

12/11/97 NYLV

## Presiding Justice's Resignation Prompted by Governor Pataki

BY DANIEL WISE

PRESIDING JUSTICE Francis T. Murphy, who announced his resignation from the bench earlier this week, complained in a letter to the head of the screening committee for the Appellate Division, First Department, that he had been told that Governor Pataki had decided not to reappoint him because of "ideological differences," according to a copy of the letter obtained by the *Law Journal*.

On Monday, Justice Murphy announced his retirement after 26 years on the First Department bench, 20 of them as presiding justice of the 13-member court.

In his letter to James P. Gill, a partner at Robinson, Silverman, Pearce, Aronsohn & Berman, who is chairman of the First Department screening panel, Judge Murphy protested that he had been given "the message" that Governor Pataki had "declared his in-

attention not to reappoint me."

In the letter, dated Dec. 8, the day he announced his resignation, Justice Murphy explained that he had received the message from Mr. Gill through retired Judge Thomas B. Galligan, acting as a middleman. Mr. Galligan confirmed yesterday that he had delivered the message.

In light of the fact that "the Governor already has made up his mind," Justice Murphy stated in the letter that he was withdrawing his application for reappointment. He had been scheduled to appear for an interview on Dec. 18.

The Governor's press office did not respond to requests for comment yesterday. Mr. Gill could not be reached for comment.

Justice Murphy, who turned 70 in April, will no longer be eligible to serve as presiding justice after the end of this year. However, the Office

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## Murphy Resignation

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of Court Administration has certified him for an additional two-year term, which made him eligible to apply for reappointment to the First Department.

The screening committee is charged with recommending candidates to Governor Pataki who are highly qualified to serve on the First Department appellate bench. A recent change in the executive order creating the screening panel, however, raises a question of whether judges in Justice Murphy's situation are to go through the screening process or whether decisions on reappointment are to be made by the Governor alone (*NYLJ*, Dec. 5).

The amended order, dated Nov. 25, stipulated that judges leaving an "associate justice" post for an "additional" justice post are not to go through the screening process. As a judge, having reached age 70, Justice Murphy was leaving the "presiding" position, which carries a five-year constitutional term, for an "additional" position. Additional justices serve as long as the presiding justice, with the Governor's approval, certifies there is a need for them.

EX "A-1"

12/5/97 NYLJ

# Judicial Screening Panel Rule Changes 'Troubling' to City Bar

BY GARY SPENCER

ALBANY — Reaction from the City Bar has been sharp and swift to additional changes announced by Governor Pataki this week to his rules for judicial screening committees.

The Governor amended his executive order on judicial screening panels to give himself more geographical flexibility in naming Appellate Division justices and to eliminate his counsel as an automatic member of the committee that screens Court of Claims candidates.

The new executive order, signed last week, eliminates a requirement that the Governor choose a presiding justice and other Appellate Division justices in a judicial department from a list of candidates suggested by the Departmental Judicial Screening Committee for that department.

The change fueled speculation that the Republican Governor remains interested in filling vacancies on the Appellate Division, First Department, with judges from the Second Department, where the pool of candidates is not so overwhelmingly Democratic. It would allow the Governor to designate a judge to serve in the First Department who had been recommended by a screening panel in any of the other three departments.

Michael A. Cardozo, president of

the Association of the Bar of the City of New York, called the rules changes "deeply troubling."

The Governor's action, he said, "reflects a further interference with the ongoing evaluation process of his own departmental screening committees. The change is also of questionable merit."

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*"The Governor can now appoint to the First Department a candidate found qualified by any other department, regardless of the First Department committee's view."*

— City Bar President Michael Cardozo

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"The Governor can now appoint to the First Department a candidate found qualified by any other department, regardless of the First Department committee's view. Yet it is presumably that committee, composed of persons residing in that department, who are best able to

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Ex "A-2"

# Screening Panel Rule Changes

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determine who is highly qualified to serve."

The Governor has already made one interdepartmental appointment, naming Westchester County Republican Nicholas Colabella to the First Department bench last May. Justice Colabella, however, had been recommended by a temporary screening panel, which had statewide jurisdiction and evaluated all judicial candidates during the first two years of the Pataki Administration. The permanent departmental screening committees were not established until last spring.

## Presiding Justice

The First Department screening committee has been reviewing candidates for two long-standing Appellate Division vacancies for more than four months. The screening process has also begun for a presiding justice since Francis T. Murphy must step down as presiding justice at the end of the year.

Two of the most frequently mentioned potential candidates for presiding justice are Republicans now on the Appellate Division, Second Department: Albert M. Rosenblatt of Dutchess County and Alfred D. Lerner of Queens.

The executive order amendments do not affect the statutory requirement that a presiding justice have a residence in the department where he or she serves. The Governor's prior executive order did not bar contenders who work outside the First Department from seeking the post of presiding justice, since they could have applied to the First Department screening committee in any case. But close observers of the process said the recent amendment could make appointment of an outsider easier for the Governor.

## Governor's Counsel

A more positive reaction greeted another amendment: to eliminate the Governor's counsel as an automatic member of the State Judicial Screen-

ing Committee, which evaluates candidates for the Court of Claims. Under the new executive order, the counsel's place on the 13-member committee will be taken by "one person selected by the Governor." The Governor chooses the other 12 members of the statewide panel from the membership of the departmental screening committees.

The change improves the appearance of independence of the statewide screening panel "to the extent it results in someone other than the Governor's counsel being appointed," said Gary Brown, executive director of the Committee for Modern Courts. "At least in theory it's a step in the right direction."

The original rule, as well as the Governor's appointment of then-Counsel Michael Finnegan to the commission that nominates Court of Appeals judges, raised concerns at the Committee for Modern Courts and the City Bar that the Governor would have too much influence over the selection process with his closest legal advisor participating in screening panel deliberations.

Mr. Cardozo called the change "a constructive one."

The new executive order allows the Governor to designate an additional justice of the Appellate Division to serve as an associate justice, and vice versa, without submitting their names to a screening committee. It also allows him to designate them to serve in a different judicial department.

Authorities on judicial selection viewed this change as a clarification of existing practice. More senior members of the Appellate Division have traditionally been designated associate justices and new members as additional justices. Associate justices who reach retirement age and want to continue serving on the Appellate Division must be redesignated as additional justices.

Practice has varied for sitting judges involved in this retitling process, with some going through a screening committee and others not. The amendment makes clear no screening is required for sitting appellate judges.

