

New York City Council Committee on Courts and Legal Services
April 19, 2017
Oversight - Examining the Process of Mayoral Judicial Appointments
Testimony of Henry Berger, Special Counsel to the Mayor

The authority of the Mayor to appoint judges to the Family and Criminal Courts and to fill interim vacancies on the Civil Court derives from the *New York State Constitution, Article 6, §§13, 15 and 21*. That authority is unconstrained and limited solely by the requirements that judicial appointees be residents of the City and admitted to the bar as an attorney in New York State for at least 10 years. (See *New York State Constitution, Article 6, § 20* and related court acts). Because this constitutionally constructed mandate to the Mayor provides no limitation on his power of appointment other than that the candidates meet the requisite residence and experience requirements, the City Council has no oversight jurisdiction over the Mayor's exercise of his appointment of judges. Nevertheless, as a courtesy to our partners in the City Council, we are providing this testimony and appearing before you today.

The Mayor considers the appointment and reappointment of individuals to judicial office to be one of his most important duties. During his tenure, the Mayor has filled more than 100 judicial positions, including 35 Family Court seats and 43 Criminal Court seats. Already this year, in preparation for the judicial vacancies and completion of terms occurring at the end of the past year, dozens of candidates have been reviewed, interviewed and designated.

Prior to the end of 2016, the Mayor filled, by reappointment or appointment, all 17 vacancies occurring on January 1, 2017, on the Criminal and Family Courts (including one reappointment to the Family Court occurring in mid-January). In addition, the Mayor appointed 5 individuals to

interim Civil Court vacancies created by the election of Civil Court Judges to the Supreme Court in November 2016.

Moreover, because there was an unusually large number of interim Civil Court vacancies -13 - created in the November 2016 elections, additional candidates have been reviewed by the Advisory Committee and designated by the Mayor for appointment subject to consideration by the New York City Bar Association. That consideration is currently pending and outside of the Administration's control. It is therefore *inaccurate* to say that the Mayor has not acted on eight outstanding appointments. The Administration has in fact designated nine candidates during the last three months, including a candidate for a Criminal Court seat that became vacant recently. Thus, the only vacancy for which the Administration has not designated a candidate is an interim Civil Court seat resulting from the unexpected retirement of a judge on March 31, 2017. The process to fill that seat is nearly completed.

Once the New York City Bar Association finishes its review and consideration, all of these nine recent appointments will be immediately placed and finalized.

I note that while the Mayor's power to make such appointments is unconstrained, he has continued the practice adopted by Mayors for nearly 40 years of limiting his selections to candidates whose qualifications have been reviewed and passed upon by a screening panel, the Mayor's Advisory Committee on the Judiciary, established by his Executive Order No. 4, as well as by the Judiciary Committee of the New York City Bar Association.

The evaluation and consideration of candidates for those positions is both extensive and intensive. After completion of a lengthy application, each candidate, whether for appointment or reappointment, is reviewed by a subcommittee of the Mayor's Advisory Committee on the Judiciary including extensive outreach to the references provided as well as other members of the legal and lay community with whom the candidate has interacted. The candidate is subsequently interviewed by the subcommittee and, if approved, is then referred to the full committee for additional vetting and interviews. If approved by the full committee, the candidate is then interviewed by the Executive Committee comprised of the Corporation Counsel, the Counsel to the Mayor, the Special Counsel to the Mayor and the Executive Director of the Advisory Committee. All candidates approved by the Advisory Committee are then interviewed by the Mayor who decides which of the candidates are to be appointed or reappointed. The candidates approved by the Mayor are then reviewed by the Judiciary Committee of the New York City Bar Association. The process is, necessarily, time consuming but essential to assure that the people the Mayor appoints will meet his high standards for these positions.

Filling interim Civil Court vacancies presents a unique set of challenges. These appointments are for only one year. The assignments of candidates, who go through the Mayor's non-partisan screening process, whether to Civil, Family or Criminal Court, are determined by the Office of Court Administration. Unless there will be a Family or Criminal Court seat available at the end of the appointment, there is no assurance that they will continue to have a position. Nor is it in the best interests of justice to simply reappoint interim Civil Court Judges to another interim Civil Court seat. Judges should have the security of a fixed term to assure the independence of the judiciary. The Advisory Committee has done commendable work over the last several

months to recruit and evaluate candidates to enable the Mayor to continue to fulfill his duty to continue to appoint highly qualified individuals to the judiciary.

It must be noted that there is absolutely no indication that the current appointment process is playing a role in exacerbating the processing time of cases. As Judge Lippman noted in his recent report, delays in processing criminal cases are largely the result of a lack of non-judicial resources. The process of filling judicial vacancies is an ongoing process and to assure that only the most highly qualified individuals are appointed by the Mayor to serve the people of New York in the Judicial branch, the Mayor will continue, in conjunction with his Advisory Committee and the New York City Bar Association, to rigorously review the qualification of candidates and appoint only those candidates who meet these exacting standards.

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