



Government Relations Update

The Latest on Public Policy and Advocacy Developments from the Federal Bar Association

January 15, 2021

James Duff to Retire as AO Director, Chief Justice Roberts Names Mauskopf as Successor

On January 5, Chief Justice John G. Roberts, Jr., [announced](#) the retirement of James C. Duff as the Director of the Administrative Office of the U.S. Courts, effective January 31, 2021, and his appointment of [Roslynn R Mauskopf](#), chief judge of the U.S. District Court for the Eastern District of New York, as Duff's successor, effective February 1, 2021. Judge Mauskopf will become the first woman to serve as Director of the Judiciary's administrative arm. The Federal Bar Association conveys its best wishes and appreciation to Director Duff for his service and warm congratulations to Judge Mauskopf upon her appointment.

Federal Judicial Vacancies: Nominations and Confirmations

As the 116th Congress ended, there were 46 Article III vacancies in the federal judiciary, with 23 nominees pending, including one appellate court nominee, 21 district court nominees and one nominee to the Court of International Trade.

CURRENT ARTICLE III VACANCIES

(as reported by the US Courts [website](#) on January 15, 2021)

Court	Vacancies	Nominees Pending
Supreme Court	0	0
Courts of Appeal	2	1
District Courts	43	21
US Ct of International Trade	1	1
Total	46	23



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With the inclusion of the United States Court of Federal Claims and the United States territorial courts, 49 of 890 active federal judicial positions are vacant.

The Biden-Harris transition team has invited Democratic senators to submit recommendations for district court vacancies. In a December 22 letter, incoming White House counsel Dana Remus, asked senators to provide diverse names based on race, ethnicity, national origin, gender, sexual orientation, gender identity, religion, veteran status and disability. Remus requested that all recommendations be sent "as soon as possible and not later than January 19, 2020," indicating that Biden intends to prioritize filling vacant seats upon assuming office. His capacity to rapidly fill those vacancies and more that arise in the coming months improved as a result of the two Senate runoff races in Georgia and the 50-50 Democrat-Republican outcome in the Senate.

Judicial Confirmations

The Senate confirmed eleven judicial nominees during the lame duck session in December, filling one circuit court vacancy (in the Seventh Circuit filling the vacancy left by Associate Justice Amy Coney Barrett), six district court vacancies (in Ohio, Mississippi, Tennessee, South Carolina and California) and three vacancies in the Court of Claims.

Nominee	Court	Confirmation Date
J. Philip Calabrese	Northern District of Ohio	December 1, 2020
Taylor B. McNeel	Southern District of Mississippi	December 1, 2020
Kathryn C. Davis	Court of Claims	December 2, 2020
Stephen Sidney Schwartz	Court of Claims	December 8, 2020
Thomas L. Kirsch II	Seventh Circuit Court of Appeals	December 15, 2020
Katherine A. Crytzer	Eastern District of Tennessee	December 16, 2020
Joseph Dawson III	District of South Carolina	December 16, 2020
Zachary N. Somers	Court of Claims	December 17, 2020
Charles Edward Atchley Jr.	Eastern District of Tennessee	December 17, 2020
Thompson Michael Dietz	Court of Claims	December 19, 2020
Fernando L. Aenlle-Rocha	Central District of California	December 20, 2020

Federal Court and Government Funding

In late December the House and Senate passed [H.R. 133, the "Consolidated Appropriations Act, 2021,"](#) a nearly 5,600 page combined appropriations and Covid relief package that includes full-year FY 2021 government-wide funding and additional pandemic relief for individuals and businesses. The President signed the measure on December 27, 2021. Here are some of the Act's highlights in their impact upon the federal courts:

FY 2021 Judiciary Appropriations. The bill provides the Judiciary with a total of \$7.72 billion in discretionary appropriations for FY 2021, a 3.1 percent (\$233 million) overall increase above the FY 2020 enacted level, and equal to a midpoint funding level between the earlier House and Senate FSGG bills. This amount is \$117 million below the level the Judiciary sought in its funding request; however, \$233 million of the overall \$281 million increase in the FSGG bill above FY 2020 funding levels was devoted to Judiciary needs. provided to the Judiciary.

Capital and Noncapital Panel Attorney Hourly Rates. The bill authorizes inflationary increases to the capital and noncapital panel attorney hourly rates. The \$1 increase to the non-capital statutory maximum rate of \$153 per hour will take effect for work performed on or after January 1, 2021.

Temporary Judgeships Reauthorized. The Act provides for a one-year extension of the ten existing temporary Article III district judgeships: Alabama, Northern; Arizona; California, Central; Florida, Southern; Hawaii; Kansas; Missouri, Eastern; New Mexico; North Carolina, Western; and Texas, Eastern.

Judicial Security Funding. The Act provides funding for the replacement of Home Intrusion Detection Systems (\$7.2 million) in judges' primary residences. Funding for further judicial security measures, including additional Marshals Service protection, is also provided, but funding details remain to be worked out between the Administrative Office and the Marshals Service. The bill does not provide a direct appropriation to the Federal Protective Service to upgrade exterior perimeter security cameras at federal court facilities nationwide as requested by the Judicial Conference.

2021 Federal Pay Adjustment. The Act allows a 1.0 percent base pay adjustment for federal workers, including judges, to take effect in January 2021.

Courthouse Construction and Repair. The Act provides funding for the General Services Administration, including \$230 million for the top two FY 2021 new courthouse projects on the Judiciary's Courthouse Construction Priorities plan: \$135.5 million for the Hartford, Connecticut project, and \$94.5 million for the Chattanooga, Tennessee project. The act also provides \$577 million for major and basic repairs and alterations of buildings in GSA's portfolio, including federal courthouses.

Bankruptcy Code Amendments. The Act amends various provisions of the Bankruptcy Code to provide relief to individuals and businesses impacted by the COVID-19 pandemic in several respects. These include amendment of section 541 of the Code to ensure that federal coronavirus relief payments received by a debtor are not treated as property of the estate subject to the claims of creditors. In addition, section 1001 provides that a chapter 13 debtor who has defaulted on three monthly payments or less on a residential mortgage caused by a material financial hardship due to the COVID-19 pandemic may nonetheless be granted a discharge. Section 1001 also amends section 525 of the Bankruptcy Code to specify that a person may not be denied certain forms of financial relief under the CARES Act because such person is or has been a debtor. Protections for creditors with claims for amounts lost during forbearance periods under the CARES Act are included in Section 1001. The provision, in addition, amends section 365 of the Code to extend the time by which a debtor in a case subchapter V of chapter 11 must assume or reject an unexpired lease of

nonresidential property if such debtor has experienced or is experiencing a material financial hardship due to the COVID-19 pandemic. Section 1001 also amends section 547 of the Code to prevent a trustee from avoiding certain transfers for the payment of rental arrearages and supplier arrearages.

Section 320 of division N, title III, of the Act makes a series of amendments to the Bankruptcy Code primarily dealing with business bankruptcy cases with respect to certain Small Business Act loans, as authorized by the CARES Act.

PPP Relief Extended to 501(c)(6) Organizations

The consolidated appropriations/Covid relief package also expands eligibility for the Paycheck Protection Program to include 501(c)(6) organizations like the Federal Bar Association that meet certain qualifying conditions. An earlier COVID measure, the CARES Act, had provided relief to eligible 501(c)(3) organizations. In addition to numerous other provisions, the roughly \$900 billion bill includes \$325 billion in small business relief, including \$257 billion for the PPP, and expands PPP access to include 501(c)(6) organizations with 300 or fewer employees; 15% or less in lobbying activities and receipts; and less than \$1 million in spending for lobbying activities. FBA meets these qualifying conditions. FBA had joined with many other organizations in the non-profit community in support of PPP expansion.

Bankruptcy Administration Improvement

In December, Congress passed the Bankruptcy Administration Improvement Act of 2020 ([S. 4996](#)) that extends 25 bankruptcy judgeships for five years; restructures the United States Trustee quarterly fees to pay for the extension and provide more funding for the Trustee program; and creates a new payment for trustees serving in Chapter 7 bankruptcy cases, also to be funded from quarterly fee revenue. The bill awaits the President's approval.

Judicial Security Legislation

An attempt in the Senate during the lame duck session to approve the "Daniel Aderl Judicial Security and Privacy Act of 2020," [S. 4711](#), by unanimous consent failed due to the objection of one Senator who wanted to expand the bill to cover Members of Congress. Efforts to pass the bill will continue in the 117th Congress.

The legislation would permit federal judges to remove their personal information displayed on federal government internet sites and prevent the transfer or publication of personal information by data brokers or by other businesses and individuals where there is no legitimate news media interest or no matter of public concern. It also would require a study by the Government Accountability Office on approaches by state and local governments to protect personal information.

Federal Bar Foundation Charter Amendments Act

Efforts to pass the Foundation of the Federal Bar Association Charter Amendments Act, [H.R. 1663](#), by unanimous consent during the lame duck session also failed. The legislation would modernize the Congressional charter of the FBA Foundation and provide the Foundation with greater management flexibility. Efforts to pass the legislation will continue in the 117th Congress.

Judiciary Announces Audiostreaming Pilot Program

The Administrative Office of the Courts [announced](#) on December 15 that thirteen district courts around the country will livestream audio of select proceedings in civil cases of public interest next year as part of a two-year pilot program. The 13 district courts participating in the pilot are in Northern California, Southern Florida, Northern Georgia, Kansas, Montana, Eastern Missouri, Nevada, Northern New York, Western Pennsylvania, Rhode Island, Eastern Tennessee, Eastern Washington, and Washington D.C.

The livestreamed audio will be found on each of the courts' designated YouTube channels. Audio streaming of civil proceedings under the pilot will require the parties' consent and will be subject to the presiding judge's discretion. The pilot excludes trials and civil proceedings involving jurors and witnesses, and also sealed, confidential, and classified materials. The audio livestreams may not be recorded or rebroadcast.

Prior to the pandemic, only those in the courtroom or in specially-designated media rooms in the courthouse could listen to the proceedings. During the pandemic, most proceedings have been held by audio or videoconference, with members of the public permitted to call-in.

The Judicial Conference [authorized the test program](#) earlier this year to study the feasibility of livestreaming audio of civil proceedings. The pilot project is being overseen by the Judicial Conference's Committee on Court Administration and Case Management, chaired by U.S. District Judge Audrey G. Fleissig (E.D. Missouri).

Chief Justice Praises the Unsung Heroes of the Pandemic

In his [2020 Year-End Report on the Federal Judiciary](#), Chief Justice John G. Roberts, Jr., paid tribute to everyone in the federal court system and the federal government who allowed the courts to carry out their work safely. He particularly singled out the trial courts and their staff for their service. This was the 16th report Chief Justice Roberts has issued since he was appointed chief justice in 2005.

The report's statistical review of federal court workload noted these trends:

- New filings in the U.S. Supreme Court fell more than 16% in the last term compared with the prior year, as did cases filed in the U.S. courts of appeals, bankruptcy courts, probation offices, and pretrial services system.

- New filings in district courts were nominally greater, but excluding filings connected to a single multidistrict litigation, they were also lower than the prior year. Filings generally decreased with the onset of the coronavirus pandemic in March 2020, leading to lower annualized rates.
- Appeals of administrative agency decisions rose 20 percent, to 7,105 new cases, mostly reflecting increases in cases from the Board of Immigration Appeals, the Federal Energy Regulatory Commission, the National Labor Relations Board, and the Environmental Protection Agency.
- Cases with the United States as defendant grew 16 percent, primarily reflecting increases in social security cases and prisoner petitions. Cases with the United States as plaintiff declined 16 percent, mainly because courts received fewer actions related to defaulted student loans.