



Argues Chief Justice Rabner did not have power to fill vacant seat temporarily with Justice Stern

**BY TOM HESTER SR.
NEWJERSEYNEWSROOM.COM**

In an unexpected action that rocked New Jersey's legal community Friday, New Jersey Supreme Court Justice Roberto A. Rivera-Soto declared he will abstain from the high court's decisions because he maintains Chief Justice Stuart Rabner did not have the constitutional power to appoint Judge Edwin Stern to temporarily fill a vacant seat on the seven-member panel.

The dispute is another round in the controversy that has been simmering since May when Republican Gov. Chris Christie refused to renominate Democratic-appointee Justice John Wallace to the court and, instead, nominated Anne Patterson, a Morristown attorney and a Republican.

Democratic legislative leaders charged that Christie's action was unprecedented and Senate President Stephen M. Sweeney (D-Gloucester) declared the upper house would not consider a replacement for Wallace until he would have retired from the court in March 2012. Rabner then appointed Stern, an appeals court judge, to temporarily fill Wallace's seat.

In two routine decisions made public Friday, Rivera-Soto stated it was not necessary to appoint a temporary justice, and that he is abstaining from decisions because the court's current makeup is unconstitutional. He argued that only the governor has the power to appoint a justice.

"The assignment of a Superior Court judge to serve on this court to fill a vacancy resulting from

a political impasse between the executive and the legislative branches thrusts the judiciary into that political thicket, all the while improperly advancing one side's views in preference over the other's," Rivera-Soto wrote. "The Constitution, sober and reflective court practice, and everyday common sense each counsels against the foolhardy steps the court today takes."

Rabner responded that the creators of the state's Constitution did not make an ironclad standard that only the governor could name a justice.

"The court today has only six members — one short of its full complement — and it is unclear when that will change," Rabner wrote. "In the interim, the current assignment is necessary to address the court's substantial workload and meet the needs of the public."

Justices Virginia Long, Jaynee LaVecchia and Barry T. Albin agree with Rabner, while Justice Helen Hoens raised concerns with both arguments.

Hoens stated that Rivera-Soto is taking a narrow view of the Rabner's constitutional powers, but added that Stern's appointment is questionable because "the only apparent reason for the temporary assignment of a judge is to have someone help the others to carry the court's heavy workload."

The state Constitution declares, "Five members of the court shall constitute a quorum. When necessary, the chief justice shall assign" the highest-ranking Superior Court judge "to serve temporarily."

Winnie Comfort, a spokeswoman for the court, said there would be no additional comment beyond the statements in the decisions.

The Supreme Court's year ends June 30.

Rivera-Soto was appointed to the court by Democratic Gov. James E. McGreevey in 2004. He

is the only Hispanic on the court and resides in Haddonfield.

Sweeney Friday called upon Rivera-Soto to resign. He maintains the Constitution allowed Rabner to appoint Stern.

Sweeney said that prior to Friday, Rivera-Soto had no problem rendering decisions since Stern's appointment by Rabner," The seneator also noted Rivera-Soto had also joined with Stern in two decisions in 2005 where Stern had been temporarily appointed, but his presence was not required to ensure a quorum.

"Today's dissent from Justice Rivera-Soto shows contempt for the law, disregard for his fellow jurists and utter disdain for the right of New Jerseyans to have their cases heard by a full Court," Sweeney said. "It officially cements his place as the worst and most ethically challenged justice in the history of the modern judiciary.

"If he is so disinterested in fulfilling his constitutional duties, then he should step down and let the governor nominate and the Senate confirm a new justice who will actually participate in court matters," Sweeney said. "It's very telling that not one of his colleagues — nor any other jurist since 1947 — would agree with his cynical, transparent and politically motivated temper tantrum, which is either a hail-Mary attempt to curry favor among conservatives to save his own reappointment or an effort to undercut the state Supreme Court's authority on the eve of legislative redistricting.

"This isn't the first mistake Rivera-Soto's made since joining the Court, but it should be his last," Sweeney added.

Michael Drewniak, Christie's press secretary, said, "This should never have become an issue. The governor made a nomination seven months ago — as was his Constitutional duty and prerogative — of a highly qualified individual to be a full-fledged justice on the Supreme Court. It's time now for the Senate president to meet his Constitutional obligation and call for a hearing for Anne Patterson to become a member of the court. That is effectively what Senator Sweeney argued for today in criticizing the current conflict."

Sen. Nicholas P. Scutari (D-Union) chairman of the Senate Judiciary Committee, also called on Rivera-Soto to resign.

"Justice Rivera-Soto's outright refusal to perform his judicial duties demonstrates a complete disregard for the position he holds and for the residents of this state," Scutari said. "The timing of his move is suspect. With his reappointment around the corner, this smacks of a desperate attempt to distract from his ethical lapses and grab the attention of right wing pundits who share a disdain for the court. This is an act of true arrogance. He is making an absolute mockery of the judiciary, and is clearly no longer fit to serve on the court. He should immediately step down."