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## Appellate Selection Process Stirs Concern

BY DANIEL WISE

SEVERAL SERIOUS contenders have emerged for three openings on the Appellate Division, First Department, amid rising concern among judges over the Governor's selection process.

All have credentials that are likely to make them attractive to Governor Pataki, according to lawyers and judges who follow the process. Three frequently mentioned candidates are Second Department Justice Albert M. Rosenblatt, Queens Justice Alfred D. Lerner and Bronx Justice Douglas E. McKeon.

The First Department will have two vacancies at the end of the year when Justices David Ross and Theodore R. Kupferman retire. In addition, the Governor has authorized a new seat on the First Department that has yet to be filled.

Justice Rosenblatt, a Republican, comes from Dutchess County, which is adjacent to Governor Pataki's home county, Putnam. Sources say the Governor thinks highly of him. The move from the Second to the First Department, sources said, may be made with an eye to appointing Justice Rosenblatt, 60, as presiding justice when Justice Francis T. Murphy steps down at the end of 1997 after turning 70.

Justice Rosenblatt had lunch last week with the First Department justices at the invitation of Justice Kupfer-

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man, who said the visit was purely social and that "no significance" should be drawn from it.

Justice Lerner, the administrative judge in Queens Supreme Court, is also considered a candidate for the presiding justice slot. He has a reputation as an efficient administrator, who has kept the Queens dockets current and has been tapped by the Office of Court Administration for difficult tasks such as bringing under control the backlog of suits against New York City.

Justice Lerner, who was a State Assemblyman from 1957 to 1964 is one of few Republicans on the Supreme Court bench in New York City. His age, however, may work against his selection as presiding justice because, at

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69, he could serve only one year.

Justice McKeon, 48, who is a Democrat, has important backing from State Senator Guy J. Velella, the Republican Party chairman in the Bronx. Justice McKeon presided over a \$15.8 million settlement stemming from the 1990 fire at the Happy Land Social Club in which 87 people were killed. He also is in charge of civil suits against New York City in the Bronx.

In addition to the three vacancies in the First Department there are two each in the Second and Fourth Departments. It is believed that at least one Second Department post will be filled with a justice from Nassau County.

### Selection Process

A number of judges, speaking on the condition that they not be identified, were critical of the Governor's method of filling vacancies over the past two years, maintaining that he has not employed a true screening process. That perception has been fueled, they say, by the continuing use of a temporary screening panel and, most recently, by the announcement of Appellate Division openings in a manner unlikely to draw the attention of the Supreme Court justices who alone are eligible.

The Erie County Bar Association expressed "grave concerns" about the Governor's procedures. The methods used by the temporary screening panel "do not inspire public confidence in the independence and non-partisanship" of the process, said association president, David Pfalzgraf. Similar criticisms have been expressed by the Onondaga County Bar Association.

The main concern is that the temporary panel, established by Governor Pataki, has not exercised its screening function in a systematic way. One judge's observation was typical: "It seems they are just screening the names they are interested in. I've heard one [name] goes in, one goes out and one is appointed."

The Governor established the temporary screening committee on April 25, 1995, with former New York Court of Appeals Chief Judge Lawrence H. Cooke as its head. The committee is

charged with forwarding to the executive mansion the names of "highly qualified" candidates for the Appellate Division and Court of Claims, from which the Governor is to make his appointments.

Mr. Cooke said the committee has interviewed whatever names have been submitted by the Governor's office. He referred the question of whether the committee has prepared lists of "highly qualified" candidates for each Appellate Division vacancy to the Governor's press office.

The press office did not return calls seeking comment.

Chester Straub, who was the chairman of Governor Cuomo's screening committee for appointments to the First Department, said his group made it a practice to interview every judge who sought appointment, though when large numbers of judges applied sometimes the interviews were conducted by a subcommittee rather than by the group as a whole. The name of any judge rated "highly qualified" was then passed on to the Governor.

Critics say that their impressions about the process have been reinforced by the Governor's failure to appoint permanent screening panels for each Appellate Division, though 18 months ago he committed his administration to the same process that Governor Cuomo had used. While he issued an executive order re-establishing departmental screening panels on the same day he established the temporary panel headed by former Judge Cooke (April 25, 1995), those panels have yet to function.

Similarly, a number of judges said the initial notice of the Appellate Division openings was not designed to attract the attention of Supreme Court justices.

Instead of the past practice of announcing it through a press release, it was published only as a "help-wanted ad" for attorneys in the classified section of the *Law Journal* on Nov. 18.

One week later, a release was issued that announced the Appellate Division vacancies along with those on a number of other courts. The release was dated Nov. 25, the deadline for the submission of resumes as set by the help-wanted ad.

One judge said the initial announcement should have been published on the front page of the *Law Journal*, as it had been previously.