

Why the Biden Presidency Could Spawn New Era for California's Federal Courts

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By Alaina Lancaster



Chief District Judge Phyllis Hamilton, U.S. District Court for the Northern District of California. (Photo: Jason Doiy / ALM)

The Biden administration could trigger a shift in the experiential and racial diversity on California's federal courts after a handful of judges announced plans to go senior, according to some legal experts.

California's district courts will have at least 17 judicial vacancies by the end of March. In the Northern District of California, Chief District Judge Phyllis Hamilton and Judge Jeffrey White took senior status on Feb. 1. They have followed Judge William Alsup, who took

senior status on Jan. 21, into semi-retirement. The Southern District of California's chief judge, Larry Burns, went senior on Jan. 22, and District Judge Anthony Battaglia in San Diego also is set to take senior status on March 31.

The vacancies present opportunities to nominate a new slew of diverse judges to the bench, but, with Hamilton going senior, there is not a single Black woman holding an active district judgeship in California.

Carl Tobias, a University of Richmond law professor who specializes in the judicial selection process, said the Biden administration has made clear that diversity is a priority for judicial nominees, noting a Dec. 22 letter from White House Counsel Dana Remus.

Tobias said Remus "sent a letter to the home state senators saying we'd like you to have our recommendations in on the day before inauguration, and saying that they are particularly interested in diversity in terms of ethnicity, gender, sexual orientation, and especially experiential diversity."

The letter acknowledges criticism that the federal bench is filled with too many candidates from Big Law and prosecutorial backgrounds, he said, and they are looking for more people who are criminal defense attorneys, legal aid lawyers or "representing people from ordinary walks of life."

A spokesperson for the Black Women Lawyers Association of Northern California—a group founded by two Black women judges—Bay District Municipal Court Judge Patricia Ann McKinley and Alameda County Superior Court Judge Judith Ford—said in an email statement that a diverse bench increases public confidence in courts, "particularly among groups that have been historically underrepresented in the legal profession."

The group urged the Biden administration to appoint at least two African American women to the vacancies in the Northern District of California, noting that "[d]iversity on the bench should be a priority rather than an afterthought."

"Diversity should play a paramount role in filling these vacancies," the spokesperson said. "At this critical moment in history with a pandemic, transparent racial injustice, and economic uncertainty, a bench reflective of society is critical."

The organization also pointed out that the Northern District is left with only two Black federal judges, District Judge Haywood Gilliam Jr. and Magistrate Judge Kandis Westmore. The group asserted that more Black women judges would help clear career paths for Black women on the bench after four years of White House messaging that "Black women need not apply."

“Moreover, while Black women have often served as the ‘backbone of our democracy’—talented Black women who are interested in federal judgeships are too often overlooked for the bench,” the spokesperson said. “Increasing diversity on the federal bench will help alleviate these problems, as it will increase interest in federal judgeships, and show Black women law students, attorneys and state court judges that becoming a judge—or maybe even a Supreme Court justice—is not only an available, but a viable, career option.”

Retired District Judge James Ware, who served on the court with Hamilton, noted that though the chief judge’s role is changing, the court will not lose her expertise entirely, since she will still be carrying a caseload. Ware said the legal community should ensure that those who make judicial recommendations to legislators have in mind diversity of all kinds, including race, gender, educational background and experience.

“One thing about the court we ought to all acknowledge is that it is an institution that benefits from diversity, not just racial diversity, but diversity,” he said. “That is the hallmark of a good court. The interchange between backgrounds, thoughts, opinions and philosophies is what adds strength to a judicial institution. We see all kinds of cases from all aspects of society, and those kinds of balances assist in making good decisions.”

Ware said in the past, he’s seen policymakers respond to representational inequities on the court, but he’s also seen it ignored.

Bijal Vakil, a White & Case partner in Silicon Valley, said he is aware of several diverse attorneys who have applied for the open district judgeships in the Northern District of California. Vakil, who has chaired two merit selection panels for magistrate judges, indicated that there are likely several more judicial vacancies to come.

“We will see a very different district court with a number of new faces,” he said. “We’ll have those that have been added to the bench, perhaps from positions after current district judges have been elevated to the Ninth Circuit or from current magistrate judge positions. With magistrate judges filling district judge vacancies, we would see new magistrate judges as well.”

The logistics of how the nomination process will proceed is unclear now that Vice President Kamala Harris will no longer be divvying up the judgeships with Sen. Dianne Feinstein.

“It will be interesting to see what our new senator Alex Padilla does,” Vakil said. “That is a big unknown.”

But some legal experts say it’s possible Harris will still play a large part in vetting California judges.

“It would be nice to have her expertise, and maybe she would speak for the president or the White House,” Tobias said. “She certainly knows the process and the players, so if she can spare the time, it would be valuable to have more expertise.”

The law professor also said that Harris’ involvement could help accelerate the nomination process. “I think that’s a concern after so many judges announced senior status, because 2022 will come quicker than people think,” he said. “It takes a while to get the Senate organized. So, in California, it would be important to make the recommendations early.”

Alaina Lancaster

Alaina Lancaster, based in San Francisco, covers disruptive trends and technologies shaping the future of law. She authors the weekly legal futurist newsletter What's Next. Contact her at alancaster@alm.com. On Twitter: [@a_lancaster3](https://twitter.com/a_lancaster3)

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