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IN BRIEF

Court of Appeals Resumes With Only Five Judges

The state Court of Appeals reconvenes Monday without a chief judge and one associate judge.

The five-judge lineup represents the bare minimum with which the court can hold oral arguments. Four judges must agree in order for the court to make rulings in the 20 cases it is scheduled to hear in January, raising the possibility the court may have to defer some rulings.

The openings are due to the June 2015 resignation of associate judge Susan Phillips Read (NYLJ, Aug. 24) and last week's retirement of Chief Judge Jonathan Lippman (NYLJ, Dec. 30).

Gov. Andrew Cuomo has nominated Janet DiFiore, the Westchester County district attorney, to succeed Lippman. The state Senate did not act within its statutory deadline in December to confirm or deny the nomination (NYLJ, Dec. 17).

The chairman of the Senate Judiciary Committee, Mount Hope Republican John Bonacic, said the DiFiore nomination will be addressed early in the Senate's 2016 session, which begins Wednesday.

Cuomo has until Jan. 21 to make a nomination for the Read opening, choosing from seven candidates on a list compiled by the Commission on Judicial nomination.

The most senior associate judge on the Court of Appeals, Eugene Pigott Jr., will be acting chief judge until a new chief is confirmed.

Among the cases on the January calendar are *Sean R. v. BMW of North America*, 3, which challenges the admissibility of expert testimony in a suit claiming gasoline fumes caused fetal birth defects, and *Selective Insurance Company of America v. County of Rensselaer*, 4, involving insurance coverage for a \$1.6 million settlement Rensselaer County made with more than 800 former inmates who were strip-searched at the county jail.

Both cases will be heard Monday.

—Joel Stashenko