

News never stops. Neither do we. Support NJ.com

Opinion

Retired judge: New Jersey's 'veto power of one' leads to justice delayed and justice denied | Opinion

Updated: Nov. 13, 2022, 8:53 p.m. | Published: Nov. 13, 2022, 8:45 a.m.



Julio Mendez, retired assignment judge for the Atlantic-Cape May Vicinage, says the number of judicial vacancies in New Jersey is unacceptable. There are currently 60 vacancies, representing over 16% of the 457 Superior Court judge positions.

By [Star-Ledger Guest Columnist](#)

By **Julio L. Mendez**

Every citizen coming to court is entitled to the timely disposition of their case. That is a core principle of New Jersey courts. However, a staggering number of judgeships in the state are unfilled. Because of those vacancies, the courts are unable to deliver on that promise of timely justice.

Delays leave children without permanency, victims of domestic violence without a final hearing, an injured plaintiff unable to get a trial, a criminal defendant lingering in jail. The consequences are never-ending.

The current level of judicial vacancies is unacceptable. There are 60 vacancies, representing over 16% of the 457 Superior Court judge positions. The number of vacancies impacts the fair administration of justice. Judges have excessive caseloads, often leading to burnout.

Addressing the issue is of paramount importance.

Notwithstanding the judicial vacancy crisis, it is important to highlight that the New Jersey framework for the selection, vetting and appointment of judges has served the public well. It is much better than the federal system, and immensely better than electing judges. The New Jersey Judiciary is considered one of the best in the country.

The process for the selection of judges is complex and deliberate. It involves a combination of politics and qualification criteria. Under the Constitution, the governor appoints judges with the advice and consent of the State Senate.

A crucial component of the process is the vetting of judicial candidates to ensure quality, enhance public trust and diminish the impact of politics. Governors and senators deserve credit for the excellence and reputation of the New Jersey courts. But they also share responsibility for the judicial vacancy crisis.

The judicial selection framework requires that regardless of which political party is in power, half of the judges should come from each political party. Political balance cultivates moderation and stability, engenders cooperation, and most importantly, builds trust in the judicial system. Political balance serves the public interest.

The New Jersey Constitution requires mandatory retirement at age 70 for all judges. In other words, judges and justices have a term limit. This is a crucial element of checks and balances, providing regular turnover of judges. Importantly, mandatory retirement helps to address the historical lack of diversity on the bench. It opens the opportunity to appoint new judges.

The other distinctive element is the seven-year tenure review of judges. This procedure allows elected officials to assess performance before a judge obtains tenure to age 70. All these distinctive elements have contributed to an excellent judiciary.

The biggest difficulty lies with senatorial courtesy.

It is an unwritten rule that permits a single senator to block the appointment of a judicial candidate, and other gubernatorial appointments from their home counties or legislative districts. It permits a state senator to indefinitely halt consideration of a judicial candidate regardless of qualifications.

No reason or explanation required.

Senatorial courtesy is a Machiavellian political tool that heightens the political power of senators. It gives a senator bargaining power to obtain political concessions, often totally unrelated to the judicial candidate.

It is the veto power of one, to the detriment of the other branches, and to the public that deserves a full complement of judges.

The excessive use of courtesy is a major problem, particularly in large counties that cover multiple legislative districts, allowing multiple senators to hold up a nomination. In other parts of the state, the judicial appointment process has worked more efficiently.

Senatorial courtesy is not found anywhere in the constitution. It is an extreme expansion of the constitutional advice and consent power and limits the governor's appointment authority.

The abuse of senatorial courtesy raises significant constitutional issues. A legal challenge is complicated, and the outcome is hardly predictable. So far, courts have punted, ruling that the issue is not a justiciable constitutional question.

The best solution is to agree to moderate senatorial courtesy. It all starts with an appreciation of the constitutional role each branch plays in the judge selection process. A good step forward came last month with the appointment of two excellent state Supreme Court Justices. The next step is to reduce judge vacancies to 25 or fewer.

What about some proposed modifications to begin the discussion: to detach the exercise of senatorial courtesy for judicial appointments from other political appointments, to limit courtesy to a senatorial district and not the entire county, to eliminate the indefinite halt of a qualified judicial candidate, to require the senator to issue a statement explaining the reasons for courtesy, and to require a hearing within 90 days once a nomination is made by the governor.

Calls to eliminate or adjust senatorial courtesy began even before the 1947 Constitution. Despite vociferous objections by the New Jersey State Bar Association, and governors, senatorial courtesy has survived.

Now is the time to act. Addressing this issue provides the new Senate president with a historical moment to add to his legacy.

Justice delayed is justice denied.

Julio Mendez, retired assignment judge for the Atlantic-Cape May Vicinage, is a senior contributing analyst for the William J. Hughes Center for Public Policy at Stockton University.