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Obama's NJ Judges Known for Competence Before Ideology

[Charles Toutant](#), *New Jersey Law Journal*

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Claire Cecchi Photo by Carmen Natale

As his second term comes to an end, President Barack Obama's judicial legacy in the District of New Jersey is a group of judges who are considered competent, hardworking and non-ideological.

Obama nominated seven of the 15 district court judges now serving in New Jersey—Claire Cecchi, Esther Salas, Kevin McNulty, Michael Shipp, Madeline Cox Arleo, John Michael Vazquez and Brian Martinotti.

A good federal judge has a good temperament and can move the docket efficiently, and Obama's picks for New Jersey meet that standard, said Donald Scarinci of Scarinci Hollenbeck in Lyndhurst, who is known as a Democratic Party leader.

"I don't think you can call them ideologues in any way. I think they've really distinguished themselves as fair and they've interpreted the law the way the law has been written," Scarinci said.

Obama's nominees for judgeships in New Jersey have been competent and politically moderate, said Carl Tobias, a professor at the University of Richmond School of Law who tracks and writes about federal judicial selection.

"They are mainstream jurists in the sense that they are not particularly liberal or conservative. The people appointed are also diverse in terms of ethnicity and gender, although perhaps slightly less so in New Jersey than in some districts. None of this is surprising, as most Obama nominees at the district level are tapped for their competence, ethics and temperament, rather than ideology," Tobias said.

Obama's nominees for the District of New Jersey also include Julien Neals, who has been in limbo as Republican leaders in the Senate have refused to schedule a vote on his confirmation. Neals, the Bergen County counsel, did not receive a confirmation vote before the 114th Congress went into recess in September. His last chance to receive a vote is in the lame-duck session of Congress, which is set to begin Nov. 15.

Judges in the District of New Jersey have a heavier caseload than many of their counterparts elsewhere, as evidenced by the "judicial emergency" designation the court has received from the Administrative Office of the U.S. Courts based on the number of weighted filings per judgeship. Even if Neals is confirmed, the district will still have one vacancy.

As in other judicial districts, Obama's picks in New Jersey have been notable for adding diversity to the bench. Three of the seven are women, including Salas, the district's first Latina judge.

Five of Obama's picks served as a U.S. magistrate judge or a state judge before becoming a district court judge.

Some commentators, including the late Justice Antonin Scalia, have criticized the concept of a "career judiciary" for reducing experiential diversity, said Tobias. But candidates from lower courts have a sense of what the job will be like, and they have long and accessible records, he said.

Salas issued one of the most talked-about rulings of the group of Obama appointees in 2014, when she ruled in *FTC v. Wyndham Worldwide* that the Federal Trade Commission has authority to enforce cybersecurity standards under its consumer protection mandate.

Her decision that the FTC could proceed with a suit against the operator of Days Inn, Ramada and other lodging chains over a series of data breaches that affected 500,000 guests was upheld by the U.S. Court of Appeals for the Third Circuit in August 2015. The case was closed last December when Wyndham agreed to comply with a lengthy array of data security measures. But Salas noted in the ruling that it "does not give the FTC a blank check to sustain a lawsuit against every business that has been hacked."

Commentators said the case was the first confirmation from a higher court of the FTC's broad authority to regulate cybersecurity.

Shipp issued another high-profile ruling in a challenge by college and professional sports leagues to New Jersey's attempt to legalize betting on sporting events. Shipp ruled that a federal law, the Professional and Amateur Sports Protection Act, pre-empts New Jersey legislation enacted in 2012 and updated in 2014 that would have allowed wagering on sports events at casinos and racetracks. Shipp's decision was upheld 2-1 by the Third Circuit in August 2015, then affirmed en banc this past August. New Jersey has asked the U.S. Supreme Court to review the case.

Although the state and the gaming industry have a strong desire to implement sports betting, Shipp's ruling in the case put those issues aside and focused only on the law, said Christopher Soriano, a gaming attorney at Duane Morris in Cherry Hill, who did not represent any parties in the case but attended the hearings.

Mark Catanzaro, a lawyer in Mount Holly who handles criminal and civil matters, said Obama's nominees come from a variety of backgrounds. Noting that Vazquez has a criminal defense background, he said, "criminal defense lawyers don't often get selected."

William Maderer of Saiber in Florham Park gives Salas high marks for the way she handled the sentencing of his 70-year-old client for selling nutritional supplements that were diluted with rice flour. The sentencing guidelines called for a five-year sentence in the economic crime case, but Salas gave the man three-and-a-half years.

"She reviewed the facts. She did her homework. I thought she was fair—she did her job. What more can you say?" Maderer said.

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