Federal Judicial Vacancies, Nominations and Confirmations

District court vacancies spiked by ten slots in the past month, from 49 to 59, as more judges announced taking senior status. Here are the numbers:

Current Article III Vacancies
(as reported by the US Courts website on March 7, 2021)

<table>
<thead>
<tr>
<th>Court</th>
<th>Vacancies</th>
<th>Nominees Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Courts of Appeal</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>District Courts</td>
<td>60</td>
<td>0</td>
</tr>
<tr>
<td>US Ct of International Trade</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>66</strong></td>
<td><strong>0</strong></td>
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</tbody>
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Related Developments:

- It’s unclear when the Biden White House will announce its first wave of judicial nominees, with the predominating focus on getting the $1.9 trillion Covid relief package through Congress and the confirmation of remaining Cabinet picks during the last several weeks. Regardless when, expect a racially and ethnically diverse pool of judicial candidates to be named.

- Advocacy groups have praised the new administration for announcing it would bypass a the American Bar Association ratings process for judicial nominees. The ABA drew criticism from the left as a conduit for corporate lawyers to get on the federal bench. In Colorado, Democratic senators are facing pushback from progressives for putting forward a described-Latina Big Law attorney for an open district court seat.

- With the anticipated confirmation of Judge Merrick Garland as Attorney General and the announcement of DC Circuit Judge David Tatel to take senior status, two vacancies on the
high-profile District of Columbia circuit court will soon open up. DC district court judge Ketanji Brown Jackson is widely seen as a potential replacement for Garland.

- Senate Judiciary Committee Chairman Richard Durbin warned Republicans in a New York Times interview that he would reserve the right to end their ability to block district court nominees through withholding blue slips if he concluded that they were obstructing nominations for reasons of race or gender. “I am not going to let the blue slip perpetuate prejudice in America,” Durbin said.

**Additional Judgeships:** The Judicial Conference soon will set in play a Congressional debate over whether to establish more federal judgeships. The Judicial Conference is expected on March 16 to release its biennial analysis and recommendations for additional circuit and district judgeships. Congress already has begun to take a look at the issue. A February 24 House judiciary subpanel hearing on the case for more judgeships received bipartisan support for adding more bench slots, but also highlighted partisan tensions over the timing of adding judgeships, as well as the adding more Ninth Circuit appellate seats without splitting it. The last time Congress passed a comprehensive judgeships bill was in 1990.

**Federal Courts Funding.** Judiciary officials have told Congress that an expected resurgence in lawsuits is expected to hit the federal courts in the coming months as the Covid-19 pandemic declines. “We anticipate a backlog of cases will flood the federal court system once vaccination becomes widespread and society begins a return to normalcy,” Judge John W. Lungstrum, chair of the Judicial Conference’s Committee on the Budget, told a House panel in appropriations testimony on February 24.

Judge Lungstrom noted that the pandemic resulted in double-digit declines in 2020 in criminal filings (-11 percent) and bankruptcy filings (-12 percent). “The Judiciary projects that criminal and bankruptcy workload will rebound in 2021, with each increasing nearly 4 percent.” Court-appointed defense representations in the Judiciary’s defender services program are also expected to increase.

Judge Lungstrum and Judge Roslynn R. Mauskopf, director of the Administrative Office of the U.S. Courts, testified via video in support of the Judiciary’s appropriation request for FY 2022. The $8.12 billion request also includes more funding for growing security threats, both physical and cyber, against judges and court facilities and pay for additional videoconferencing capabilities and more magistrate judges.

The request in discretionary appropriations represents an overall $403 million increase, or 5.2 percent, above the FY 2021 enacted level. Judge Lungstrum said the courts will need supplemental appropriations for the current fiscal year, which ends Sept. 30, 2021, to pay for information technology expenses and for enhanced cleaning of court space to reduce infection risk for litigants and court personnel. He noted the disruptive impact that COVID-19 has had on the federal court operations, widespread telework for employees, postponed jury trials, increased use of video and teleconferencing, and new approaches for probation and pretrial supervision.
The Judiciary also has requested funding through the General Services Administration for courthouse construction and improvements, including a new courthouse in Puerto Rico, currently operating under emergency conditions due to seismic vulnerabilities. Funding for courthouse projects in Hartford, Connecticut, and Chattanooga, Tennessee also would be provided.

**Judicial Security.** A chilling 60 Minutes report on the tragic murder of Judge Esther Salas’ son highlighted the fourfold increase in threats against the federal judiciary. The report revealed that the killer of Judge Salas’ son also targeted Justice Sonia Sotomayor.

The “Daniel bill”, introduced in the last Congress to improve judicial security, has not yet been introduced in the new Congress.

**White House Commission on the Federal Courts.** The White House has not yet released information on its expected creation of a commission to assess the state of the federal courts. Allowing cameras in the courtroom, establishing term limits for Supreme Court justices, and adding more judgeships to the federal courts could be among the recommendations of the commission.

**In Other News:**

At least five federal courts have adjudicated virtual civil jury trials, with jurors serving from home. Their experience has been positive. Some of the lessons learned are recounted in this Administrative Office coverage. The courts are in: Western District of Washington; Middle District of Florida; District of Minnesota; Districts of Kansas; and District of Rhode Island.

A new report from the Administrative Office also takes a deeper dive into pro se actions in the federal courts. It found these trends:

- Most federal pro se cases are civil actions filed by persons serving time in prison.
- Pro se prisoner petitions spiked in 2016 after a pair of Supreme Court rulings made it possible for certain prisoners to petition to have their sentences vacated or remanded.
- Non-prisoners who file pro se actions most often raise civil rights claims.
- Bankruptcy filings fell sharply — 29.7 percent -- for the 12-month period ending Dec. 31, 2020, despite a significant surge in unemployment related to the coronavirus (COVID-19).