

newsday.com/news/local/wire/newyork/ny-bc-ny--chiefjudge-senate0127jan27,0,3847208.story

Newsday.com

Lawmakers fault top court selection process

By MICHAEL VIRTANEN

Associated Press Writer

January 27, 2009

ALBANY, N.Y.

Several New York senators and attorneys Tuesday urged reform in choosing judges for the state's top court. They criticized the recent closed-door selection of seven potential nominees for chief judge, saying the process lacked diversity, openness and outreach.

Senate Judiciary Committee Chairman John Sampson said only 12 candidates applied to the Commission on Judicial Nomination to replace Chief Judge Judith Kaye, and three were women, all qualified. However, the seven names submitted to Gov. David Paterson were all men, only one a minority.

Paterson raised the same concern before nominating Justice Jonathan Lippman, a midlevel appeals court judge and the former chief administrative judge of the sprawling court system.

"The purpose is not to challenge the nomination of Justice Lippman," Sampson said at the close of Tuesday's hearing, which he said would be followed by others in New York City and upstate. "It's to deal with the process so we don't run into this problem again."

Sampson, a Brooklyn Democrat, said he and other lawmakers will meet with Lippman before the committee holds confirmation hearings he hopes will follow within 30 days.

Sampson noted that 18 percent of New Yorkers are African-American, but only 9 percent of its judges are; 16 percent of its people are Hispanic, but only 4 percent of the judges are. He said 18 percent of the state's law students are Asian, but only 1 percent of its judges are.

There is a problem of public perception that politics came into play in the judge selection process, he said.

Lippman's nomination requires Senate approval.

"I'm not talking about any issue of quota," Sampson said.



Sen. George Winner, an Elmira Republican, said lawmakers should make sure "the highest qualified individuals" are put on what he called the most important state court in the nation.

Sen. Ruben Diaz, a Bronx Democrat, said that while New York now has a black governor who could have appointed a well-qualified and well-prepared woman or minority as the state's top judge, the commission "tied his hands."

"Let's untie the governor's hands and give the governor the power to say to the committee what you did was wrong," Diaz said. One applicant was Court of Appeals Acting Chief Judge Carmen Beauchamp Ciparick, a longtime associate judge on the Court of Appeals, and a Hispanic woman Diaz said was obviously qualified, but her name wasn't on the list.

The other women considered by the commission were Judges Fern Fisher and Priscilla Hall in New York City, both experienced and well qualified, Sampson said.

John Dunne, a former lawmaker who helped author the law that substituted the appointment process for the Court of Appeals instead of elections, urged the senators not to change the system. He said it has worked for 30 years and made the process less political.

Dunne said the governor, chief judge and four lawmakers who choose members to the 12-member nomination commission, in staggered terms, can emphasize to those appointees that diversity is important and needs to be considered.

Dunne said the court, which until Kaye's retirement had four women, one of them Hispanic, and an African-American judge, became far more diverse with this process. Judge Theodore Jones was on the commission's short list. But Dunne acknowledged the commission's "failure to meet expectations of a great many of its citizens" with a list that included no women.

Attorney Ravi Batra said the system is "badly broken," that the commission approves nominees with a two-thirds majority, allowing a bloc of five to hijack the process. He suggested changing the rules so only a majority vote is enough, expanding the list of nominees to 12, making public the names of applicants, having 15 commissioners, and letting lawmakers choose eight.

Brooklyn Bar Association president-elect John Lonuzzi said the commission should include bar association representatives and the number of potential nominees should be expanded.

Sampson said he will talk to Commission Chairman John O'Mara to discuss lawmakers' concerns.

Copyright 2009 Associated Press. All rights reserved. This material may not be published, broadcast, rewritten, or redistributed.