

Cuomo Clashes With Committee Over Judgeships

Asks Panel to Disregard Law on Nominations

By JOSH BARBANEL

Governor-elect Mario M. Cuomo said yesterday that a state law governing the nomination of judges to the State Court of Appeals was inconsistent with the State Constitution. He asked a nominating panel to disregard the law and recommend additional candidates for a court vacancy.

The law requires that a Governor be given three to five well-qualified candidates. Last week the panel, the Commission on Judicial Nomination, sent Mr. Cuomo the names of four candidates to fill the seat of Judge Domenick L. Gabrielli, who is retiring.

Mr. Cuomo said, however, that the constitutional amendment that set up the commission only required that it send him a list of candidates "well qualified" to hold office, without any limitation on numbers.

But the chairman of the commission, Mendes Hershman, said that it was "unlikely" that it would comply with Mr. Cuomo's request. He suggested that Mr. Cuomo seek to have the law changed or "seek a determination by the courts as to what the Constitution means."

Many Candidates Called Qualified

Mr. Cuomo said that he was told that the commission had considered many other well-qualified candidates, but that Mr. Hershman, a Manhattan lawyer, refused to provide him with any details. The Governor-elect, who takes office on Jan. 1, is required to make the court appointment by Jan 15.

In a letter to Mr. Hershman released yesterday, Mr. Cuomo formally requested that the commission send him the names of all candidates already found "well qualified." It asked that Mr. Hershman meet with the commission and report back to Mr. Cuomo by today.

Mr. Hershman said that as of last night he had not scheduled a meeting of the commission.

The issue of the number of candidates is particularly important since five of the seven members on the court, the state's highest judicial body, will retire over the next four years, and Mr. Cuomo will be called upon to replace them.

All 4 Candidates Men

The appointment process was set up under a constitutional amendment enacted in 1977. Before that, members of the court were elected. Each candidate must be endorsed by at least eight of the 12 commission members.

All four candidates named so far are men. Mr. Cuomo had pledged during his campaign that he would appoint a woman to the court if one was recommended by the commission.

The four candidates recommended are Surrogate Bertram R. Gelfand of Surrogate's Court in the Bronx, Judge Joseph M. McLaughlin of Federal District Court in Brooklyn, Justice Richard D. Simos of the Appellate Division of State Supreme Court in Rochester, and Justice Vito J. Titone of the Appellate Division of State Supreme Court in Brooklyn.