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Lack of Women on Court List Draws Fire

By SEWELL CHAN

Judith S. Kaye, chief judge of the New York State Court of Appeals since 1993, is retiring at the end of this year. (Photo: Nicole Bengiveno/The New York Times)

Updated, 5:45 p.m. | Gov. David A. Paterson and Attorney General Andrew M. Cuomo expressed outrage on Wednesday about the lack of women among the seven nominees for chief judge of the State Court of Appeals, New York's highest court. They said they were exploring their legal options, but it appeared that Mr. Paterson might have no option but to select from the list, which was put forward by the State Commission on Judicial Nomination last week.

The next chief judge will replace Judith S. Kaye, the chief judge since 1993, who is retiring at the end of this year, having reached the mandatory retirement age of 70.

"All we're saying is it seems highly unusual that in a class of seven individuals considered to be capable of supervising the Court of Appeals, that not one of them would be a woman — not one," Mr. Paterson said. "I think it's very unfortunate."

The governor is required to make a selection from the list of seven nominees by Jan. 15.

The 12-member commission nominated seven men — four current state judges and three law-firm partners — for the position of chief judge. The commission includes four members appointed by the chief judge, four by the governor and four by the leaders of the State Legislature. Four of the current commission members are women, officials said.

The chairman of the commission, John F. O'Mara of the law firm of Davidson & O'Mara in Elmira, was appointed by George E. Pataki, a Republican, who was governor from 1995 to 2006. Mr. Paterson and Mr. Cuomo are Democrats.

A majority of the seven current members of the Court of Appeals are women: Judge Kaye and Associate Judges Carmen Beauchamp Ciparick, Victoria A. Graffeo and Susan Phillips Read.

Two current judges on the court were on the list of seven nominees for chief judge: Eugene F. Pigott Jr. and Theodore T. Jones Jr. Judge Jones, who is African-American, was also the only member of a racial minority among the seven nominees.

At a news conference in Midtown Manhattan, Mr. Paterson said it was not clear whether he had any option but to pick among the seven names, as the State Constitution states that the governor "shall" select from among the commission's nominees. Rather, Mr. Paterson and Mr. Cuomo said, they wanted to express outrage over the lack of women on the list.

"I won't disobey the rules of the Constitution," Mr. Paterson said. "However, I'm going to explore my options, and I've asked the attorney general to come take a look at this and

see what our options are here.”

Mr. Paterson added: “The issue is not the merit of the candidates that have been brought forward; they’re outstanding. The issue is that I don’t accept that there wasn’t a woman that wasn’t qualified.”

Mr. Cuomo said:

Remember, this list circumscribes the governor’s choices, and he picks from the list. The governor should be able to consider qualified men and qualified women in making this determination. To circumscribe, to limit the governor to only men, and for the commission to say we searched the state, we couldn’t find a single solitary qualified woman to serve on the bench – something is either wrong with the process or the legislation or the way it was administered.

Peter J. Kiernan, counsel to the governor, said afterward that the commission is required under state law to consider judicial temperament, qualifications and other subjective criteria and ordinarily submits a report to the governor about its deliberations. But in this case, “all they gave to the governor was a list of names,” Mr. Kiernan said.

This was not the first time a governor has complained about a lack of women among nominees for the state’s highest court. In 1983, Gov. Mario M. Cuomo, who had campaigned in 1982 on a promise to appoint the first woman to the Court of Appeals, complained when a list of nominees for a vacancy contained no women. He ultimately chose a man from the list, but later that year, appointed Ms. Kaye to a second vacancy on the bench. (Judge Kaye was the first woman to serve on the court.)

Since 1977, when an appointive system replaced the election of judges of the Court of Appeals, the State Senate has never declined to confirm a governor’s nomination for the chief judgeship.

Michael A. Cardozo, the New York City corporation counsel, said in a statement on Wednesday that while concerns about diversity were understandable, the system for selecting judges was a good one. He said the seven nominees were “excellent.” Mr. Cardozo said in the statement:

The present Court of Appeals selection system has produced an outstanding and diverse Court. While we understand the Governor’s and Attorney General’s concerns, we’re pleased that neither the Governor nor the Attorney General suggested making drastic changes to the merit-based appointment system.

Certainly, there’s always room for improvement in any process. For example, perhaps more steps can be taken to ensure that a larger, and more diverse, group of people apply to the Nominating Commission.

While the present selection process can certainly be reviewed — that process, which has been in effect since the late 1970s, has resulted in outstanding Court of Appeals jurists, including four women, one Hispanic and three African Americans. Under the prior system, there were none (who ever served out full terms). Even with Chief Judge Judith Kaye’s retirement, today there will continue to be three women, an Hispanic and an African American — an ongoing reflection of the importance of a diverse court.

I believe that all of the current Chief Judge candidates, most of whom I know well

personally, are excellent. I am absolutely confident that whichever nominee the Governor selects, the candidate will be an outstanding chief judge.

Jeremy W. Peters contributed reporting.

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