



Update from AAJ Linda A. Lipsen

CEO, AMERICAN ASSOCIATION FOR JUSTICE

Journal of Consumer Attorneys Associations for Southern California
ADVOCATE
October 2021

Congress introduces bill to end forced arbitration in nursing homes

ALSO: BIDEN NOMINATES A FORMER PLAINTIFF'S ATTORNEY AND THE FIRST OPENLY LGBT WOMAN TO SERVE ON ANY FEDERAL CIRCUIT COURT

WASHINGTON UPDATE

I am pleased to report some great news: Congress has introduced a bill that includes a crucial provision to end forced arbitration for nursing home residents and their families. Currently, this rigged practice forces residents and their families to give up their rights after suffering horrendous injuries from sexual abuse and neglect.

Ending forced arbitration in nursing homes will improve care for residents and ensure nursing homes are accountable when harms occur. It will also increase public transparency so that residents and their families can make informed long-term care choices.

The Nursing Home Improvement and Accountability Act (S. 2694) was introduced in the Senate on August 10, 2021, by Senator Wyden (D-OR) and five other Democratic senators. The bill was also introduced in the House (H.R. 5169) on September 3 by Chairman Richie Neal (D-MA-1) and Chairman Frank Pallone (D-NJ-6), the chairs of the two relevant House Committees of jurisdiction in Congress.

The bill also improves quality of health care standards by addressing substantial gaps in nurse staffing, while increasing transparency, accountability, and oversight in nursing homes.

AAJ will continue the fight to end forced arbitration and restore your clients' rights.

President Biden names sixth round of judicial nominees

I am also pleased to report that President Biden announced four more judicial nominees in August, two of whom are current or former plaintiff lawyers.

Justice Beth Robinson from Vermont was nominated for the United States Court of Appeals for the Second Circuit. We are thrilled with this nomination. Justice Robinson is a former plaintiff lawyer, working for 18 years at a firm in Vermont. She will be the first openly LGBT woman to serve on any federal circuit court.

We are also very pleased that Charlotte Sweeney was nominated for the United States District Court for the District of Colorado. Ms. Sweeney is a plaintiff's side employment and civil rights lawyer in Denver. Ms. Sweeney has dedicated her career to fighting to protect and empower workers and victims of discrimination and workplace retaliation. Ms. Sweeney will be the first openly LGBT judge in any federal court in Colorado. AAJ strongly supports these two great nominees.

Federal rules update

We will continue to provide updates on federal rule changes, as the same rules often are adopted at the state level.

Comment period now open on FRE 702 – Expert witnesses

The Evidence Rules Committee is currently in a formal comment period on proposed amendments to FRE 702 related to expert witnesses. The proposed changes would add a preponderance of the evidence standard to the rule and modify subsection (d) of the rule to limit "overstatements" by expert witnesses. Read about how this proposal would overly restrict expert testimony at www.law360.com/articles/1408127 (subscription needed).

It is important for the plaintiff bar to participate in the formal comment period, which started in August 2021 and will run until February 16, 2022 (including one public hearing). AAJ encourages you to review the proposed changes and submit a short comment about the effect of the amendments on your practice.

Additional federal public comment on emergency rulemaking

There is also currently a public formal comment period on whether the Federal Rules of Civil Procedure should be amended to add a new proposed emergency rule, FRCP 87, which focuses on service of process and appeals. Congress directed the rules committees to determine whether emergency rules are necessary to deal with emergencies such as the pandemic, as well as other emergencies such as the shutting down of a court or courts. This public comment period began in August 2021 and will run until February 16, 2022 (including two public hearings).

If you have questions about submitting a comment or pertaining to federal rules, please contact Sue Steinman at susan.steinman@justice.org or Amy Brogioli at amy.broglioli@justice.org.

Fighting for you and your clients

Thank you for your continued support as we continue to make our way forward during the ongoing pandemic. AAJ will continue fighting to block attempts to deny your clients access to justice. We will keep you informed about important developments and welcome your input. You can reach me at advocacy@justice.org.