



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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**CORPORATION COUNSEL MICHAEL A. CARDOZO TESTIFIES
BEFORE STATE SENATE JUDICIARY COMMITTEE;
MAKES PROCEDURAL RECOMMENDATIONS TO STRENGTHEN NEW YORK'S
JUDICIAL SELECTION PROCESS**

***CAUTIONS AGAINST UNNECESSARY AND UNWARRANTED CHANGES
THAT WOULD WEAKEN MERIT-BASED SYSTEM***

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Albany, Jan. 27, 2009 – Testifying this morning before the State Senate Standing Committee on the Judiciary, New York City Law Department Corporation Counsel Michael A. Cardozo offered steps to strengthen the judicial selection process for the Court of Appeals to ensure that nominees continue to be of the highest caliber and represent the rich diversity of New York State.

Following the retirement of Chief Judge Judith Kaye from the Court of Appeals at the end of 2008, the Commission on Judicial Nomination presented a list of seven potential replacements to Governor David Paterson. The Governor, who is required to choose one of the individuals from the list, criticized the Commission for failing to include the names of any women on the list of candidates.

Cardozo testified that although the Commission has operated under the same rules for approximately 30 years and changes are necessary, the merit selection process has served New York State extremely well. "This merit-based system, has resulted in three African American, one Hispanic and four women, all highly qualified, being appointed to the Court. These constituencies, with the exception of one interim appointee, were never previously represented on the court," Cardozo said.

To preserve the qualities of the current system that have served New York well while making necessary changes, Cardozo suggested that the Commission's Rules of Procedure be amended, rather than adopting more extreme changes that would require changes to the New York Constitution or the statutes governing the Commission on Judicial Nomination. Cardozo explained that such changes would not only be unnecessary, but they would also undermine the protections against improper political interference in the judicial nomination process that the Commission was established to guard against.

Cardozo suggested changes to the Rules of the Commission in three areas:

- First, the Rules of Procedure should be amended to emphasize the value of having a diverse group of candidates for vacancies on the Court of Appeals. Candidates should come from different ethnic, geographic, gender and legal backgrounds. In addition to diversity among the candidates presented to the governor, Cardozo suggested that the members of the Commission should be selected so that the Commission itself would be composed of diverse members from different backgrounds.

- Second, amend the Rules to require greater outreach efforts to encourage a greater number of qualified applicants presenting themselves to the Commission for consideration. Outreach could be increased by requiring the Commission to reach out to all bar associations across the state when a vacancy is expected, by providing Commission members make efforts to speak out about the judicial selection process, and by developing a short application form for interested applicants to express their interest.
- Third, increase the transparency of the Commission's work to ensure that New Yorkers understand and accept the Commission's recommendations. Transparency could be increased by making more information available on the Commission's new website and by increasing the amount of information contained in the report presented to the governor, including detailed biographies of each candidate and a summary of the Commission's outreach efforts.

In addition to changes the Senate Committee should consider, Cardozo also spoke out strongly against proposed changes that are unnecessary and should not be considered. These changes would undermine the structure of the Commission that was intended to ensure that the Court of Appeals would remain as free from political interference as possible. These ill-advised suggestions include: increasing the number of candidates presented to the governor, changing the method for selecting the chair of the Commission, and removing the requirement that Commissioners serve staggered terms.

Cardozo explained that these changes would inject partisan politics back into the selection of judges. Quoting former Supreme Court Justice Sandra Day O'Connor and Alexander Hamilton, Cardozo said: "Experience has demonstrated that the courts are stronger when judges have greater independence from the prevailing political forces. That is the basic principal of our court of appeals nominating system, and changes that would endanger that principal must be rejected."

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