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Hochul Prepares for Governorship, Expected To Have Say Over Final Court of Appeals Vacancy

She is expected to wield power over who will fill the last anticipated vacancy on New York's highest court.

By Ryan Tarinelli | August 11, 2021



Lt. Gov. Kathy Hochul speaks during a press conference at the State Capitol in Albany, N.Y., on Wednesday, Aug. 11. Photo: Ryland West/ALM

Lt. Gov. Kathy Hochul sought to distance herself in public remarks Wednesday from scandal-scarred Gov. Andrew Cuomo as she prepares to become the first woman to helm New York's state government.

"It's very clear that the governor and I have not been close, physically or otherwise, in terms of much time," said 62-year-old Hochul to a national audience before a hefty line of cameras at the New York State Capitol in Albany.

Hochul is poised to become governor later this month after a sexual harassment scandal engulfed the Cuomo administration, leading to his announcement that he would resign.

Once in the governor's seat, Hochul, a former congressional member who represented a portion of Western New York, will have an outsized influence in shaping the state's judiciary.

Specifically, she is expected to wield power over who will fill the last anticipated vacancy on New York's highest court.

Court of Appeals Judge Eugene Fahey is turning 70 years old next month and will be stepping down from the court due to a retirement age requirement. His seat is expected to open at the start of 2022.

Fahey's seat is viewed as a swing vote on the seven-person court and his replacement could be key in determining the direction of the court.

Fahey's retirement will round out a time of remarkable turnover at the state's top court: His seat will be the third to open up in under a year.

Even before Cuomo's downfall and Hochul's expected ascension, a candidate from upstate or Western New York was likely a shoo-in to replace Fahey, said Robert Spolzino, an appellate lawyer and a former Appellate Division justice who is now a partner at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone.

With Hochul, she may have a good sense of Western New York lawyers and judges who could be Court of Appeals candidates, Spolzino said.

Cuomo, a third-term governor, announced Tuesday that he will be resigning later this month, ending his decade-long tenure in the role.

An independent report from state Attorney General Letitia James' office found that Cuomo sexually harassed state employees. After the report was released, Cuomo's political support from prominent Democrats quickly eroded.

"At the end of my term, whenever it ends, no one will ever describe my administration as a toxic work environment," Hochul said on Wednesday. She directed her comments at the report's findings that Cuomo's office fostered a culture of fear and intimidation that allowed his behavior to persist.

The governor's political demise capped off months of controversy and scandal for the Cuomo administration, which has also been accused of withholding the true number of nursing home residents who died from the coronavirus.

The Cuomo administration launched a campaign to discredit the first aide to accuse him of sexual harassment, something that rose to the level of unlawful retaliation, investigators concluded.

No officials implicated by the report by acting unethically will be in her administration, Hochul said.

A day before his resignation announcement, the state Assembly outlined a timeline for their impeachment investigation. It's unclear if that process will continue now that Cuomo has said he will be quitting.

Hochul declined on Wednesday to say whether she thinks the Assembly should move forward with impeachment. She did not address whether officials should release any findings they've uncovered so far in their investigation.

While she sought to separate herself from the governor's office culture, Hochul expressed support for Cuomo administration policies, saying she had fought for paid family leave and policies aimed at fighting opioid and heroin abuse.

With the reputation of the Cuomo administration, Hochul said: "It's no secret that we have not been close and I've not been associated with that."

"I know the job. I fought for the same policies," she said. "That's why I'm more prepared than anyone could possibly be for this position."

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