

Politics

# Christie, Sweeney deal on NJ Supreme Court leaves one lasting vacancy

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PHOTOS: Christie re-nominates Stuart Rabner as Supreme Court Chief Justice - 5.21.2014

By Salvador Rizzo | The Star-Ledger

By Salvador Rizzo and Matt Friedman /The Star-Ledger

TRENTON — The last open seat on the New Jersey Supreme Court is likely to stay vacant for the rest of Gov. Chris Christie's term, The Star-Ledger has learned.

Christie and state Senate President Stephen Sweeney last week ended their four-year stalemate over court nominations — a development cheered by leading lawyers, judges and court watchers across the state. Amid the crossfire, Christie had ousted two sitting justices and Sweeney had led efforts to block four of the governor's nominees.

Now those battles are in the past, as the governor and Senate president struck a deal that would keep Chief Justice Stuart Rabner, a Democrat, on the court until 2030 if he decides to serve that long, while state Superior Court Judge Lee Solomon, a Republican, would be elevated to one of two vacant seats as an associate justice.

The Senate is expected to approve both nominations within a month. But that's as much common ground as the two leaders can find on the court: Sweeney (D-Gloucester) is unwilling to accept any nomination from Christie unless it is a Democrat, according to two Democratic sources in the state Senate who requested anonymity because they are not authorized to discuss it publicly.

And Christie, having just angered conservatives by renominating Rabner — despite promises to steer a "liberal" and "activist" court to the right — is unlikely to grant Sweeney his wish.

That means the last vacancy on the seven-member court — now temporarily held by Judge Mary Catherine Cuff, a Democrat — is likely to remain open as long as Christie is governor.

"We can just agree to disagree right now," said Sen. Nicholas Scutari (D-Union), the chairman of the Senate Judiciary Committee. He called Cuff a seasoned jurist who has performed well since Rabner assigned her to the top court in October 2012. She would reach the mandatory retirement age of 70 in August 2017 in the final year of Christie's term.

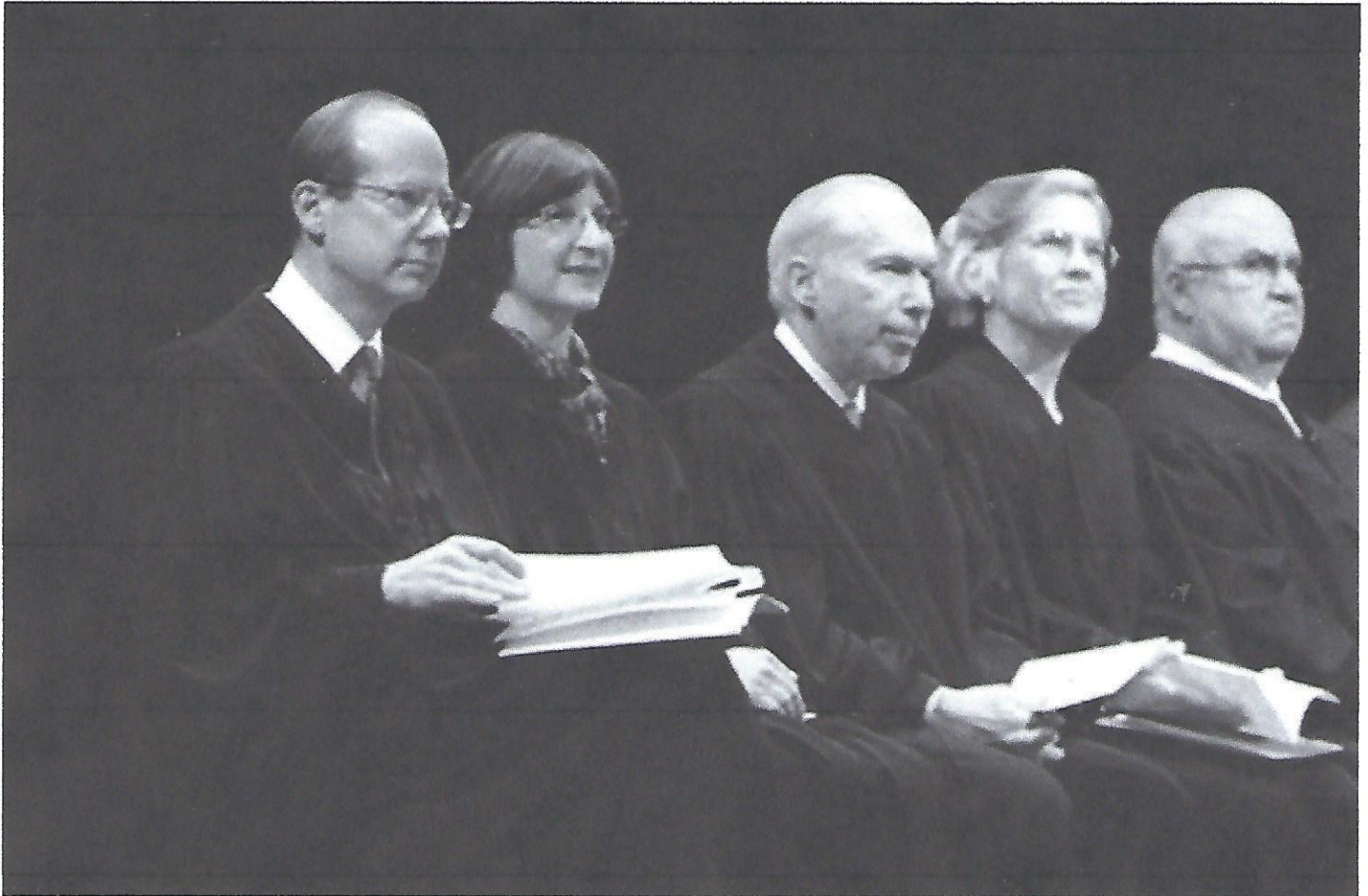
"I don't think it's detrimental to the court's performance — it hasn't been," Scutari said.

Spokesmen for Christie and Sweeney declined to comment. After announcing the Supreme Court agreement with Sweeney on Wednesday, Christie said he didn't have any potential nominee lined up for the high court's remaining vacant seat.

Scutari said his committee will hold confirmation hearings for Rabner and Solomon in the third or fourth week of June.

"They'll be required to answer questions, and I'm going to require specific answers," he said. But he added that he expected both nominations to be successful.

"It's a good day for the judiciary and for the people of New Jersey when leaders can come together and select some people of obviously good reputation to serve on our highest court," he said. "Hopefully, it will get back some of the luster that it lost in this battle over the last four years."



The Supreme Court's five current justices could serve together for nearly another decade. From left, Chief Justice Stuart Rabner and Justices Jaynee LaVecchia, Barry Albin, Anne Patterson and Faustino Fernandez-Vina in Trenton.

For the governor, it means his bid to reshape the court is likely to end up an unfinished project. Christie came into office at a time when there were four Democrats, two Republicans and one independent on the Supreme Court. He would leave the Statehouse having flipped only one seat, with three Republicans, three Democrats and one independent.

At his news conference Wednesday, Christie said "opinions change and shift all the time," and that it would be hard to say what mark he will leave on the Supreme Court. But he said it has changed "significantly" since he's been governor.

If Solomon is confirmed, he would be the third Christie appointee after Justices Anne Patterson and Faustino Fernandez-Vina. "That's nearly half the court that's been changed," the governor said.

"The best any governor can do is to try to make the best decisions you can about the people you want to put on the court, and then watch them work," he said. "And we'll see what happens."

The Supreme Court has rebuffed Christie on major issues such as school funding, affordable housing and same-sex marriage. By and large, the same justices who wrote those opinions will be shaping the court's legacy for about a decade, and Rabner would lead it for the next 16 years if he serves until age 70.

Justice Barry Albin, a Democrat, has eight years before reaching the mandatory retirement age, while Justice Jaynee LaVecchia, an independent, can serve another 10 years. Aside from Cuff's, no other seat is likely to go vacant before Christie's term ends in 2017.

Patterson, a Republican, is the next justice to come up for tenure, in 2018.

Robert Williams, an expert on the court at Rutgers Law School in Camden, said the past four years marked the "most serious crisis in the history of the modern judiciary" of New Jersey, which was established after World War II.

"Many people see this as a very, very positive step, but they're a little hesitant to say that the danger to judicial independence has passed," Williams said.

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Politics

# Christie, N.J. Democrats filling eight judicial vacancies, but 44 remain

By Salvador Rizzo | The Star-Ledger

TRENTON — Gov. Chris Christie and state Democrats reached a turning point last week in their long stalemate over who gets to be a judge in Essex County, home to New Jersey's busiest courthouses.

But across the state, the wait for more judges continues.

After some turbulent on-and-off negotiations, the Republican governor and the Democratic-led state Senate reached a deal last week to fill eight of 21 judicial vacancies in Essex.

Democratic leaders expect that all eight nominees will be confirmed at Monday's Senate session — a shot in the arm for the courthouses in Essex — but Christie would still have another 44 vacancies to fill, a number that would bolster the judicial ranks in New Jersey by roughly 10 percent.

Legal observers say the nominations are overdue by several years. As state political leaders tussle behind the scenes over judicial appointments, the courthouses have been dealing with rising case backlogs, leading to more wait times — or months of legal limbo — for people enmeshed in divorce or custody battles, and business disputes.

"Our judges are stretched beyond reason," Paris Eliades, president of the state Bar Association, wrote to Christie and legislative leaders last week. "As a result of these unprecedented numbers, judges are carrying staggering caseloads and court officials are turning to desperate measures, leading to delays and hardships for people seeking divorces, the resolution of business disputes and many other cases."

New Jersey's state courts handle nearly 1 million matters a year, touching thousands of residents. Backlogged cases are those that remain open even after the "normally accepted" timeframe to hear them has passed.

In the last year, the statewide backlog in the Superior Court grew by roughly 3,000 cases, and leading court officials say the main reason is the persistent spate of vacancies, especially in densely populated counties such as Bergen and Essex.

According to recently published court statistics, 17 percent of all cases in state trial courts were backlogged from July 2013 to June 2014. That was an increase from 16 percent in the year-earlier period.

And the number has been rising steadily during Christie's governorship: going from 12 percent in June 2010 to 17 percent today. That means there are an extra 9,000 backlogged cases on the dockets now compared with 2010, a 33 percent increase.

"We attribute a large part of the increase in backlog to the high number of judicial vacancies experienced in recent years," Judge Glenn Grant, acting administrative director of the state courts, told lawmakers during budget hearings in the spring.

"All Superior Court judges continue to work expeditiously and diligently to handle increasing workloads and demands, including exponential increases in trial, hearing, and motion work," Grant testified later.

Judge Peter Doyne, the top court administrator in Bergen County, recently took the rare step of freezing some trials due to six judicial vacancies. The number of empty judgeships is expected to increase to nine within weeks, he wrote in a letter July 30.

"Despite all our efforts, with that shortage, we will be unable to serve you and your clients as we wish," Judge Doyne wrote in a notice to the state's lawyers.

Starting Sept. 15, "there shall be no trials conducted in the civil or family divisions which are expected to last longer than two weeks," Doyne said, though some exceptions would be allowed.

Judge Grant told lawmakers that Chief Justice Stuart Rabner has tried stopgap fixes such as reassigning judges from a well-stocked county to ones experiencing a "dearth." Rabner has also relied on dozens of retired judges.

Although judges must retire at 70 in New Jersey, for decades, the Supreme Court has been able to recall retired judges — including those older than 70 — to lend a temporary hand in overloaded courthouses. As of the end of April, there were 73 judges on recall, and at least 56 of them were 70 or older, according to a list provided by the state judiciary.

But the practice of recalling judges older than 70 is being challenged by James Buckner, an appellant with a case before the state Supreme Court, and depending on how the justices rule, the vacancy problem could grow much worse.

A spokesman for Christie, Michael Drewniak, said more judicial packages are "in the pipeline." One of the biggest problems in filling up the bench, he said, is recalcitrance from some senators with a say in the appointment process.

The state Senate must confirm all of Christie's picks for the bench, and individual senators also have the power to block appointments in their home counties — for any reason, and without disclosing why — under an unwritten custom called "senatorial courtesy" that several legal experts say should be abolished.

"The reality is that filling vacancies in some counties is far more complex than in others," Drewniak said. "The practice of 'senatorial courtesy' — which is seldom courteous — still plays an outsize role in the process and can hold up reasonable negotiations and accommodations to get whole packages of judges through to fill vacancies. Nonetheless, we have succeeded in many counties and we will continue our part in bringing judicial ranks up to optimum levels."

State Sen. Nicholas Scutari (D-Union), chairman of the Senate Judiciary Committee, said that senatorial courtesy has an important role in the process of choosing judges, many of whom get "extraordinary power for life."

"Courtesy doesn't allow one person to make all the decisions," Scutari said, "which I think is integral to having a good judiciary."