



# ABA Washington Letter



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### Confirmation comes after “nuclear option” invoked

## Neil M. Gorsuch sworn in as 113th Supreme Court justice at White House ceremony

Neil M. Gorsuch was sworn in April 10 as the 113<sup>th</sup> justice of the U.S. Supreme Court following a move by the Senate majority leader to invoke the “nuclear option,” which enabled the Senate to change the filibuster rule with regard to Supreme Court nominees by a simple majority vote.

Senate Majority Leader Mitch McConnell (R-Ky.) took the historic “nuclear option” step after Gorsuch’s nomination failed, by a 55-45 vote, to garner the 60 votes required for cloture to end debate and proceed to a vote on the nomination. Following the failed cloture vote, a 52-48 party-line vote changed the Senate rules to require only a simple majority for cloture votes on all nominees.

Three Democrats — Sens. Joe Manchin (D-W.Va.), Heidi Heitkamp (D-N.D.) and Joe Donnelly (D-Ind.) — voted with Republicans on the initial filibuster vote and to confirm the nomination the next day. The final confirmation vote on April 7 was 54-45.

When faced with Republican opposition to President Obama’s Cabinet and lower-court nominees during the 113<sup>th</sup> Congress, the Democratic leadership invoked the nuclear option to prevent filibusters for those nominees. The filibuster was preserved, however, for Supreme Court nominations.

President Trump nominated Gorsuch on Feb. 1 to fill the seat left vacant by the February 2016 death of Justice Antonin Scalia. After Scalia’s death, the Senate leadership refused to consider the nomination of DC Circuit Court of Appeals Chief Judge Merrick Garland, President Obama’s choice for the vacancy, maintaining that no action should be taken a Supreme Court nominee during a presidential election year.

During debate on the Gorsuch nomination, Minority Leader Charles Schumer (D-N.Y.) emphasized that the Democrats were opposing the Gorsuch nomination because of some of his past rulings and because they did not believe that he was forthcoming in his answers during his confirmation hearings regarding judicial precedents and his time at the Department of Justice.

Pressured to ensure Gorsuch’s confirmation, McConnell justified the Senate rule change, saying, “This will be the first, and last, partisan filibuster of a Supreme Court nominee,” he said. “This is the latest escalation in the left’s never-ending judicial war, the most audacious yet, and it cannot and will not stand.”

Justice Anthony Kennedy, for whom Gorsuch was a law clerk, administered the judicial oath to Gorsuch during the White House swearing-in ceremony. Gorsuch, who served as a judge on the U.S. Court of Appeals for the Tenth Circuit from 2006 until his Supreme Court confirmation, holds a law

see “Gorsuch confirmation,” page 4

## LEGISLATIVE BOXSCORE

LEGISLATIVE ISSUE	HOUSE	SENATE	FINAL	ABA POSITION
<p><b>Criminal Justice.</b> S. 328 and H.R. 968 would confer jurisdiction on the U.S. district courts to provide declaratory and injunctive relief against systemic violation of the right of counsel. S. 330 and H.R. 969 would establish a federal Defender Office for Supreme Court Advocacy to ensure right to counsel. S. 573 would establish a National Criminal Justice Commission.</p>	<p>H.R. 968 and H.R. 969 were referred to the House Judiciary Cmte. on 2/7/17.</p>	<p>S. 328 and S. 330 were referred to the Senate Judiciary Cmte. on 2/7/17. S. 573 was referred to the Senate Judiciary Cmte. on 3/8/17.</p>		<p><b>Supports federal sentencing reform to address explosive growth in prison population and costs. Supports JJDDPA and Second Chance Act reauthorization. Supports funding for federal and state indigent defense programs. Supports certain civil asset forfeiture reforms. See pages 5 and 7.</b></p>
<p><b>Federal Courts.</b> P.L. 114-113 (H.R. 2029), included \$6.78 billion for the federal judiciary in FY 2016. P.L. 114-254 (H.R. 2028), extends current funding through 4/28/17. H.R. 720 and S. 237 would amend federal rules to require mandatory imposition of sanctions for lawyers who file non-meritorious lawsuits. H.R. 985 would amend federal rules regarding class actions. Numerous proposals would split the Ninth Circuit Court of Appeals.</p>	<p>House passed H.R. 985 on 3/9/17 and H.R. 720 on 3/10/17. Judiciary subc. held a hearing on splitting the Ninth Circuit on 3/16/17.</p>	<p>S. 237 was referred to the Senate Judiciary Cmte. on 1/30/17.</p>	<p>President signed P.L. 114-113 (H.R. 2029) on 12/18/15. President signed P.L. 114-254 (H.R. 2028) on 12/10/16.</p>	<p><b>Supports adequate judicial resources and opposes efforts to infringe on separation of powers or undermine the judiciary. See front page and page 3.</b></p>
<p><b>Immigration.</b> The president issued executive orders on 1/25/17, and 1/27/17 followed by a revised executive order 3/6/17 on border security, immigration enforcement, and visa and refugee programs. Federal judges temporarily blocked the orders nationwide that suspended entry from majority-Muslim countries.</p>				<p><b>Supports improvements in the immigration court and adjudication system. Opposes mandatory detention and supports alternatives to detention. Supports access to counsel and due process safeguards.</b></p>
<p><b>Legal Services Corporation (LSC).</b> P.L. 114-113 (H.R. 2029), included \$385 million for LSC in FY 2016. P.L. 114-254 (H.R. 2028) extends current LSC funding level through 4/28/17. President's FY 2018 budget blueprint issued on 3/16/17 includes no funding for LSC.</p>			<p>President signed P.L. 114-113 (H.R. 2029) on 12/18/15 and P.L. 114-254 (H.R. 2028) on 12/10/16.</p>	<p><b>Supports an independent, well-funded LSC.</b></p>

## White House will not include ABA in pre-nomination process

### *ABA president says ABA standing committee will continue to evaluate nominees*

ABA President Linda A. Klein said last month that the ABA Standing Committee on the Federal Judiciary will continue to provide its objective evaluations of federal judicial nominees to the Senate Judiciary Committee on a post-nomination basis as part of the judicial confirmation process.

Klein was responding to a [letter](#) received from the White House in March notifying the association that the Trump administration does not intend to invite the ABA standing committee to conduct pre-nomination evaluations of prospective nominees to the lower federal courts.

In her [March 31 statement](#), Klein noted that President Eisenhower first invited the ABA into the process in 1953 and, with the exception of the George W. Bush administration, the ABA has been asked by every president to conduct pre-nomination evaluations of the professional qualifications of potential lower-court nominees and post-nomination evaluations of Supreme Court nominees.

“This helps to ensure the highest quality judiciary through an objective, nonpartisan review of the professional competence, integrity and judicial temperament of those who would have lifetime appointments to our federal courts,” Klein wrote. “Over the years, the standing committee’s work has done much to instill public confidence and trust in the judiciary.”

White House Counsel Donald F. McGahn II wrote in the letter to Klein that “it is essential to give all interested parties the same opportunity to evaluate candidates for judicial service and that the administration welcomes the ABA to evaluate its judicial candidates just as it welcomes evaluation from any other professional organization or interest group.” He added that the administration admires the “ABA’s goal of providing non-politicized review of judicial nominees.”

Reacting to the administration’s decision, Senate Judiciary Committee Ranking Member Dianne Feinstein (D-Calif.) expressed her disappointment, noting that during her 24 years on the Judiciary Committee she has found the ABA evaluation of judicial nominees to be very helpful. “Senators deserve the opportunity to take the ABA’s evaluations into account as they review nominees, and the Judiciary Committee should not hold hearings on nominees until the ABA has an opportunity to provide its ratings,” she said.

During the recent Senate Judiciary Committee confirmation hearings for Supreme Court nominee Neil Gorsuch, ABA Standing Committee Chair Nancy Scott Degan and Tenth Circuit Representative Shannon Ed-

wards appeared before the committee to explain the ABA panel’s “Well Qualified” rating for the nominee. They emphasized that the evaluation process involves extensive peer review that focuses solely on a nominee’s professional qualifications and does not take into consideration a nominee’s philosophy, political affiliation or ideology. ■

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### Legislation would improve availability of legal services to homeless veterans

Rep. Joyce Beatty (D-Ohio), with cosponsors Reps. Steve Stivers (R-Ohio) and Pat Tiberi (R-Ohio), reintroduced legislation April 7 that would allow the secretary of Veterans Affairs (VA) to partner with public and private entities to provide legal services to homeless veterans and veterans at risk of homelessness.

“Our nation made a lifelong promise to our veterans; and clearly, we can and must do more,” Beatty said. “Providing expanded access to free, high-quality legal services – whether that be assisting in restoring their driver’s license, preventing eviction or the loss of their home, or resolving child support issues, to name a few – is one way we can do so immediately. This bill reaffirms the promise to serve those who answered the call to serve in the Armed Forces,” she explained.

Current law does not provide the VA with statutory authority to directly fund any legal services, but it does permit grantees under the Supportive Services for Veterans Families (SSVF) program and the Grant Per Diem program to use funds for legal services. Legal assistance continues to be among the most pressing needs for the nation’s veterans, however.

The legislation calls for consultation by the VA secretary with veterans service organizations and other appropriate organizations to coordinate outreach relationships, and the secretary may require those entering into partnerships to submit periodic reports on the legal services they have provided. The legislation requires that the VA ensure that the partnerships are equitably established across the United States to include rural communities and tribal lands.

ABA President Linda A. Klein voiced the ABA’s support for the bill. “Many veterans continue to make sacrifices long after they’ve come home,” she said. “They encounter a variety of legal problems, including loss of a home or a job, wrongful denial of benefits, and credit problems. That’s where lawyers can make a difference. Allowing increased private-public partnerships with the VA will improve these veterans’ access

*see “Homeless veterans,” page 4*

## House postpones action on medical liability legislation

The House left town for a two-week recess this month without taking a vote on H.R. 1215, an ABA-opposed bill that would preempt state laws to impose caps of \$250,000 on non-economic damages and place limits on contingency fees that lawyers can charge in medical liability cases.

The legislation cleared the House Judiciary Committee on an 18-17 vote after the committee rejected numerous amendments offered by the panel's Democrats, who maintain that the legislation would impose an unjustifiably low cap on non-economic damages.

ABA Governmental Affairs Director Thomas M. Susman, explaining the ABA's opposition in a Feb. 27 [letter](#) to the committee, emphasized that the authority to determine medical liability law has rested in the states for more than 200 years and that the system is a "hallmark of our American justice system." He said Congress should not substitute its judgment for the systems that have evolved over time in the states,

which are the repositories of experience and expertise in these matters.

Susman cited three major areas of concerns with the bill.

**Damages.** The ABA believes that damages should not be capped at either the state or federal level, pointing out that research has shown that caps diminish access to the courts of low-wage earners such as the elderly, children and women. Those affected by caps on damages are the patients who have been most severely injured by the negligence of others.

**Proportionate Liability.** A fair share rule created by the bill would provide that each party would be liable only for its share of any damages, preempting existing state law that provides for joint and several liability in medical liability cases. The ABA supports the principle that defendants whose responsibility is substantially disproportionate to liability for the entire loss suffered by the plaintiff should be held liable for only their equitable share of the plaintiff's non-economic loss, the association believes that these changes should be made by the states.

**Contingent Fees.** The ABA opposes provisions in H.R. 1215 that would empower courts to specify maximum percentages for contingent fees paid from a plaintiff's damage awards to an attorney and to authorize fees that are less than the maximum percentage in cases involving minors and incompetent persons. After studying the issue, the ABA concluded that a sliding scales and other restrictions on contingency fees in medical liability cases may reduce total awards for patient-victims and deprive them of representation by the most highly skilled trial lawyers for their cases.

"The ABA remains committed to maintaining a fair and efficient justice system where victims of medical malpractice can obtain redress based on state laws, without arbitrary or harmful restrictions," Susman wrote.

The House will return from its break on April 25, but no further action is scheduled for H.R. 1215. ■

### Gorsuch confirmation

*continued from front page*

degree from Harvard Law School and a Doctor of Philosophy in Law from University College at Oxford. Following 10 years in private practice from 1995 to 2005, he served as a principal deputy associate attorney general in the Department of Justice until his judicial appointment to the Tenth Circuit by President George W. Bush.

In early March, the ABA Standing Committee on the Federal Judiciary submitted a unanimous rating of "Well Qualified" for Gorsuch to the Senate Judiciary Committee. The ABA committee subsequently submitted a [detailed written statement](#) to the committee and presented testimony March 23 during the nominee's confirmation hearings.

"Based on the writings, interviews and analyses scrutinized to reach our rating, we discerned that Judge Gorsuch believes strongly in the independence of the judicial branch of government, and we predict that he will be a strong but respectful voice in protecting it." ABA committee Chair Nancy Scott Degan told the Senate committee. She was accompanied by Shannon Edwards, the ABA committee's Tenth Circuit representative and lead evaluator for the Gorsuch investigation.

### Homeless veterans

*continued from page 3*

to legal help and provide desperately needed progress toward ending the crisis of veteran homelessness in the country."

Klein, who has designated legal services to veterans as a priority during her ABA presidency, launched the ABA Veterans Legal Services Initiative in August to help meet the specific needs of veterans and their families. ■



## Education Department responds to ABA's PSLF lawsuit

In response to a [lawsuit](#) filed in December by the ABA and four other plaintiffs, the Department of Education (ED) issued an answer March 28 indicating that those who were provided with approval for participating in the Public Service Loan Forgiveness Program (PSLF) cannot rely on information provided to them by the organization contracted by the department to administer the program.

The ABA filed the lawsuit after the department rescinded without explanation the association's status as a qualified employer under PSLF and notified ABA employees and others who had previously been approved for participation in the program that they no longer qualified. ABA leaders had met with department officials in September to discuss the association's strong opposition to the department's action.

PSLF was established in 2007 to forgive federal student loans for individuals who work in a wide range of public service jobs, including jobs in government and non-profit charitable organizations. The program provides forgiveness of remaining debt after 10 years of eligible employment and 120 qualifying loan payments, and the first group of public service workers will be eligible for forgiveness this year. Those eligible for PSLF include prosecutors, public defenders and legal aid lawyers.

ED regulations define public service to include government, 501(c)(3) charitable organizations and certain non-501(c)(3) organizations that provide any of a list of public services, including public interest law and public education. Employees wishing to participate in the PSLF program are encouraged by the department to periodically submit an Employment Certification Form (ECF) created by the department to determine whether they are

meeting the PSLF eligibility requirements.

The ABA lawsuit is seeking to restore the association's longtime status as a qualified employer, vacate the department's retroactive interpretation of the plaintiffs' eligibility, and reinstate the previous eligibility certifications that had been issued.

The ED [response](#) to the lawsuit maintained that even though borrowers had received ECFs assuring them that they were on track to receive loan forgiveness under the PSLF program, the decision issued by FedLoan Servicing, the government contractor, "does not reflect a final agency action on the borrower's qualification for PSLF."

ABA President Linda A. Klein maintained that "borrowers have had the rug pulled out from under them," explaining that the Education Department "is putting lawyers who have been working in public service jobs in this untenable position of being forced to wait 10 years to find out whether their jobs qualify them for Public Service Loan Forgiveness."

There is also congressional concern about the program. Thirty-six senators sent a letter April 6 to Secretary of Education Betsy DeVos about the department's "lack of consistent, transparent and fair treatment" of borrowers participating in the PSLF program.

"It is unacceptable for the department to have told students they may rely on PSLF to help pay their students loans, only to have that assurance suddenly revoked," the letter said. "Borrowers who have been told in error that their employers qualify for PSLF should at a minimum be grandfathered in for the period for which they were previously approved, even if the department intends to change its determination about qualifying employment going forward."

The senators requested that the department further define and formally clarify the types of eligible employers that qualify for PSLF, provide clarity and support in communications denying employment certification, and fully digitize the PSLF employment certification process. ■

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## ABA urges Arkansas to modify execution schedule

### *Courts temporarily block controversial executions*

ABA President Linda A. Klein expressed the ABA's concern that the scheduling of eight executions during a 10-day period this month in Arkansas undermines due process and impedes adequate legal representation in the individual cases.

"While the ABA takes no position on the death penalty itself, it has long been association policy that executions should only be carried out when a state has ensured sufficient procedural safeguards to decrease the risks of injustice," Klein wrote April 11 to Arkansas Gov. Asa Hutchinson. "This can happen only when decision makers – including judges, parole boards and governors – are all provided with adequate time to assess claims for relief *and* when prisoners are represented by qualified, resourced and conflict-free counsel able to present these claims."

Since Klein's [letter](#), several court rulings at the federal and state levels temporarily blocked the executions from taking place, and the state is appealing the decisions.

After more than a decade without executions, the state set the multiple executions this month because its supply of midazolam, a sedative used

*see "Arkansas executions." page 8*

## ABA president addresses issues surrounding lawyer advertising

### *ABA working group is studying the issue*

ABA President Linda A. Klein, [responding](#) March 23 to an inquiry from House Judiciary Committee Chairman Bob Goodlatte (R-Va.), said that a working group of the ABA Standing Committee on Ethics and Professional Responsibility is reviewing the issue of attorney advertising.

Goodlatte's [request](#) for information was prompted by a recent resolution adopted by the American Medical Association that supports a requirement that attorney commercials that may cause patients to discontinue medically necessary medications have appropriate warnings that patients should not discontinue medications without seeking the advice of their physicians. He asked the ABA president to describe the steps the association is taking to address these types of ads, including possible amendments to the association's *Model Rules of Professional Conduct*.

"The ABA, of course, does not sanction misleading or untruthful advertising – by lawyers, doctors, pharmaceutical companies or anyone else," Klein wrote.

She said the review by the ABA working group is based on a report by the Association of Professional Responsibility Lawyers (APRL), which has recommended making state rules more uniform and focusing on the "false and misleading" standard. A [2015 APRL report](#), which found that complaints about lawyer advertising are rare and usually made by other lawyers,

recommended that lawyers should not be subject to discipline for "potentially misleading" advertisements.

The working group is focusing on three points.

- Many people are injured or killed each year from taking prescription drugs and would benefit from having a lawyer help them or their families determine whether they are entitled to compensation for the harms caused, and they might not otherwise know where to turn were it not for a lawyer's advertisement.

- The Supreme Court held in 1977 that the right of lawyers to advertise is protected as commercial speech under the First Amendment. A compelling interest would have to be found by state supreme courts and the ABA Model Rules to regulate advertising beyond a concern that some members of the public might misunderstand an advertising message that is not misleading.

- Every state already has a rule prohibiting lawyer advertising that is "false and misleading" and a version of Model Rule 8.4(c) that prohibits lawyers from conduct that involves "dishonesty, fraud, deceit or misrepresentation."

"While the AMA resolution and explanation state that attorney ads have the potential to frighten people and thus cause them to discontinue taking their medicine, it does not allege that those ads are false, misleading or deceptive," Klein said. She explained that there is a procedure for filing a complaint against specific lawyer advertising within each state's disciplinary agency. ■

### Judicial Vacancies/Confirmations—115th Congress\* (as of 4/18/17)

<u>Court</u>	<u>Vacancies</u>	<u>Pending Nominations</u>	<u>Confirmations</u>
US Supreme Court (9 judgeships)	0	0	1
US Courts of Appeals (179 judgeships)	20	1	0
US District Courts (678 judgeships)	99	0	0
Court of International Trade (9 judgeships)	2	0	0
Totals	121	1	1

\*Includes territorial judgeships

## WASHINGTON NEWS BRIEFS

**PRO BONO/DOMESTIC VIOLENCE VICTIMS:** Sens. Dan Sullivan (R-Alaska) and Heidi Heitkamp (D-N.D.) are seeking to help victims of domestic violence access legal services by reintroducing bipartisan legislation on March 23. S. 717, the Pro Bono Work to Empower and Represent (POWER) Act, will encourage lawyers across the country “to get involved and help victims who too often fear or are unfamiliar with the justice system,” Sullivan explained in a press release announcing introduction of the legislation. The bill would direct U.S. attorneys to hold a minimum of one event annually to promote pro bono legal assistance for domestic violence and sexual assault victims and submit reports on the events to the Department of Justice, which will then compile an annual report to Congress. Sullivan noted that about 25 percent of women will experience domestic violence in their lifetime. Also notable is that the success rate for a survivor obtaining a protective order against an attacker increases by over 50 percent when the survivor is represented by an attorney. “No victim of domestic violence should have to live in fear for their safety because they can’t afford legal protection,” Heitkamp said. “We can do better.” The ABA supports the expansion of pro bono legal services by all lawyers as a critical priority and adopted policy in 1997 urging that “federal, state, territorial, tribal, local governments and private entities make the establishment of programs addressing domestic violence a priority,” and that the access to legal services for such victims be ensured.

**FLORIDA DEATH PENALTY:** Florida Gov. Rick Scott signed legislation March 13 that requires a unanimous jury recommendation before a judge can impose the death penalty. The new law, which was passed overwhelmingly by the Florida House and Senate, came after the Florida Supreme Court ruled in October 2016 that the death penalty cannot be imposed without the unanimous support of a jury. Previous law required a 10-2 jury vote for the death penalty to be imposed. The Florida action is in line with policy adopted in 2015 by the ABA that emphasizes the importance of jury unanimity in death penalty sentencing. The policy was designed to complement the ABA’s other extensive policies and principles reflecting its longstanding and strong support of jury verdict unanimity in all cases, not just in death penalty trials. Although the ABA takes no position on capital punishment generally, the association has extensively studied the operation of the death penalty in the U.S. criminal justice system and has taken the position that

governments should take great care to ensure that death penalty cases are administered fairly and impartially in accordance with due process and in a way that minimizes the risk that innocent persons may be executed. In [correspondence](#) to the Florida Legislature in 2015, then ABA President William C. Hubbard emphasized that “with a decision as serious and irreversible as imposing the death penalty,” the ABA believes that “the vote of the jury should be unanimous both in its fact-finding role on the aggravating circumstances that legally allow consideration of a death sentence and in the ultimate determination that permits a court to impose a sentence of death.”

**EDUCATION FOR EX-OFFENDERS:** The ABA expressed its support March 22 for legislation that passed the Maryland House and Senate to prohibit state-funded institutions of higher education from considering a person’s criminal history during the admissions process except in specific circumstances. “Education is directly related to better employment and lower rates of criminal recidivism,” ABA Governmental Affairs Director Thomas M. Susman wrote in letters to the Maryland General Assembly’s [House Appropriations Committee](#) and [Senate Education, Health, and Environmental Committee](#). He added that allowing past offenders to be free from discrimination in higher education opportunities will even the playing field and allow them to better themselves professionally, thereby reducing the risk of further interaction with the criminal justice system. Susman said the legislation, Senate Bill 543 and House Bill 694, will help applicants who have a criminal history at least be considered for higher education, and, if admitted and allowed to graduate, will potentially help them get a better job later. He explained that the ABA has multiple projects, policies and standards ensuring fair treatment of individuals with criminal records, including the creation of the [National Inventory of Collateral Consequences of Conviction](#), a publicly searchable database of collateral consequences in all U.S. jurisdictions. In addition, Section 19-3.1 of the *ABA Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons* states that the legislature “should prohibit discretionary disqualification of a convicted person from benefits or opportunities, including housing, employment, insurance, and occupational and professional licenses, permits and certifications, on grounds related to the conviction, unless engaging in the conduct underlying the conviction would provide a substantial basis for disqualification even if the person had not been convicted.”

## Foster care and homeless have unique student aid needs

### *ABA urges Congress to retain and improve mechanisms for identifying students' needs*

In a [March 17 letter](#) to the chair and ranking member of the House Education and the Workforce Committee, the ABA emphasized the unique educational needs of students in, or formerly in, foster care and those experiencing homelessness that need to be taken into account as changes are being considered to the Free Application for Federal Student Aid (FAFSA).

The letter was sent by ABA Governmental Affairs Director Thomas M. Susman in advance of a hearing held March 21 by the Subcommittee on Higher Education and Workforce Development. The hearing focused on streamlining federal student aid during reauthorization of the Higher Education Act.

Susman called on the committee to retain mechanisms for students to report their status as homeless or in foster care to ensure they are considered “independent” for purposes of financial aid calculations. The mechanisms, added to FAFSA in 2009, were “pivotal in making it easier for students without the support of their birth families to get the help they need to enter and complete postsecondary education.” He emphasized, however, that remaining barriers include:

- students failing to understand the questions about foster youth or homeless status;
- difficulty securing documentation of former foster youth or homeless status; and
- difficulty accessing assistance to complete FAFSA.



Susman pointed out that newly available data from the Department of Education indicates that students in foster care and unaccompanied homeless youth are severely under-identified as “independent” when accessing federal financial aid. He urged that additional protections be put in place to help identify these students. ■

## Arkansas executions

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during executions, will expire at the end of April. The drug has been a topic of debate following its use in several botched executions.

Klein said the execution schedule set by the state appears to “prioritize expediency above due process” and asked the governor to modify the schedule to allow adequate time between executions.

In her letter, Klein cited the [ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases](#), which provide that when an execution date is set, counsel must “immediately take all appropriate steps to secure a stay of execution and pursue those efforts through all available fora.” She explained that the execution dates in Arkansas “have been set without regard to these lawyers’ ethical duties; more important, the arbitrary acceleration of execution dates poses unfair and irreversible consequences for defendants who may still be in the process of asserting their legal rights.”

Klein also noted ABA concerns about allegations by counsel that at least two of the prisoners scheduled for execution suffer from severe mental illness.

“Allowing time for each case to receive sufficient and individualized review prior to imposing death – the most serious action that our governments can take – will not preclude the administration of justice in Arkansas from going forward. It is critical, however, to ensuring our collective confidence in the fairness and accuracy of our justice system,” she concluded. ■

The monthly *Washington Letter* reports news of national public interest to the legal profession, including congressional, executive branch and ABA activities concerning the association’s legislative priorities. The newsletter is published by the Governmental Affairs Office as a service to ABA members and national, state and local bar associations. Full text is available on the Internet at [http://www.americanbar.org/advocacy/governmental legislative work/publications.html](http://www.americanbar.org/advocacy/governmental_legislative_work/publications.html). ©2017

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