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## Kaye becomes first chief judge reappointed

By Yancey Roy  
Albany Bureau

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ALBANY - The state Senate yesterday confirmed Judith Kaye for another term as New York's chief judge, making her the only jurist ever reappointed to the post.

Technically, Kaye's appointment is for 14 years. But she will be able to serve just 21 months. Kaye will turn 70 years old, the mandatory retirement age for judges, in 2008 and must step down on Dec. 31 of that year.

Kaye has been on the state Court of Appeals since 1983 and the chief judge since 1993. By the time she steps down, the Democrat will have logged more than 25 years, giving her the third-longest tenure on the state's top court,, bested only by Stanley H. Fuld, who served from 1946 to 1973, and Charles Desmond, 1940 to 1966, court officials said.

Kaye years ago became the longest-tenured chief judge, surpassing Sanford Church, who held the post for just over 10 years ending in 1880. Court of Appeals slots were filled by a combination of elections and appointments until the 1970s, when the state switched to 14-year appointments exclusively. (The modern era of the court is considered to have begun in 1847.)

Though considered one of the more liberal members of the seven-member court, Kaye has not pushed the court toward the left during her tenure, analysts say. In fact, the court has been known for its moderation and its tendency to not overreach in handing down decisions.

At her confirmation hearing, senators praised Kaye's "dignity" and "thoughtfulness" and her administrative efforts to change jury selection and specialize venues dealing with drug crimes and family/domestic-violence issues. But they also grilled her about some of the key cases of her tenure, including the death penalty and the landmark school funding case.

Perhaps the testiest exchange focused on the latter, when Senate Education Committee Chairman Stephen Saland, R-Poughkeepsie, essentially accused the court of overstepping its powers. The court ruled in 2003 that the state had shortchanged New York City schools and ordered the state to pump billions of dollars into the system.

"I'm very troubled when I view the court, your court or any other court, usurping the legislative function even if for perfectly desirable social ends," Saland said. "I don't think the ends justifies the means ... and I would appeal for some sort of judicial restraint."

"I would agree with you," Kaye quickly shot back. "It would be terrible if we usurped the legislative function based on preconceived philosophy or political end. I cannot agree that the court does that or that I do that."

Saland voted against Kaye's appointment. He said it was "not merely a matter of competence" or qualifications but a feeling that Kaye at times "ruled more like a legislator" than a judge.

Sen. George Maziarz, R-Newfane, Niagara County, the only other senator to vote against her, cited the court's 2004 ruling effectively declaring the state's death-penalty law unconstitutional.

Senate Judiciary Chairman John DeFrancisco, R-Syracuse, also raised questions about Kaye's proposal to establish regional panels to screen the credentials of candidates for local judicial elections. The state is under a federal court order (now on appeal) to change its method for electing state Supreme Court judges.

"It goes back to the fact that judicial elections are different. There's no question they are different," Kaye began. "The idea that judicial candidates would go out to the public to raise millions of dollars, to engage in unbridled political rhetoric - to me, that's just unthinkable."

She said the proposal would not block anyone from getting on the ballot but would give the public some evaluations of a candidate's qualifications. But DeFrancisco, who eventually supported Kaye, didn't sound satisfied.

"This goes to concerns raised by Sen. Saland: separation of powers," DeFrancisco said. "Whose role is it, really, to set the parameters of elections? I could not find, really, any (authority) for the judicial branch to be involved."

"We are not setting up parameters of elections," Kaye said, adding that court administrative law gave her the power to set up the panels. No one would be compelled appear before them.

In the end, even those who have criticized some of the court's decisions praised Kaye's tenure.

"I don't think any chief judge has presided over the court with as much dignity and straightforwardness as you have," said Sen. Dale Volker, R-Depew, Erie County, who has served in the Legislature since 1973. "You will be remembered possibly as the finest legal mind Court of Appeals chief judge in modern times."

Kaye's husband, attorney Stephen Rackow Kaye, died in October. That led some to wonder whether she'd retire rather than seek reappointment. But she told senators she wanted to stay on, in part, to push for her three top "reforms": boosting judicial pay, restructuring the multilayered court system and upgrading town and village courts.

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