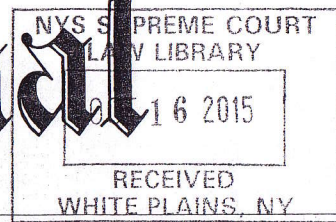


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Janet DiFiore



Carey Dunne



Michael Garcia



Caitlin Halligan



A. Gail Prudenti



Rowan Wilson



Stephen Younger

Practitioners Dominate Chief Judge Nominee List

BY JOEL STASHENKO

ALBANY

THE STATE Commission on Judicial Nomination on Thursday sent Gov. Andrew Cuomo a list of the names of seven nominees for the next New York state chief judge, none of whom are judges on any court.

The candidates are:

- Janet DiFiore, 60, Westchester County District Attorney
- Carey Dunne, 57, partner at Davis Polk & Wardwell
- Michael Garcia, 54, partner at Kirkland & Ellis
- Caitlin Halligan, 48, partner at Gibson, Dunn & Crutcher
- A. Gail Prudenti, 62, executive director of the Center for Families,

Children and the Law at the Hofstra School of Law

- Rowan Wilson, 55, partner at Cravath, Swaine & Moore
- Stephen Younger, 59, partner at Patterson Belknap Webb & Tyler.

The candidate selected by Cuomo, who under law must make a nomination to the state Senate between Nov. 15 and Dec. 1, will replace Chief Judge Jonathan Lippman.

Lippman, who has been chief judge since succeeding Judith Kaye in early 2009, must step down on Dec. 31 because he has reached the mandatory retirement age of 70.

The Senate has 30 days to act on Cuomo's nomination.

Younger, Dunne and Halligan live in Manhattan; DiFiore and Garcia

in Westchester County; Wilson in Port Washington and Prudenti in Bellport.

Younger was president of the New York State Bar Association from 2010 to 2011, and Dunne was president of the New York City Bar Association from 2012 to 2014.

Garcia served as the U.S. Attorney for the Southern District from 2005 to 2008.

Halligan was state solicitor general from 2001 to 2007 and general counsel to Manhattan District Attorney Cyrus Vance Jr. from 2009 to 2013. She was nominated by President Barack Obama to the D.C. Circuit Court of Appeals, but Republicans in the Senate blocked her confirmation.

Wilson has been a litigator

handling antitrust, intellectual property and civil rights cases at Cravath since 1992.

DiFiore and Prudenti are the only two nominees to have served on the bench. DiFiore is a former Supreme Court justice (2002-05) and Westchester County Court judge (1998-2002). Prudenti was elected to Supreme Court in 1991 and became Suffolk County Surrogate in 1995. She was appointed as an administrative judge in 1999 and in 2002 was elevated to the Appellate Division, Second Department, where she served until being tapped as chief administrative judge in 2011. She held the post until this year.

This is the first time since 1979, the year that the merit » Page 2

Nominees

« Continued from page 1

selection of judges was instituted, that a sitting judge was not included in the nominees list.

Attorneys and members of the business community have called for the appointment of more practitioners and experts in commercial law to the court.

All of the candidates, except for Prudenti, are Democrats, as is Cuomo. Prudenti is a Republican.

Cuomo's four nominees to the court have been Democrats. With the nomination of a chief judge, the governor will have appointed five of the court's seven members.

Two of the candidates have been on prior commission lists: Wilson, who was nominated in 2013 and twice in 2014, and Younger, who was nominated once in 2014.

Garcia and Younger were both clerks for Court of Appeals judges early in their careers—Garcia for Kaye from 1990 to 1992 and Younger for Hugh Jones from 1982 to 1984.

Garcia, who is Hispanic and Wilson, who is black, are the only minorities on the list. The commission said it received 33 applications, eight of whom were women and seven from diverse backgrounds.

Kaye, who was chief judge from 1993 to 2008, is chairwoman of the nominating commission.

She said in a letter to Cuomo released Thursday outlining the qualifications of the candidates that the panel had widely disseminated notice of the opening and worked diligently to find qualified and diverse candidates.

When Kaye took over as chair in 2009, it implemented procedural changes that she said would make it easier to attract a deeper and more diverse candidate pool.

Openings for chief judge traditionally have drawn fewer applicants than for the six associate judgeships. New York's chief judge is not only the leader of the state's highest court, but also the top judge in charge of the administration of the Judiciary in the state.

The last opening for an associate judge, for the seat vacated by Robert Smith at the end of 2014, attracted 53 candidates.

Kaye said that applicants for the Lippman seat contained "extraordinary quality and diverse backgrounds."

Deadlines for Action

While Judiciary Law contains deadlines for when the governor and the Senate must act to fill the Lippman opening, it's not a guarantee that either will do so.

Cuomo said last year that he would ignore the deadline for replacing Victoria Graffeo, supposedly to take pressure off the Senate to confirm his choice before Election Day (NYLJ, Oct. 6, 2014).

The Republican-controlled Senate responded by missing its deadline to confirm Cuomo's eventual choice, Appellate Division, Third Department, Justice Leslie Stein (NYLJ, Feb. 5).

In her letter to Cuomo, Kaye made reference to the legal deadlines. "We underscore the importance of compliance with these mandates, so that the successor chief judge is able timely to assume the vital leadership responsibilities of the court and the third branch of state government, as close as possible to Jan. 1, 2016," wrote Kaye, who is of counsel at Skadden, Arps, Slate, Meagher & Flom.

The Fund for Modern Courts echoed Kaye's statement, urging prompt action by both the governor and Senate to have a new chief judge in place when the New Year starts.

"The consequences of delay in the statutorily mandated timetable for action by the governor and the state Senate will have a significant impact of the justice system and negatively impact all who rely on the courts to resolve their differences," said Amelia T.R. Starr, who chairs the Modern Courts' executive committee.

The Judiciary Law states that the failure to meet the deadlines "shall not invalidate any appointment" or otherwise carry penalties.

Rich Azzopardi, a Cuomo spokesman, declined to comment except to say the governor and his staff would review the list.

The chief judgeship pays \$198,600 a year.

The 12-member judicial nominating commission is composed of appointees of the governor, the chief judge and the state Legislature.

Its work is not over. The panel has announced that by Dec. 22 it will send Cuomo a list of nominees for the opening created when associate judge Susan Phillips Read retired this summer (NYLJ, June 24). The deadline to apply for Read's seat on the bench passed on Aug. 24.

When vacancies occur as closely together as the Lippman and Read openings did, the commission automatically considers the applicants for the first vacancy for the second one as well.

Court of Appeals terms run for 14 years, unless cut short by a judge reaching retirement age sooner.

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