A Successful Virtual Capitol Hill Day 2021

Thank you to all FBA advocates who participated in FBA Virtual Capitol Hill Day 2021 – held May 3-7, 2021. This year’s event was an outstanding success, with unprecedented participation by FBA leaders and members in scores of virtual meetings with House and Senate lawmakers and their staff. The meetings educated Congress on these FBA legislative priorities:

- Greater Security for Federal Judges and Courthouses
- More Judgeships for Our Federal Courts
- Responsible Federal Court Case Records Reform
- Adequate Funding for Our Federal Courts
- Establishment of an Independent Immigration Court
- Foundation of the Federal Bar Association Charter Amendments

Click here to learn more about these FBA legislative priorities. Click here to access the video from the Capitol Hill Day debrief session, held May 7. Click here to access the Capitol Hill Day Meeting Report form that should be completed for each meeting in which you participated as an FBA Advocate.

Judicial Vacancies, Nominations and Confirmations

Current Article III Vacancies

(As reported by the US Courts website on May 19, 2021)

<table>
<thead>
<tr>
<th>Court</th>
<th>Vacancies</th>
<th>Nominees Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court</td>
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</tr>
<tr>
<td>Courts of Appeal</td>
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<td>0</td>
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<tr>
<td>District Courts</td>
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</tr>
<tr>
<td>US Ct of International Trade</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>78</strong></td>
<td><strong>16</strong></td>
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Judicial Nominations. President Biden on May 12 announced his intent to nominate six judicial nominees, including three Court of Appeals nominees and three District Court nominees. According to the May 12 White House statement, “these individuals embody President Biden’s commitment to ensure that his judicial nominees represent not only the excellence but the diversity of our nation with respect to both personal and professional backgrounds.” Many of the nominations “… are groundbreaking choices, including:

- the second judge of Hispanic origin to serve on the United States Court of Appeals for the First Circuit and the second judge from Puerto Rico ever to sit on the First Circuit;
- the second African American woman ever to serve on the United States Court of Appeals for the Second Circuit, who would also be the only judge with experience as a federal defender serving on that circuit;
- an immigrant who came to the United States as a small child and would be the only judge with experience as a federal defender serving on the United States Court of Appeals for the Tenth Circuit;
- only the third active Native American federal judge currently serving in the entire United States, and the first Native American federal judge in Washington State history;
- the first African American district court judge to sit in the Camden courthouse of the United States District Court for the District of New Jersey;
- the second African American woman judge and the second Asian American judge to serve on the United States District Court for the District of Massachusetts.”

The circuit court nominees include two Federal Bar Association leaders: Hon. Gustavo A. Gelpí, Jr., chosen for the United States Court of Appeals for the First Circuit; and Lauren J. King, nominated for the United States District Court for the Western District of Washington.

Judge Gelpi currently serves on the U.S. District Court for the District of Puerto Rico and has served as chief judge of the court since 2018. Judge Gelpi served as National President of the Federal Bar Association in 2013, becoming only the second Hispanic and first federal judge to achieve that milestone. He is also a Sustaining Life Fellow of the Foundation of the Federal Bar Association.

Lauren J. King is a principal at Foster Garvey, P.C. based in Seattle, Washington, where she has practiced since 2012. She chairs the firm’s Native American Law Practice Group and has served as a pro tem appellate judge for the Northwest Intertribal Court System since 2013. Ms. King is an active member of the Indian Law Section of the Federal Bar Association, and she has served on the planning committee for the FBA annual conference for the past two years.

The slate of nominees announced on May 12 were President Biden’s third group of judicial candidates, bringing to a total of 20 nominees intended to be named to federal judicial vacancies. A prior White House announcement on April 29 named three District Court choices, two to the Western District of Washington and one to the District of New Jersey.

On April 27 the Senate Judiciary Committee held the first hearing on President Biden’s judicial nominees. Two federal appeals court nominees and five district court nominees appeared before the committee. The two nominees to the federal appeals courts were Judge Ketanji Brown Jackson,
nominated for the U.S. Court of Appeals for the District of Columbia Circuit, and Candace Jackson-Akiwumi for the U.S. Court of Appeals for the Seventh Circuit, in Chicago. Judge Jackson, currently a district court judge in Washington, D.C., is considered a potential future Supreme Court nominee. Ms. Jackson-Akiwumi would be the only Black judge on the Seventh Circuit. President Biden during his 2020 campaign for the presidency promised to name a Black woman to the Supreme Court for the first time in U.S. history, should he get the chance.

The district court judges appearing at the April 27 hearing were Regina M. Rodriguez for a seat in Colorado and Julien Xavier Neals and Zahid N. Quraishi for seats in New Jersey. If confirmed, Mr. Quraishi, currently a federal magistrate, would be the first federal district judge who is Muslim. The New Jersey federal bench currently has six judicial vacancies. All six of the vacancies are deemed “judicial emergencies” by the Judicial Conference. Two of the vacancies are the two longest-remaining district vacancies on the federal bench, each remaining vacant for more than six years.

Additional Federal Judgeships

House and Senate bills establishing additional federal appeals court and district court judgeships have not yet been introduced in the 117th Congress. The Judicial Conference of the United States on March 16, 2021 recommended to Congress the creation of two new court of appeals judgeships and 77 new district judgeships. The Conference also recommended that nine temporary district judgeships be converted to permanent status.

Judicial Security

House and Senate judicial security bills in the 117th Congress also have not yet been introduced. Rep. Mikie Sherrill (D-NJ) and Sen. Robert Menendez (D-NJ), original sponsors of the “Daniel Anderl Judicial Security and Privacy Act of 2020” (H.R. 8591, S. 4711) in the 116th Congress, are expected to introduce updated versions of the measure at some point this spring.

Free PACER and Federal Court Records Modernization

An updated version of “The Open Courts Act (H.R. 8235 in the 116th Congress) has not been introduced in the 117th Congress. The measure, passed by the House late last year, would require a complete overhaul of the federal courts’ electronic platform (Case Management/Electronic Case Filing or “CM/ECF”) for online filing in the appellate, district and bankruptcy courts. The legislation also would terminate charges for non-commercial users of the federal courts’ Public Access to Court Electronic Records (PACER) system, which allows users to access documents in current and recently closed federal cases.

The Federal Bar Association has raised concerns about the necessity and cost of a federal court records overhaul and remains opposed to increases in litigant fees to finance the initiative.

Any federal court records system overhaul will require assurance of protection against cybersecurity breaches. The Senate Homeland Security and Governmental Affairs Committee held a May 11 hearing on the SolarWinds attack, which may have compromised highly-sensitive, sealed documents
contained within CM/ECF. The cyberattack also hit nearly a dozen federal government agencies and approximately 100 corporate enterprises.

**Bankruptcy Filings Plummet 38.1 Percent**

According to a report from the Administrative Office of the U.S. Courts (AO), bankruptcy filings dropped 38.1 percent for the 12-month period ending March 31, 2021, a dramatic fall that coincided with the coronavirus (COVID-19), which first disrupted the economy in March 2020.

According to AO statistics, the March 2021 annual bankruptcy filings totaled 473,349, compared with 764,282 cases in the previous year. Filings fell both for businesses and non-business bankruptcies, compared with the year ending March 2020. Non-business filings fell by a total of 38.8 percent, while business filings fell 13.9 percent.

When COVID-19 numbers began to spike last year, unemployment initially soared. But several factors may have contributed to the sharp drop in new bankruptcy filings. New filings fell in all federal courts, including the bankruptcy courts, as many federal courts closed their doors to in-person business. In addition, unemployment began to moderate, and state lockdown orders depressed personal expenditures. Increased government benefits and moratoriums on evictions and certain foreclosures also may have eased financial pressures in many households.