

No End in Sight for Family Court Vacancy

By Justin Mason

More than two months have passed since Christine Clark was sworn in as a state Supreme Court justice, and there's still no indication whether an acting judge will be appointed to the bustling Schenectady County Family Court she once presided over.

Gov. Andrew Cuomo has given no indication whether he'll take up the appointment, and a spokesman from his office said Friday there's no timetable for one to be named. That means one of the busiest family courts in the 11-county Fourth Judicial District may have to make do with its lone elected judge and a patchwork of visiting or retired judges for the foreseeable future -- perhaps until a new judge is elected and sworn in.

The absence of one judge hasn't posed any significant problems for the court yet, according to attorneys practicing there. But the longer the court operates without a second judge, the more difficult its operation will become.

"We can't do this long-term," said Vito Caruso, the Fourth Judicial District's administrative judge. "There has to be a stopgap measure."

Caruso said the vacancy is compounded by the extremely heavy caseload in Schenectady County, which ranks among the three busiest family courts in the district. Even before Clark's departure, he was trying to secure a third judge to help reduce a backlog of cases.

"There's no question about it, we could use three full-time family court judges in Schenectady County," he said. "Every plan that has been advanced to date [by the state Office of Court Administration] includes Schenectady County as one of the ones that needs another judge."

Clark assumed her new post after winning a tightly contested election last year. Her vacancy can be filled only by Cuomo, who can appoint a judge on an acting basis for the remainder of the year.

The county's family court now relies on Judge Michael Powers and four part-timers. Retired judges L. Foster James and Michael Eidens are acting as judicial hearing officers, while Saratoga County Family Court judges Courtney Hall and Jennifer Jensen Bergan are filling in on a visiting basis.

The arrangement is anything but practical. Caruso said the judicial hearing officers are able to cover only some legal proceedings, while the visiting judges have their own caseloads in neighboring Saratoga County, which also has one of the busiest family courts in the district.

This places a greater burden on Powers, who is the judge who responds to emergency situations arising in the court, such as a child removal or protective order. But it creates a process that can drag out already-lengthy family court trials for many additional months.

"How do you go day to day on trials when you have a judge who is only there once a week or once a month?" asked Barbara King, an attorney with the Colonie law firm Tully Rinckey who

frequently practices in Schenectady County Family Court. "It's really a horrible way to help people resolve their intimate family issues."

Bruce Trachtenberg, an attorney with more than three decades of family court experience, said leaving the bench vacant does a disservice to people who rely on the court to resolve their disputes. He said the system of employing judicial hearing officers and visiting judges is inherently problematic for a system that functions much better with full-time judges.

"You're talking about continuity," he said "The clients are entitled to expedited resolutions to their domestic disputes."

Trachtenberg, a Democrat, is among those who underwent the lengthy application process with the governor to vie for appointment to the seat. He's also among a pool of about a half-dozen candidates contemplating a run for the 10-year seat in November.

Recently, the executive board of the Schenectady County Democratic Committee selected Kevin Burke as its candidate for the race. The candidacy of Burke, who serves as first deputy in the County Attorney's Office, will now need to be ratified by the full committee later this month.

Party Chairman Brian Quail declined to discuss the party's candidate-of-choice, nor would he speculate on when the governor will make an appointment. He speculated that the appointment may be waiting for others -- such as vacancies on the Appellate Division of state Supreme Court and the state Court of Appeals -- to wend through the governor's office before being handed down.

"I think what we're dealing with now are that all things will be in due course," he said. "These things take time."