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NEWS



'A Situation Like We Have Now': What's Driving New Jersey's Judge Shortage?



"I would still say you're worlds ahead of the places where they've got these elected judiciaries, and I think you should count yourselves lucky," Brian Fitzpatrick of Vanderbilt University said of New Jersey's judiciary.



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Judges



Charles Toutant

What You Need to Know

- Poor communication between Gov. Phil Murphy and state senators is seen as a factor in the slow pace of the judicial nomination process.
- More judges are retiring at an earlier age, which exacerbates the judicial shortage.
- Filling vacancies might take longer in an appointed judiciary than an elected one, but an elected judiciary brings its own set of problems.

New Jersey's judiciary is said to have a stellar reputation nationwide, but lately its pedigree has been tarnished by a very basic problem—not enough judges. So how has this judge shortage befallen such a well-regarded institution?

Civil and matrimonial trials are suspended in some counties, and judges are pulling extra duty amid vacancies and backlogs.

The lingering impact of backlogs that developed during COVID-19 and a trend toward judges retiring at younger ages are part of the equation.

18 Months of Limbo

But another factor is poor communication about judicial nominees between the governor and the state Senate, said Julio

Mendez, a former assignment judge in Atlantic and Cape May counties who retired in 2022.

“There’s a slowness in the process. It’s not supposed to be a very fast process because we want to make sure there are enough checks and balances in the process and people are properly vetted,” Mendez said.

“We have vetting that takes place with the local bar associations and the state bar association, and we have vetting that takes place with the state police four-way check. And the governor’s office does their own vetting and the Senate Judiciary Committee does their own vetting, so there’s multiple levels of vetting that takes place. Overall the system has worked quite well for the state of New Jersey over the years. At times, we get in a situation like we have now,” Mendez said.

Much has been said about senatorial courtesy and its impact on judicial nominations, but some of the impact of that unwritten rule is behind the scenes, and not publicized, Mendez said.

When Gov. Phil Murphy nominated Rachel Wainer Apter to fill a vacancy on the Supreme Court in March 2021, for instance, the candidacy was held up when Sen. Holly Schepisi, R-Bergen, invoked senatorial courtesy to block the nomination.

The nomination was in limbo for nearly 18 months until Schepisi allowed it to proceed.

Murphy has not discussed nominations with senators before announcing them publicly, Mendez said. The governor’s failure to put out enough nominations is exacerbated by his poor communication with legislators, Mendez said.

A senator “may not be inclined to move that nomination forward until he had an opportunity to review that candidate. All of this should take place in advance, as much as possible. That’s senatorial courtesy,” said Mendez, who is now a senior contributing analyst for the Hughes Center at Stockton University.

“It seems to me that the beginning of a good conversation is taking place, but it’s difficult to catch up quickly because it’s a very deliberate process. So getting the appropriate sign-offs early on and building trust and engaging in good discussions is the key here,” Mendez said.

The Good News

The shortage of judges is slowly improving.

New Jersey has 58 vacancies out of 433 trial court positions, with 20 nominations pending.

That’s an improvement from the 75 vacancies the courts had in May 2022, which officials said at the time was the highest vacancy level in the history of the state judiciary.

Another factor impacting the judge shortage is a trend toward earlier retirements.

“It used to be that judges sat until the age of mandatory retirement, which is 70. What we’re seeing is many more judges are leaving as soon as they are eligible for the pension. And there are individual reasons why that takes place, but judges are not staying as long as they had in the past,” Mendez said.

Retirements and other departures have been on an upswing since the arrival of COVID. In 2019 and 2020, the state judiciary saw 24 judges leaving annually.

But that number grew to 31 in 2021 and 44 in 2022, with the most dramatic growth among judges who left before reaching mandatory retirement age, according to data from the judiciary.

The increase in departures could be linked to the so-called Great Resignation, in which burnout and a desire for greater work-life balance prompted a record number of people to quit their jobs.

Better Than Elections?

In states such as New Jersey with an appointed judiciary, the process of filling vacancies can take longer and be more complex than in states that elect judges, said Brian Fitzpatrick, a law professor at Vanderbilt University who studies judicial selection.

“You have to go through all the work to find candidates, and then there has to be agreement among the various political leaders. And sometimes that can create bottlenecks,” Fitzpatrick said.

No such delays are seen in places that elect judges, but there are other issues with judicial elections, Fitzpatrick said.

“You get vacancies filled quicker with election, but elections have so many other problems, including campaign contributions and the illegitimacy that comes from judges taking money and then sitting on cases where litigants gave them money. It’s just an intractable problem,” he said.

“Even if your system seems like it’s slowed down too much at this moment, I would still say you’re worlds ahead of the places where they’ve got these elected judiciaries, and I think you should count yourselves lucky,” Fitzpatrick said of New Jersey.

Fitzpatrick likened senatorial courtesy to the blue slip system in use at the federal level, where senators receive a slip of paper that is used to indicate a favorable or unfavorable opinion of a judicial nominee. A movement is attempting to get rid of blue slips, and senatorial courtesy should also be eliminated, Fitzpatrick said.

“I think you guys might consider just scrapping this darn thing and letting the governor pick who the governor wants, and let the Senate vote up or down on whether to confirm that person. That’s a more transparent and democratic way to handle these things,” Fitzpatrick said.

“The other thing is maybe the governor is not putting enough resources into finding people quick enough,” Fitzpatrick said. “It could be a two-way street where maybe the governor needs to put more resources into finding people quickly, and then maybe these local leaders need to drop their prerogative to veto things that they don’t like. And that will probably get things moving in the right direction. But New Jersey has one of our best judicial selection systems. You guys should be very proud.”

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