

law.com
Seminars

advertise
on law.com
click here

print

LAW.COM HOME

store

lawjobs

online CLE

daily legal newswire

customer service

fre

law.com, new york

home

December 3, 2002

30 day risk free trial
subscribe now

- today's news briefs
- more news
- search stories
- search cases

Store

- law student bookstore
- more legal products

Resources

- nycourts
- judges' profiles
- court & judges' rules
- ny courts & law guide
- federal government
- federal laws and regs

Classified Ads

attorney and support
staff positions
across the country
updated every day

additional listings
including real estate,
support services, and
other advertising from
the *New York Law Journal*

Email

log on to your free
@law.com
email account.

Customer Service

please click [here](#) for
our customer service
phone numbers and
e-mail addresses.

Court of Appeals Candidates Are Named

By John Caher
New York Law Journal

An appellate division presiding justice -- Eugene F. Pigott Jr. of Buffalo -- five trial judges and a Manhattan law firm partner were included on a list of Court of Appeals nominees submitted to Gov. George E. Pataki Monday by the Commission on Judicial Nomination. With his next appointment, which must be made between Jan. 1 and Jan. 15, the Republican governor will have appointed a majority of the judges on New York's highest court. Pataki has already designated well over half of the justices sitting on the four Appellate Divisions.



Gov. George E. Pataki

The seven finalists are:

- Justice Pigott -- The presiding justice of the Appellate Division, Fourth Department, is widely considered a frontrunner. A 56-year-old Republican from Buffalo, which has not been represented on the Court of Appeals since 1985, Justice Pigott became a judge in 1997 and was promoted to the Fourth Department bench by Pataki the following year. He was named presiding justice in 2000. Justice Pigott, a decorated Vietnam war veteran, previously served as Erie County attorney and practiced law in Buffalo. He holds degrees from LeMoyn College and the State University of New York at Buffalo School of Law.

- Susan Phillips Read -- A former deputy counsel to Pataki, Judge Read is now presiding judge of the Court of Claims. Judge Read, a graduate of Ohio Wesleyan University and the University of Chicago Law School, previously served as in-house counsel to General Electric and practiced privately in Albany. She was appointed to the Court of Claims in 1998 and elevated to presiding judge in 1999. Judge Read,

visit another
law.com

search

Find an E

court re
directo

FREE
daily leg

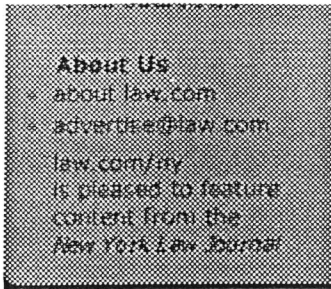
GET THE
Trademark
Manag

Trademark

Give your
the Infa
advan

www.lafu

Exhibit B-1



57, a Republican, was on the commission's 2000 list for the vacancy ultimately filled by Victoria A. Graffeo.

- Steven W. Fisher -- The administrative judge of the Supreme Court in Queens, Justice Fisher, 56, was also recommended for the prior vacancy. A Democrat, Justice Fisher became a judge of the City Criminal Court in 1983. He served as an acting Supreme Court justice in Kings and Queens counties and later was elected Supreme Court justice in Queens. Justice Fisher has been the administrative judge for the Eleventh Judicial District since 1998. He is a former Brooklyn assistant district attorney, clerked for an Appellate Division presiding justice from 1979 to 1983 and practiced law in New York City. Justice Fisher received his bachelor's degree from Queens College and his law degree from Brooklyn Law School. He recently presided over the capital trial of John Taylor, who was convicted and condemned to death for his role in the murder of five Wendy's restaurant employees.

- Helen E. Freedman -- Justice Freedman, 60, is a former Appellate Term, First Department, judge now serving as a justice in the Commercial Division of Manhattan Supreme Court. She has been a Supreme Court justice since 1984 and previously was a City Civil Court judge, a private practitioner, law secretary to a Civil Court judge, senior attorney with the City Department of Housing Preservation and Development and supervising attorney of District Council 37 Legal Services Plan. A self-described liberal Democrat who was once accused by Mayor Rudolph W. Giuliani of advancing a "personal ideology" (see The New York Times, Aug. 26, 1996), Justice Freedman, who is now the presiding justice of the New York State Litigation Coordinating Panel, graduated from Smith College and New York University School of Law.

- L. Priscilla Hall -- Brooklyn Supreme Court Justice Hall, a 56-year-old Democrat, joined the judiciary in 1986 when she was named to the City Criminal Court. She has been on the Supreme Court bench since 1994. Justice Hall, a graduate of Howard University, Columbia School of Journalism and Columbia Law School, was previously in-house counsel to General Electric, an assistant district attorney in Manhattan, inspector general with the City Department of Employment and inspector general with the City Human Resources Administration.

- James A. Yates -- The former chief counsel to the Democratic majority in the State Assembly, Justice Yates was appointed to the Court of Claims in 1992 and served through 1997, when he became a Supreme Court justice. Justice Yates, who was recommended for the 1998 Court of Appeals vacancy that went to Albert M. Rosenblatt, was a staff attorney with the Legal Aid Society from 1973-79. A Democrat, he worked for the Assembly from 1979 to 1992. Justice Yates, 56, graduated from Princeton University and Rutgers University School of Law.

- Guy Miller Struve -- This marks the third time that the Davis Polk & Wardwell partner has made a Court of Appeals list. Struve, who is best known for serving as deputy to Iran-contra special prosecutor Lawrence E. Walsh from 1987 to 1994, was recommended for the Court of Appeals in 1997 and 1998. He was bypassed by Pataki in favor of Judges Richard C. Wesley and Rosenblatt. Struve, 59, is a graduate of Yale College and Harvard Law School. He clerked for a judge of the U.S. Court of Appeals for the 2nd Circuit in the mid-1960s and has been with Davis Polk since 1967.

Pataki has until Jan. 15 to make his selection, which is then subject to confirmation by the Republican-controlled state Senate.

"We look forward to reviewing the potential candidates and will make a decision at the appropriate time," said Joseph Conway, spokesman for the governor.

Changes in Court

When Pataki took office in 1995, he inherited a Court of Appeals that had been appointed entirely by his Democratic predecessor, Mario M. Cuomo. Early in his first term, Pataki harshly criticized the Cuomo Court for some of its criminal law rulings. However, in recent years Pataki has said little about the Court, and when he does comment about the tribunal his remarks tend to be neutral to favorable.

Over the last eight years, Pataki has replaced three judges named by Cuomo. All three Pataki appointees -- Judges Wesley, Rosenblatt and Graffeo -- were Republican Appellate Division justices with solid law-and-order credentials. With his next appointment, the governor will have appointed four of the seven judges. However, since the new judge will replace retiring Judge Howard A. Levine, a moderate to conservative Republican whose decisions have generally been consistent with the governor's philosophy, this appointment is not expected to greatly affect the Court's jurisprudence.

Of far more significance, observers say, is that in the nearly eight years since taking office, Pataki has virtually remade the Appellate Divisions that had been designed by his two Democratic predecessors, Governors Hugh L. Carey and Cuomo. Now, more than half of the justices serving on the mid-level court -- which has the last word on the vast majority of matters since the Court of Appeals accepts only a fraction of the cases decided by the lower court -- were designated by Pataki.

Practitioners say the Pataki appellate courts tend to be restrained, pro-prosecution in criminal cases, inclined toward defendants in tort suits, and generally deferential to the political branches and administrative agencies. Observers say the Court of Appeals has also followed that approach, and they expect that with the next appointment the high court will function much as it has in recent years.

Decline in Interest

Meanwhile, there is growing concern among the bench and bar over an apparent decline in interest in serving on the Court, according to several attorneys close to the selection process.

Prior to releasing its list, the Commission on Judicial Nomination interviewed about 18 applicants, but only after extending the application process because of a shortage of interested and suitable candidates. Three appellate jurists said there seems to be a sense that only one or two candidates close to the governor have any real chance to secure an appointment, so some judges are disinclined to subject themselves to a rigorous interview. On the latest list, only one judge fits the mold of all of Pataki's prior appointees -- Republican

Appellate Division justice: Justice Pigott.

The merit selection process has been in use since 1978 and was instituted through a constitutional amendment resulting from concerns that the elective system had politicized the judiciary. A 12-member commission, with members appointed by the governor, chief judge and legislative leaders, is charged with nominating highly qualified candidates through a non-partisan process.

As usual, the latest list reflects political, racial and gender diversity. It includes: four Democrats and three Republicans; three women and four men; one African American; and two upstaters. The commission has tended to release diverse lists since the early 1980s when it was once criticized for finding only white males qualified to sit on the Court of Appeals.

Luke Bierman, director of the American Bar Association Justice Center in Chicago and author of a doctoral dissertation on the Court of Appeals and the selection process, said several patterns are evident after nearly a quarter century of experience with the Commission on Judicial Nomination. Bierman said the commission virtually always includes the applicant rumored to be favored by the governor, fostering an impression that the deck is stacked.

Bierman also said that candidates making the list for the first or second time seem to have a substantial edge over those repeatedly nominated. Two of Pataki's three appointees -- Judges Wesley and Graffeo -- were first-timers on the list when they were appointed.

"It shows the governor is able to get who the governor wants," Bierman said. "When you see people being selected on their first or second nomination, it does indicate that the list is aimed toward someone who is a preferred choice."

Still, Bierman said that with many recent indications nationally that "the elective system [of selecting judges] is spiraling out of control," having "appointed judges, it would seem to me, would be preferable."

Date Received: December 02, 2002