

The Impact of Judicial Vacancies on Florida's Federal Courts

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Executive Summary

Florida's federal district courts play an important role in the administration of both civil and criminal justice in the state. Florida has three federal court districts: the Northern District, the Middle District and the Southern District. In the 12-month period ending March 31, 2016, more than 24,000 cases were filed in Florida's three federal district courts.

Florida has 37 authorized federal judges over the three districts. For various reasons, there are currently four vacancies, constituting 11 percent of the authorized judges. Nominations have been made by the President to fill all of the vacant judgeships, but none have been confirmed by the Senate.

Three of the Florida vacancies, those in the Middle and Southern districts, have been designated "judicial emergencies" by the Judicial Conference, the policy-making body for the federal courts. That means that the "weighted filings" for each judge in those districts exceeds 600 filings per judge.

Court vacancies impact the ability of people and businesses to access the courts in many ways. A [2014 study](#) by the Brennan Center for Justice at New York University School of Law examined 10 judicial districts including Florida's and found judicial vacancies had four major effects on the working of the courts:

1. Case delays, primarily involving motions and hearing trials.
2. Less time spent on cases. Because of higher caseloads, judges on courts with vacancies meant less time for individual cases, raising questions about the quality of decisions.
3. Administrative burdens. It's not only the lack of a judge that harms courts, but also all the other associated impacts, such as the loss of law clerks and other administrative resources and less time for judicial committee work.
4. Risk of judicial burnout. Judges on courts with vacancies have higher caseloads and a heavier burden to dispense with cases, raising the likelihood of judges burning out.

While nominations for the replacement of most of Florida's vacant judgeships were made in April of 2016, one nomination was made well over a year ago, in February of 2015. It appears unlikely that the U.S. Senate will hold hearings to confirm any of the Florida nominations before the 2016 general election.

Given the inaction on filling the three judicial vacancies that are considered "emergency vacancies," the Senate is not acting in the Courts' best interest and may be putting the Courts at risk of the potential effects cited above. Unfilled vacancies, particularly judgeships open for a long period of time, threaten the timely administration of justice in both criminal and civil cases.

Analysis

Senate inaction on the nomination of Judge Merrick Garland to the U.S. Supreme Court has focused attention on vacancies in federal judgeships throughout the nation. That vacancy is one of 83¹ in the nation's "Article III" courts, including 71 district court judges, established by or under Article III of the Constitution: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."²

Article III courts include the Supreme Court; 12 geographic-based courts of appeal and one for the federal circuit, which hears appeals in specialized cases such as patent law³; 94 district courts in the 50 states, District of Columbia and Puerto Rico and their subordinate bankruptcy courts; and the Court of International Trade.⁴

Florida, Georgia and Alabama constitute the 11th Circuit Court of Appeals, which has courts in Atlanta, Miami, Jacksonville and Montgomery, Alabama.⁵ Three federal district courts serve Florida: the Northern District, with four judges authorized; the Middle District, with 15; and the Southern District, with 18.⁶

What the Federal District Courts Do

District courts are the general federal trial courts of the nation's judiciary and handle both civil and criminal cases.⁷

Each year up to 400,000 cases are filed in the nation's federal district courts – 371,507 in the 12-month period ending March 31, 2016. More than 365,000 cases were terminated in that period, but 427,512 cases remained pending.⁸ Florida's three courts received 24,500 of those cases.⁹

District courts hear cases that deal with the constitutionality of a law; involve the laws and treaties of the U.S.; involve ambassadors and public ministers; disputes between two or more states; admiralty law; bankruptcy; and habeas corpus issues.¹⁰ Thus cases heard in district courts include civil rights claims, criminal prosecutions, environmental and consumer protection laws, challenges to government power, predatory lending, consumer fraud, immigrant rights, government benefits, business contracts and lawsuits against corporations for wrongdoing, unfair business practices, patent infringement, police brutality and employment discrimination.^{11,12}

Three recent cases illustrate the significant impacts on the people of Florida from decisions in the state's federal district courts:

1. A judge granted a temporary injunction barring key provisions of a bill passed by the Florida Legislature that would have blocked public funding for Planned Parenthood and imposed new restrictions on abortion clinics.¹³ (A date for a hearing on whether the law will ultimately be implemented has yet to be set.)
2. Federal district judges rejected an incumbent candidate's claim that a newly redrawn congressional district in Florida violated the Voting Rights Act.¹⁴
3. In 2014 a federal district judge declared Florida's ban on same-sex marriage unconstitutional. He subsequently clarified his decision to instruct the state's clerks of court that they are bound by the U.S. Constitution and cannot enforce a same-sex marriage ban existing in state law.¹⁵

Impacts of Vacancies

People, businesses and other organizations can be affected by court vacancies in many ways. Plaintiffs may be forced into lower settlements and small businesses may make unnecessary settlements to end the cost and uncertainty of litigation.¹⁶ Case backlogs ensure further delays in the future. Delays damage small businesses trying to uphold their rights as a plaintiff or to put a case behind them. Court vacancies can increase the time people wait for their day in court. The lack of a full complement of judges can create pressure to “robotize” justice.¹⁷

One member of the Federal Bar Association, which represents lawyers and judges practicing in federal courts, addressed the practical effect of vacancies:

Vacancies and delay add greater costs to already high litigation expenses. Those of us who try federal cases know the financial impact of continuances of cases that can extend for months, even years, without decision, due to insufficient bench capacity. For business clients, these costs get passed on to customers. And when the United States is a party to the case, it means that the public is paying that higher tab.¹⁸

The [2014 study](#) of 10 judicial districts, including Florida's, by the Brennan Center concluded that “vacancies impact the ability of many courts to effectively and timely administer justice. In eight of the 10 profiled districts, judges and court administrators reported that judicial vacancies had a substantial impact on their courts... unfilled seats leave many federal trial courts unable to effectively manage their dockets — with the individuals and businesses that rely on these courts paying the price.”¹⁹

The study, which analyzed actions in the courts and included interviews of more than 20 judges, court administrators and lawyers, found that vacancies had four major effects on the working of the courts:

- Case delays, primarily resolving motions and hearing trials.
- Less time spent on cases. Because of higher caseloads, judges on courts with vacancies meant less time for individual cases, raising questions about the quality of decisions.
- Administrative burdens. It's not only the lack of a judge that harms courts, but also all the other associated impacts, such as the loss of law clerks and other administrative resources and less time for judicial committee work.
- Risk of judicial burnout. Judges on courts with vacancies have higher caseloads and a heavier burden to dispense with cases, raising the likelihood of judges burning out.

The study quotes comments made in interviews of two Florida district court judges.

Chief Judge Ann Conway of the Middle District of Florida:

- “Things take longer because of vacancies. . . . When you have as many cases as we have, it’s just hard.”
- “Vacancies push cases back. . . If you could rule on a summary judgment motion right away it would save the parties a lot of time [and] narrow the issues,” she explained. “Reducing the number of open questions also narrows a case’s discovery. Fewer issues mean that the client pays less.”
- “Sometimes you’d like to be able to spend more time thinking and writing, or having more hearings,” she noted. “We just don’t have time to do that — there are fewer hearings and less face time with attorneys [because of vacancies]. . . [w]e would like to be able to benefit from hearing more from the lawyers. You really want a clear mind for the kind of cases we have.”

Chief Judge Federico Moreno in the Southern District of Florida on judicial burnout:

- “It’s like an emergency room in a hospital. The judges are used to it and people come in and out and get good treatment. But the question is, can you sustain it? Eventually you burn out.”

Another report interviewed six federal district judges about caseloads due to vacancies. “All of them said they feel like they’re underwater and desperately need more judges.”²⁰

Florida Vacancies

A total of 71 district court vacancies exist throughout the U.S., due to death, retirement, resignation or designation as “senior status,” a kind of semi-retirement in which judges may still handle decreased caseloads.²¹ That is more than 10 percent of the nation’s 677 district judges.²²

Four vacancies exist in Florida: one of four authorized judgeships in the Northern District, two of 15 in the Middle District and one of 18 in the Southern District. The four vacancies are 11 percent of the 37 district judges authorized in the state. (In addition, another vacancy will occur in November in the Northern District.²³) Nominations have been submitted to the President for each of the four current vacancies. The nominees are:²⁴

- Richard Smoak, in the Northern District, to replace Judge Philip R. Lammens, who moved to senior status. Vacancy date: 12/31/2015. Nomination date: 4/28/2016.
- Patricia D. Barksdale, in the Middle District, to replace Judge John E. Steele, who also moved to senior status. Vacancy date: 6/3/2015. Nomination date: 4/28/2016.
- William F. Jung, in the Middle District, to replace Judge Anne C. Conway, who also took senior status. Vacancy date: 8/1/2015. Nomination date: 4/28/2016.
- Mary Barzee Flores, in the Southern District, to replace Judge Robin S. Rosenbaum, who was appointed a Circuit Court judge. Vacancy date: 5/12/2014. Nomination date: 2/26/2015.

The first three nominations were made three months ago. The Flores nomination, however, has been pending for 17 months.

Following custom, the two senators from Florida appoint a Federal Judicial Nominating Commission which recommends potential judges to them.²⁵ The senators agree on candidates and submit their recommendation to the President, who selects a nominee for consideration by the U.S. Senate. The state’s senators then issue so-called blue slips, which triggers Senate hearings on the confirmation of nominees.

In the Flores case, she was first cleared by Florida’s two senators who submitted her name to the President, who nominated her. Subsequently, Senator Marco Rubio issued blue slips for the other three Florida judicial nominees, but not for Flores. The action put Senate hearings on her nomination on indefinite hold.²⁶

Three Florida Vacancies are “Judicial Emergencies”

Three of the Florida vacancies – those in the Middle and Southern Districts – have been designated as “judicial emergencies”²⁷ by the Judicial Conference, the policy-making body for the federal courts.²⁸ Judicial emergencies are declared if “weighted filings” are more than 600 per judge.²⁹ The vacancies in the Middle District create a weighted filing caseload of 611 per judge and the Southern District vacancy a caseload of 675 per judge.³⁰

(Weighted filings are calculated to account for differences in time required in different kinds of cases. Instead of counting each case as one, the cases are weighted; for example, default of a student loan would be counted as 0.16 for each case and each antitrust case as 3.72 cases.)³¹

Judges in Florida districts carry a heavier load than judges in other state’s districts. Of the 94 districts, Florida’s Southern District recorded the 5th-highest total of weighted filings per judge in the 12 months ending March 31, 2016. The Middle District had the 9th most and the Northern District the 20th most.³²

But the Florida courts also disposed of cases at a high rate compared to other districts, ranking 24th, 12th and 13th in case terminations. The districts also disposed of cases more quickly, on average, than the rest of the 94 district courts.³³

Few Judges Are Expected to be Confirmed Before the Election

It is likely that only a few, if any, judicial nominees will be confirmed before the November election. “The chances of doing so appear slimmer by the day,” according to a July 14 Politico story.³⁴

“Supreme Court nominee Merrick Garland may be the most prominent casualty of the GOP-controlled Senate’s election-year resistance on the federal judiciary — but the pace of overall judicial confirmations under Mitch McConnell is on track to become the slowest in more than 60 years,” according to Politico.³⁵

Conclusion

Floridians and the rest of the American people pay a price for vacancies on federal district courts. Individuals and businesses seeking their day in court may find their cases delayed or eventually decided without the full deliberation that would be possible in courts with a full complement of judges.

Unfilled vacancies, particularly judgeships open for a long period of time, threaten the timely administration of justice in both criminal and civil cases. It is in the best interest of Floridians and the nation that vacancies be filled quickly, without undue delays in nomination of candidates or confirmation by the Senate. The logjam of dozens of unfilled vacancies should be broken to make sure that the administration of justice works quickly and efficiently.

Endnotes

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About Integrity Florida

Integrity Florida is a nonpartisan, nonprofit research institute and government watchdog whose mission is to promote integrity in government and expose public corruption. Our vision is government in Florida that is the most open, ethical, responsive and accountable in the world.

Integrity Florida and its research have been cited by major news outlets including CNN, the BBC, the Wall Street Journal, New York Times, Washington Post, Reuters and the Associated Press. Integrity Florida policy solutions have been incorporated into 15 new laws increasing government transparency and accountability in Florida. Founded in January 2012 by Dan Krassner, Nicole Krassner and Michael Dema, Integrity Florida is based in Tallahassee, Florida. Research Director Ben Wilcox joined the organization in February 2012.

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Tampa Bay Times: "...the independent watchdog and research group Integrity Florida took little time raising its profile and becoming an influential player in public policy."

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