

The State Budget Act Amends the Term of Office for Appointed District Court Judges

It is a new year, and there are new rules for determining the term of office for a district court judge appointed to fill a vacancy.

First, some background. Judicial vacancies are filled by appointment of the governor. This is a constitutional requirement for appellate and superior court judges, see [N.C. Const. Art. IV](#), § 19, and a statutory requirement for the office of district court judge, see N.C. Const. Art. IV, § 10 (providing that vacancies in the office of district court judge are filled for the unexpired term “in a manner prescribed by law”); [G.S. 7A-142](#) (providing for appointment by the governor).

Justices and judges appointed to fill vacancies in the appellate and superior courts hold their places until the next general election that is held more than 60 days after the vacancy occurs. N.C. Const. Art. IV, § 19; [G.S. 163-9](#). At that time, an election must be held to fill the office. The winner of that election assumes the judicial office for a new eight-year term beginning January 1 following the election. A paper by my former colleague, Michael Crowell, available [here](#), and a blog post by my colleague Jim Drennan, available [here](#), recount the legislative history that led to the current method for filling those vacancies.

Before passage of the 2021 State Budget Act, [G.S. 7A-142](#) provided that a vacancy in the office of district court judge was filled by gubernatorial appointment for the unexpired term, rather than just until the next general election. The difference in treatment of these appointees likely was explained by the shorter terms for district court judges. District court judges are elected for four-year terms, see [G.S. 7A-140](#), while justices and judges elected to the appellate and superior courts serve eight-year terms, N.C. Const. Art. IV, § 16. Whatever the reason, the rules have changed for district court judges appointed on or after November 18, 2021. If those judges wish to serve out the rest of the term of a district court judge who dies, resigns or is removed from office in the first 20 months of his or her term, they must be elected in the next general election.

Changes enacted by [S.L. 2021-180](#). Section 16.6(a) of the State Budget Act amends G.S. 7A-142 to provide that when there is a vacancy in the first two years of a district court judge’s term, the judge appointed by the governor to fill that vacancy serves only through the end of the year following the next general election – so long as the vacancy occurs more than 60 days before the election. The judge elected in November to fill the seat begins to serve out the remainder of the unexpired term of office on January 1 following the election. Again, these provisions became effective November 18, 2021 for judges appointed on or after that date.

Examples of the terms of office for a judge appointed to fill a district court vacancy before November 18, 2021 and a judge appointed after that date may help to illustrate the effect of these statutory amendments.

Example 1. *Judge A, a district court judge elected in 2020 to a four-year term that expires January 1, 2025, retired July 31, 2021. The governor appointed Judge B to fill the vacancy on September 1, 2021. Because Judge B was appointed before November 18, 2021, Judge B's term of office is controlled by the former version of G.S. 7A-142 and thus expires when Judge A's term would have: January 1, 2025.*

Example 2. *Judge C, a district court judge elected in 2020 to a four-year term that expires January 1, 2025, retired October 31, 2021. The governor appointed Judge D to fill the vacancy on December 1, 2021. Because Judge D was appointed on or after November 18, 2021, Judge D's term of office expires January 1, 2023 – at the end of the year following the next November general election (which is more than 60 days away from the date Judge D was appointed). The judge elected in November 2022 to fill this seat has a term of office that begins January 1, 2023 and expires January 1, 2025, when Judge C's term would have ended.*

As with superior court judges, if the term to which the district court judge is appointed expires at the end of the next general election year, the appointment is for the remainder of the term. Consider this example:

Example 3. *Judge E, a district court judge elected in 2018 to a four-year term that expires January 1, 2023, retired October 31, 2021. The governor appointed Judge F to fill the vacancy on December 10, 2021. Judge F's term of office ends with the conclusion of Judge E's term: January 1, 2023. The judge elected to fill this seat in the November 2022 general election will have a four-year term that begins January 1, 2023.*

How does the election work? Now that district court judge elections are once again partisan, candidates must file for and run in party primaries. When a vacancy occurs during the first year of a district court judge's term (a year in which there is no general election), the candidates who will appear on the general election ballot may be selected in next upcoming primary. When a vacancy occurs on or after tenth day before the filing period ends but more than 60 days before the general election during the second year of the district court judge's term, the political parties select nominees to appear on the ballot. See [G.S. 163-115\(c\)](#).

Nomination process remains. G.S. 7A-142(c) continues to require that the local bar of the judicial district nominate five persons for the governor's consideration in filling a vacancy on the district court. Nominees are selected by vote of those bar members who reside in the district. The governor is required to "give due consideration to the nominees" before filling the vacancy, but is not required to select the appointee from this list.

What happens next? District court judges may time their retirement decisions to afford appointees longer or shorter terms of office depending upon their predilections. Of course, not all retirements and certainly not all vacancies, occur on a timeline selected by the office holder. District court judges, like all, justices and judges must retire no later than the last day of the month in which he or

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she reaches the age of 72. [G.S. 7A-4.20](#). Vacancies also result when district court judges die or are removed from office.

One thing that is certain under this new legislative scheme is that there will be more elections for district court judgeships. As noted above in Example 2, there could be two elections for a single four-year term, with the second election garnering the winner a single-year term.