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Superior Court Backlog Surpasses 11,500 Cases Amid Judicial Vacancy Challenges

Administrator of Courts Regina deChabert Petersen informed lawmakers of an escalating backlog, highlighting legislative hurdles such as the lengthy judicial appointment process and recent changes disqualifying senior sitting judges as key factors.

Government / **Published On February 28, 2025 04:58 AM /**

Nelcia Charlemagne **February 28, 2025**

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The V.I. Superior Court on St. Croix. By. ERNICE GILBERT, V.I. CONSORTIUM

The backlog of cases at the Superior Court of the Virgin Islands stands at over 11,500, and is unlikely to improve without some legislative adjustments, lawmakers were told during Thursday's meeting of the Senate Committee on Rules and Judiciary.

The meeting was a historic one, as it featured representatives of the judicial branch of government appearing before the Legislature for the first time outside of the annual budget defense hearings. Administrator of Courts Regina deChabert Petersen noted that the case backlog of 11,666 was measured as of September 30 2024, and has undoubtedly increased since then.

Contributing to this large backlog is a shortage of judges to dispose of cases in a timely manner. The issue, Ms. deChabert Petersen said, arises due to the lengthy process by which judicial vacancies are filled. Upon the expiration of a judge's six-year term, "the judicial branch cannot simply reallocate appropriated funds to make additional hires," she told lawmakers. Instead, it must await appointments by the governor and subsequent approval by the Legislature, a drawn-out process that often leaves a sizable gap between the exit of a judge from the bench and the appointment of a replacement, or the reappointment of the same judge for another term.

"Untimely nominations and confirmations over the last eighteen years have consistently threatened the continuity of case flow management," Ms. deChabert Petersen lamented. However, "despite obvious constraints, we are constantly examining current operations and looking for better ways to manage existing resources when the prospect of new resources simply doesn't exist."

The judiciary once possessed an avenue to ensure continuity of operations within the Superior Court. Title Four, Section 72A of the Virgin Islands Code provided a "grace period in which an incumbent judge whose term has expired, can continue to hear cases up until conclusion of the confirmation process, or the passage of 180 days, whichever is earlier."

According to Ms. deChabert Petersen, the judiciary was, for the past forty-nine years, authorized to appoint a Senior Sitting Judge to temporarily "take over a docket" in the Superior Court on an as-needed basis. Such an appointment could have been made to "combat case backlogs and other delays by hearing a defined class of cases to permit active judges and magistrate judges time to concentrate on complicated, multi-issue, time-consuming cases," she said.

As recently as last year, Senior Sitting Judges had been appointed to handle "probate, small claims, landlord-tenant, traffic and other matters." However, as of October 10, 2024, "the judicial branch no longer has the practical ability to effectively mitigate the challenge of any judicial vacancy," Ms. deChabert Petersen told lawmakers, because Section 14 of [Act 8919](#) adjusted the qualifications needed to act as a Senior Sitting Judge.

"Eligibility for senior sitting judge service now requires at least 12 years as a Judge of the Superior Court, or Justice of the Supreme Court," noted Ms. deChabert Peterson. This requirement "would disqualify current senior sitting judges from service in the future," she argued. Further, Ms. deChabert Petersen contended that the legislative change was made "without surveying the number of former judges so qualified within the territory who would be available and willing to serve."

The enactment of Act 8919, said Ms. deChabert Petersen, "eliminated the single most effective tool available to the judicial branch to mitigate or otherwise address case backlogs in the Superior Court." She is now fearful that the backlog within the court will only worsen.

This concern has prompted the judiciary to offer draft legislation which would address the issue. Among its provisions, the draft bill will remove the current prohibition on judges of the Superior Court remaining in office longer than 180 days after their term expires. The amendment, Ms. deChabert Petersen says, will allow judges to serve until their renomination or the appointment of a successor, thus preventing "the reassignment of all their pending cases to other judges in the

event the governor or the Legislature fails to take swift action to fill the vacancy within the 180 days.’’

Another section of the proposed legislation will “permit the Chief Justice to waive the 12-year service requirement upon further certifying that no former judge possessing at least 12 years of service is available to hear the case or cases,” the administrator of the courts said. The draft bill would also allow “the appointment of former judges to serve as senior sitting judges for renewable terms not to exceed one year.”

Only four months after enactment, the difficulties brought by Section 14 of Act 8919 have apparently already been brought to the attention of legislators. “There is already a draft bill to that extent,” announced Senator Novelle Francis. “I’ll take a look at the one that you have proposed here, but I think it’s pretty much similar to what you may have submitted,” he told Ms. deChabert Petersen. “We’ll certainly be moving that in the very near future via this very same committee,” he assured. Earlier, Senator Francis explained that lawmakers drafted Section 14 Act 8919 specifically to address “the nuances that were presented in the past, where individuals were able to usurp the governors, as well as the legislature’s authority.”

Senator Milton Potter, meanwhile, was wary that adopting the judiciary’s recommendations posed “a risk of disincentivizing the governor.” Ms. deChabert Petersen, however, was more optimistic. “There are always risks in every decision that’s made...This is hypothetically our fix, and time will tell whether or not that risk is real or imaginary. But the status quo shows it’s problematic,” she replied.

With the terms of four judges expiring in May of this year, Senator Potter asked, “What contingency plans exist if the proposed legislation is not enacted?” The response from Ms. deChabert Petersen was stark. “I don’t know that we can have a contingency plan...if that 180 days expire and we don’t have a person in place...we would have to look and see who in the territory that served for 12 years is not only available, but willing to cover those cases.”

“It’s a high bar that was set,” Mr. Potter noted. The limitations of Act 8919 are exactly why Ms. deChabert Petersen has urged the Legislature to “seriously consider the new and improved version that we provided.” For now, however, the judiciary is constrained in how they can address the mounting backlog.