a presiding federal trial judge. Under Senate rules, for example, the Chief Justice’s rulings on witnesses can be overruled by a majority of the Senate. An FBA primer on the impeachment process, produced in collaboration with National Journal, is [here](#). Coverage and analysis of the Chief Justice’s role in the impeachment trial is [here](#), [here](#), and [here](#). An interview with Jeff Rosen, President of the National Constitution Center, on how the Chief Justice could shape the impeachment trial is [here](#).
Chief Justice Roberts’ Year-End Report

Chief Justice Roberts’ traditional year-end report, released January 1, 2020, focused on the important role federal judges play in promoting civic education and explaining government in an age “when social media can instantly spread rumor and false information on a grand scale.” The Chief Justice applauded the civics education efforts that judges have initiated and supported and called for more. Civics education, he noted “is a continuing enterprise and conversation.” “Each generation has an obligation to pass on to the next, not only a fully functioning government responsive to the needs of the people, but the tools to understand and improve it.”

The Chief Justice also underscored the independence of the judiciary and the linkage between its preservation and public respect for the rule of law:

We should celebrate our strong and independent judiciary, a key source of national unity and stability. But we should also remember that justice is not inevitable. We should reflect on our duty to judge without fear or favor, deciding each matter with humility, integrity, and dispatch. As the New Year begins, and we turn to the tasks before us, we should each resolve to do our best to maintain the public’s trust that we are faithfully discharging our solemn obligation to equal justice under law.

Government Funding for the Federal Judiciary and Executive Branch

In late December, Congress and the President approved two broad government spending measures that will fund all three branches of government through the rest of the federal fiscal year, ending September 30, 2020.

The appropriations measure that funds the Judiciary, H.R. 1158, the “Consolidated Appropriations Act, 2020,” provides the Judiciary with a total of $7.49 billion in discretionary appropriations for FY 2020, a 3.2 percent ($234 million) overall increase above the FY 2019 enacted level. This amount is $79 million below the level the Judiciary sought in its funding appeal, but still represents a relatively positive result. The Federal Bar Association supported the Judiciary’s funding request in its advocacy efforts.

Other notable provisions are included in the bipartisan, nearly $1.4 trillion FY2020 spending agreement:

Pay Adjustment for Federal Employee. The bill authorizes a 3.1% pay increase for federal civilian employees and members of the military, beginning in January 2020. The raise includes a 2.6% across-the-board increase and a .5% locality pay increase. Judges will receive the 2.6 percent across-the-board adjustment are ineligible for the 0.5 percent locality pay adjustment. FBA advocacy efforts provided support for the pay adjustment.

CJA Panel Attorney Hourly Rate Increases. The panel attorney hourly rates increase to $152 (up from $148) for non-capital work and to $195 (up from $190) for capital work. The new rates apply to services performed on or after January 1, 2020. Where appointment of counsel occurred before January 1, 2020, the new hourly compensation rates apply to that portion of services provided on or after the effective date.
Temporary District Judgeship Extensions. The bill includes one-year extensions for 10 temporary district judgeships whose authorizations expire in FY 2020: Alabama-Northern, Arizona, California-Central, Florida-Southern, Hawaii, Kansas, Missouri-Eastern, New Mexico, North Carolina-Western, and Texas-Eastern.

Judiciary Announces Amendments to the Federal Rules of Practice and Procedure

On December 3, 2019, the Administrative Office of the U.S. Courts (AO) announced the Supreme Court’s adoption of amendments to the Federal Rules of Appellate, Bankruptcy, and Criminal Procedure, the Rules of Evidence, the Rules Governing Section 2254 Cases in the United States District Courts, and the Rules Governing Section 2255. The AO memo announcing the rules changes is here.

PACER Public User Group Established by Judiciary

The Administrative Office of the U.S. Courts (AO) on January 7, 2020 announced the establishment of a twelve-member Public User Group to exchange information and recommend improvements to the administration and use of the PACER system and other electronic public access systems in the federal courts. According to the AO, the Electronic Public Access (EPA) Public User Group’s mission is to provide advice and feedback on the development, implementation, and enhancement of electronic public access services provided by the federal Judiciary, including but not limited to PACER, PACER Case Locator, Multi-court Voice Case Information System applications, and the availability of electronic court records. The group is expected to hold its inaugural meeting in February 2020. The Federal Bar Association will monitor the group’s proceedings and provide input as appropriate. More information on the Public User Group, its membership and charter is here.