Call for Nominations to FBA Issues Agenda

FBA members – as well as chapters, sections and divisions – are invited to nominate issues for inclusion in the FBA Government Relations Issues Agenda. The deadline for all agenda nominations is Friday, March 26, 2021. For further details, click here.

Capitol Hill Day: May 3-7, 2021

Later this spring FBA’s premier advocacy event -- Capitol Hill Day -- will occur over the course of an entire week – May 3-7. During that period, FBA leaders and members from across the country will meet virtually with their House and Senate lawmakers to discuss legislative issues that impact the federal courts and federal practice. Those issues include: federal judicial security; PACER overhaul; additional judgeships; federal court funding; and immigration courts.

Training and materials will be provided to Capitol Hill Day participants in advance of the event. For further details and registration information, click here.

Capitol Hill Day Prep and Schedule

March 17, 2021    Legislative Update (on-demand viewing available)
April 14, 2021    Capitol Hill Day Preparatory Briefing (3 pm ET)
May 3-7, 2021     Meetings with Lawmakers and Staff (virtual)
May 7, 2021       Capitol Hill Day Debrief (Noon ET and virtual)
Hack of Federal Judiciary Impacts Highly Sensitive Court Documents

Federal judiciary officials announced on January 6 the start-up of new federal court filing arrangements for highly sensitive court documents (HCDs). The new filing procedures respond to the massive SolarWinds attack, which has burrowed into the electronic networks of thousands of private companies and federal agencies, including the federal courts. The hack by suspected Russian cyber-espionage operatives is under broad investigation and continues to attack new networks every day, according to a recent Sixty Minutes report.

In the courts, the attack raises concerns about the potential disclosure to foreign sources of highly sensitive confidential materials filed in the past through the federal courts’ Case Management/Electronic Case Filing (CM/ECF) system and has prompted the start-up of new filing procedures going forward. An internal audit of the CM/ECF, the Judicial Conference of the United States disclosed in a January 6 memorandum to the federal judiciary, “indicates serious security vulnerabilities in CM/ECF that greatly risk compromising highly sensitive non-public documents stored on CM/ECF, particularly sealed filings. An apparent compromise of the confidentiality of the CM/ECF system due to these discovered vulnerabilities currently is under investigation.”

The Judicial Conference in the January 6 memorandum authorized federal district courts to develop policies for accepting HSDs, which would normally be filed electronically under seal, via paper filing. Under the new security procedures, highly sensitive court documents (including secretive material about wiretaps, witnesses and national security concerns) will be required to be filed by the government and other litigants on paper or via secure electronic devices and will be stored in a stand-alone computer system, and not uploaded as usual to the case management/electronic case filing system, known as CM/ECF. According to a Crowell and Moring report, “… courts nationwide are issuing notices delineating what constitute HSDs, and how parties must file HSDs, effective immediately … [C]ourts are left with a split between treating all sealed documents as HSDs, and leaving to the presiding Judge, or if none, the Chief Judge, the determination of whether a document is an HSD.”

Judicial Vacancies: Nominations and Confirmations

As the 116th Congress adjourned sine die on January 3, 2021, the United States Senate returned the nominations of 37 individuals to the president, according to Ballotpedia. The list of returned nominations included 22 nominees for the U.S. district courts, three nominees for the Court of Federal Claims, one for the Court of International Trade, one for the United States Tax Court, two for the District of Columbia Court of Appeals, one for the District Court of Guam, and seven for the Superior Court of the District of Columbia. Seven of the nominees were awaiting a full Senate vote, one was awaiting a vote in the Senate Judiciary Committee, and 29 were awaiting a committee hearing.

With Senate Democrats currently focused on confirming Biden’s Cabinet nominees and the passage of another Covid relief package, the first batch of Biden judicial nominations may not land in the
Senate until later this spring. President Biden currently has 58 Article III vacancies to fill, including four on the circuit courts and 53 in the district courts. Although that number is expected to grow, Biden is starting his presidency with the fewest number of judicial vacancies since former President George H.W. Bush, according to FiveThirtyEight. That number will grow in the months ahead as judges announce retirement or take senior status, many awaiting the outcome of the 2020 presidential election. Speculation is mounting on Supreme Court Justice Breyer’s retirement at some point during the next two years, possibly as early as this summer. An opening on the D.C. circuit court will arise after Judge Merrick Garland is confirmed as attorney general.

**CURRENT ARTICLE III VACANCIES**

*(as reported by the US Courts website on February 15, 2021)*

<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>4</td>
<td>0</td>
</tr>
<tr>
<td>District Courts</td>
<td>53</td>
<td>0</td>
</tr>
<tr>
<td>US Ct of International Trade</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>58</strong></td>
<td><strong>0</strong></td>
</tr>
</tbody>
</table>

**Commission on the Federal Courts**

Preliminary work has begun within the White House on establishment of a commission to review the structure of the federal court system, including the Supreme Court, and recommend changes. Politico reports that commission mandate and membership aspects are being sorted out. President Biden pledged to establish the advisory panel last summer on the campaign trail in response to calls to pack the Supreme Court with additional jurists. According to an NBC report, the commission will be co-chaired by Obama White House Counsel Bob Bauer and Yale Law School Cristina Rodriguez.

The commission is expected to take into account the anticipated report of the Judicial Conference of the United States, due in mid-March, based on its biennial assessment of district and appellate court workload and its recommendations for additional judgeships.

**Board of Directors Actions**

The FBA Board of Directors at its meeting on January 21, 2021 approved the addition of the following issue to the FBA Issues Agenda:
Federal Court Electronic Records and PACER Reform
The Federal Bar Association is committed to public access to our federal courts and the use of information technology to make court records as freely available as possible, without unduly shifting the financial burden upon the courts and those seeking access to justice.

Laura Conover Becomes Pima County Attorney

Congratulations to FBA Circuit Vice-President Co-Chair and Government Relations Committee Member Laura Conover, who began her duties as District Attorney for Pima County, Arizona on January 4, 2021. Laura was elected to the position last November.