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■ COURT OF APPEALS ■

First Department Justice Tapped for Top Bench

BY JOHN CAHER

ALBANY

GOVERNOR Andrew Cuomo has nominated Sheila Abdus-Salaam, a highly regarded appellate judge, for a seat on the state's highest court.

Cuomo announced April 5 that he has selected Abdus-Salaam, an associate justice on the Appellate Division, First Department, for the position that opened with the sudden death in November of Judge Theodore Jones Jr.

Abdus-Salaam, a 61-year-old resident of Manhattan, is Cuomo's second nominee to the seven-judge court. His first, Jenny Rivera, a professor at the City University of New York School of Law, was confirmed in February.

"As one of our state's most respected and experienced jurists, Justice Abdus-Salaam will bring a wealth of judicial and legal expertise to the New York State Court of Appeals," Cuomo said in a statement.

Cuomo said Abdus-Salaam rose "from working class roots" to the judiciary, where she has shown "a deep understanding of the everyday issues facing New Yorkers, as well as the complex legal issues that come before the state's highest court." He said her "respect for the law and commitment to making New York a more just place to live will continue to benefit all New Yorkers."

In a statement, Abdus-Salaam said she is honored by the nomination.

"Throughout my legal career, I have sought to uphold the laws of our state and treat all those who appear before me fairly and with respect and dignity,"



Justice Abdus-Salaam

she said. "This nomination presents me with an opportunity to continue to serve New Yorkers and advocate for justice and fairness here in New York state."

Chief Judge Jonathan Lippman said Abdus-Salaam is "extremely well regarded as an appellate judge and a person, and I couldn't be more delighted by this appointment."

If confirmed by the Senate, Abdus-Salaam, who is black, would restore a measure of racial balance to the court, which has not had a black judge since Jones died. There has never been a black woman on the court.

Senate Judiciary Committee Chairman

John Bonacic, R-Mount Hope, said the panel will hold a confirmation hearing later this month.

"I appreciate the governor nominating someone with legal and judicial experience," Bonacic said. He said he expects that Abdus-Salaam "will meet and exceed the Judiciary Committee's expectations."

Abdus-Salaam holds degrees from Barnard College and Columbia Law School. She began her career with the East Brooklyn Legal Services Corp., spent eight years as an assistant state attorney general under Robert Abrams and four as general counsel to the New York City Office of Labor Services. She was elected to a New York City Civil Court judgeship in 1992 and to Supreme Court in 1994.

Abrams, now a partner with Stroock & Stroock & Lavan, said Cuomo had made "a great choice."

"Sheila has the ability, experience, temperament and integrity to be an outstanding judge on the Court of Appeals," he said. "I've known her for 30 years, she worked for the attorney general's office for six years, and I can attest to her capability to step into this role."

Governor David Paterson elevated Abdus-Salaam in 2009 to the Appellate Division, where her decisions show a "moderately liberal" philosophy, especially in criminal cases but also in civil matters where she has written in favor of low-income plaintiffs over corporate defendants, according to Professor Vincent Bonventre of Albany Law School, an expert on the state's high court. "There are certain cases, both civil and criminal, where you can see she is a little more liberal some of the time in the divided cases

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than the majority of her colleagues.”

Bonventre said that since Abdus-Salaam joined the First Department she has written 12 dissents, compared to an average of 16.5 by her colleagues.

“I read a slew of her opinions and thought they were excellent,” Bonventre said. “Her opinions seem really solid. They are very understandable. She writes well. She analyzes very, very well. I think she is really a good judge.”

Michael Hutter, an Albany-based attorney with Powers & Santola, a Law Journal columnist and an Albany Law School professor who frequently argues in the appellate courts, said he includes Abdus-Salaam among the very best jurists in the state, with the potential to become the court’s intellectual leader.

“Her decisions have been absolutely superb pieces of judicial writing, showing clarity, thoughtfulness and putting the decision in proper perspective with regard to possible implications and past precedent,” Hutter said.

Abdus-Salaam’s major rulings include a majority opinion in *Martin v. Portexit*, 98 AD3d 63 (2012), and a dissent in *ABN AMRO Bank v. MBIA*, 81 A.D.3d 237 (2011). *Martin* upheld the admissibility of an electronically signed affirmation (NYLJ, July 16, 2012). In *ABN AMRO*, Abdus-Salaam dissented when her court threw out a fraudulent conveyance action against a bond insurer.

High Bar Association Ratings

Abdus-Salaam was the only one of the seven candidates recommended to Cuomo by the Commission on Judicial Nomination to receive the top rating from the 19 bar groups that evaluated the contenders.

She received the highest ranking from the New York State Bar Association, New York State Academy of Trial Lawyers, New York City Bar, New York State Women’s Bar, Albany County Bar, Tri-County Commission (including the Erie, Monroe and Onondaga County bars), Broome County Bar and a consortium of affinity bar groups comprised of the Asian American Bar Association of New York, Association of Black Women Attorneys, Black Bar Association of Bronx County, Dominican Bar Associa-

tion, Korean American Lawyers Association of Greater New York, Macon B. Allen Bar Association (of Queens County), Metropolitan Black Bar Association, Puerto Rican Bar Association and the South Asian Bar Association of New York.

Cuomo selected Abdus-Salaam from a list that included her colleague on the First Department, Justice Dianne Renwick; Fourth Department Justice Eugene Fahey; Second Department Justice John Leventhal; David Schulz, a partner at Levine Sullivan Koch & Schulz; Maria Vullo, a partner at Paul, Weiss, Rifkind, Wharton & Garrison; and Rowan Wilson, a partner at Cravath, Swaine & Moore.

It was widely assumed that Cuomo would not leave the court without representation from the black community and the only black candidates before him were Abdus-Salaam, Renwick and Wilson.

There was some conjecture that Renwick’s chances were hindered in part because she is married to Bronx District Attorney Robert Johnson and would presumably have to recuse herself from any Bronx criminal cases that came before the court.

Wilson, who has a sterling reputation as a litigator, does not have judicial experience.

New York State Bar President Seymour James Jr. called Abdus-Salaam an “ideal choice,” and cited her “vast experience ruling on everything from corporate issues to personal injury cases to criminal matters.”

R. Nadine Fontaine, president of the Metropolitan Black Bar, noted that Abdus-Salaam, if confirmed, would be the first black woman to sit on the high court.

“As she elevates to this position, we strongly believe that she will continue to demonstrate the judicial traits that have garnered her the respect of her peers and the members of the legal community,” Fontaine said in a statement.

David Schizer, dean of Columbia Law, called Abdus-Salaam a “magnificent choice whose wisdom, fair-mindedness, analytical power, integrity, and compassion will bring great distinction” to the court. Abdus-Salaam is vice president of the school’s Board of Visitors.

Maureen Maney, president of the Women’s Bar Association of the State of New York, said the appointment of Abdus-Salaam “is not only a source of great pride to our association, but a benefit to all New Yorkers who are, every day, impacted by the decisions of the state’s highest court.”

The work of the Commission on Judicial Nomination, now chaired by former Chief Judge Judith Kaye of Skadden, Arps, Slate, Meagher & Flom, and the court composition in general seemed to attract unprecedented attention and scrutiny this year as Cuomo began to make his imprint on the high court.

Republicans have grumbled that the last two lists of nominees were comprised solely of Democrats and question how it could be that not a single member of their party could be qualified for the Court of Appeals.

Prosecutors are quietly complaining that there are apparently no former district attorneys on the Court of Appeals, and none on the last two lists.

Advocates for minorities are insistent that the court reflect the demographic makeup of the state, but some lawmakers and others are questioning whether race, gender and geography should even factor into the equation.

And upstaters gripe that on the last two lists there has only been one candidate from north of New York City—Fahey, who is from Buffalo.

If Cuomo serves a second term, he may have an opportunity to appoint all seven judges on the court, including the chief judge, something no other governor except his father, Mario Cuomo, has done.

With the exception of the most recent appointee, Rivera, all of the other incumbents will face either the end of their 14-year-term or mandatory retirement in the next four years.

But that could change pending a proposed constitutional amendment that would allow Court of Appeals judges, now required to step down at the end of the year they turn 70, to serve until the age of 80.

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