

With 3 Retirements, NY's Top Court Enters Period of Uncertainty, Lawyers Say

Three judges are leaving the court in a 10-month span. Legal experts say the shakeup is a critical moment for New York's highest court.

By **Ryan Tarinelli** | March 29, 2021 at 02:21 PM



The New York Court of Appeals in Albany, New York. Photo: Wikicommons

Major turnover has begun for New York's top court.

Judge Paul Feinman abruptly retired last week over health concerns and two other judges on the Court of Appeals, Leslie Stein and Eugene Fahey, are set to retire by the end of the year. That's three judges leaving the court in a 10-month span, a shakeup that legal experts describe as a critical moment for New York's highest court.

"[It does] present the opportunity for a dramatic shift in the philosophical composition of the court, the geographical composition of the court, the diversity on many, many different levels," said Scott Karson, president of the New York State Bar Association. "And it remains to be seen how dramatic the shift will be."

There are many unknowns about how three new judges might alter the direction of the court, but compounding the situation is the current status of Gov. Andrew Cuomo.

The embattled third-term governor is the subject of a range of sexual harassment allegations and his administration has been accused of covering up the real number of nursing home residents who died from the coronavirus. There are multiple investigations into the alleged misconduct of Cuomo and his administration, including an impeachment investigation in the state Assembly.

It's unclear if Cuomo's picks will run into opposition in the state Senate, where a majority of lawmakers have called for him to step down.

The significance for the state's top bench came into view last week when Feinman, the first openly gay judge on the court, suddenly retired "to attend to health concerns."

Stein is planning to retire in early June and Fahey, who is set to reach the mandatory retirement age this year, will step down at the end of 2021.

In less than two weeks, the governor is expected to receive a small list of nominees for Stein's seat from the Commission on Judicial Nomination. Cuomo will pick one of the nominees, who must then be confirmed by the state Senate.

Another element could potentially cloud the confirmation process: Because judges on the Court of Appeals sit on the impeachment court, any Cuomo nominee would have a vote in whether the governor is forced out of office.

"Not many people get to appoint their own potential judges," said A. Thomas Levin, a Long Island attorney who has argued before the court.

As the investigations play out, an impeachment vote in the state Assembly is not expected to come anytime soon.

Levin, who is the former president of the state bar association, said he expects Cuomo to be in office long enough to at least appoint replacements for Stein and Feinman.

"Obviously, it puts much more drama into the situation than usual," he said.

The Commission on Judicial Nomination says the deadline to submit applications to fill Feinman's seat is April 8. In a statement, the commission noted that it's cognizant of the need to "swiftly fill" Feinman's seat.

It's unclear if the commission will emphasize any particular legal background in selecting the nominees. In recent decades, the commission has put forward candidates from a range of legal professions, including private practice attorneys, law professors and appellate judges.

Among the three branches of New York's government, the Court of Appeals is by far the quietest. Housed in its own building, the court assumes an out-of-spotlight role in Albany compared to state lawmakers and the governor.

There are rarely protests at the Court of Appeals compared to the Capitol in Albany, where waves of raucous demonstrators would gather in the building's hallways during pre-pandemic legislative sessions.

The Court of Appeals also takes on a different tenor from the U.S. Supreme Court, said attorney Robert A. Spolzino, who has argued before New York's high court.

The U.S. Supreme Court often weighs in on hot-button issues that run along fierce ideological lines. By contrast, the state law issues that come before the Court of Appeals are more practical in nature, Spolzino said.

Spolzino said he's not sure the three new judges will lead to a sharp shift on the court, either. Part of that is the court itself, he said, but there has also been consistency in the person choosing the new members of the bench.

All of the sitting Court of Appeals judges have been appointed by Cuomo, he noted. Nevertheless, he argued it will be a challenge to incorporate a new slate of judges—and their thoughts on legal issues—into the dynamics of the court.