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NEWS RELEASE

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Chief Justice Asks Prompt Confirmation of Court Nominees

HARRISBURG, February 13, 2008 - Chief Justice Ronald D. Castille has urged the Senate to act as quickly as possible to confirm four nominees named by the governor to fill vacancies on the Supreme, Superior and Commonwealth courts.

In a letter to Senate Pro Tempore Joseph B. Scarnati, Castille said it is especially important that a vacancy on the Supreme Court be filled so that the court can operate with a full seven-member compliment of justices. With only six members to hear cases, Castille said, it is possible that some cases may end in 3-3 deadlocks, leaving important legal issues unresolved.

The current vacancy on the Supreme Court was created by the retirement of former Chief Justice Ralph J. Cappy at the end of last year. Governor Rendell has nominated James Gardner Colins, former president judge of Commonwealth Court, to fill that vacancy through 2009.

The governor also has nominated Judge James J. Fitzgerald 3d and Judge Robert C. Daniels to fill vacancies on the Superior Court. Judge Fitzgerald is a former interim justice on the Supreme Court and currently is a senior judge on Superior Court. Judge Daniels last year served a separate interim term on the Superior Court.

The governor named Kenneth G. Gormley, a professor of law at Duquesne University and president of the Allegheny County Bar Association, to fill a vacancy on the Commonwealth Court.

In his letter to Senator Scarnati, Chief Justice Castille asked for "speedy confirmation" of the four nominees, saying: "Each day's delay in the confirmation process results in a consequent delay in disposing of the important matters that come before our appellate courts and a consequent delay in dispensing justice to our citizens."

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Attached is the chief justice's letter to the Senate Pro Tempore Joseph B. Scarnati.

Commonwealth of Pennsylvania



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RONALD D. CASTILLE
CHIEF JUSTICE

Phone: (215) 560-5663

VIA FIRST CLASS MAIL AND FACSIMILE

February 11, 2008

Honorable Joseph B. Scarnati, President Pro Tempore
292 Main Capitol Building
Harrisburg, Pennsylvania 17120

Re: Appellate Judicial Vacancies

Dear Senator Scarnati:

Governor Edward G. Rendell has forwarded to the Pennsylvania Senate the names of four nominees to fill vacancies on the Supreme Court, the Superior Court, and the Commonwealth Court. I urge the Senate to prioritize the confirmation process in light of the need to fill these vacancies so that the orderly and timely disposition of the important matters that come before these Courts, and especially the matters that come before the Supreme Court, can continue with as little delay as possible.

I would like to specifically draw the Senate's attention to the fact that the Supreme Court has its first argument session of 2008 scheduled for March 3 through March 7, 2008 at which time 27 matters are scheduled for disposition. Because of the vacancy created on this Court by the retirement of Chief Justice Cappy, there are only six Justices who can sit to hear oral argument at this session unless a seventh Justice is confirmed by that time. Our court rules mandate that only a Justice who hears oral argument on a particular matter may participate in the disposition of that matter. Potentially, each listed matter could result in a 3-3 deadlock and such situation provides no guidance to the litigants or to the many citizens who may be affected by a decisive ruling on the particular issue or issues being dealt with in a particular matter.

For your further information the next two oral argument sessions are scheduled for April 14 through April 18, 2008 and May 12 through May 16, 2008. Twenty-five matters are listed for the April Session and 25 matters are listed for the May Session. The same difficulties as described above may occur in the matters listed in those sessions.

As a second point, it is crucial that individuals of experience be appointed to these two-year (and now less) vacancies. Prior judicial experience is, of course, the most relevant qualification needed to successfully address the important work of these Courts. At the appellate court level, it is a challenge to be able to handle the large caseload and the administrative requirements that are the daily work of our busy appellate courts. The learning curve as an appellate judge is steep and it is long. Accordingly, prior judicial experience can provide an individual with the background necessary to successfully complete judicial assignments. Both former Justice James Fitzgerald and Senior Judge James Colins possess this experience in abundance, each having served the court system in various judicial capacities for almost thirty years.

Judge Robert Daniels has less judicial experience but has an abundance of trial experience as one of the top trial attorneys in the state. Notwithstanding, a review of his body of work produced thus far on the Superior Court demonstrates that he is an effective Judge on that Court.

Nominee Professor Ken Gormley has no judicial experience, but his professional accomplishments as a teacher, a scholar, and an author of legal treatises should provide a base of experience that will allow his transition from law professor to a judicial role to be relatively seamless.

Therefore, since these four nominees are well-qualified for the positions to which they have been nominated, I urge speedy confirmation by the Senate. While I clearly understand that there is a procedure to be followed, the Senate should be aware that each day's delay in the confirmation process results in a consequent delay in disposing of the important matters that come before our appellate courts and a consequent delay in dispensing justice to our citizens.

I would also like to address what I feel is an unfair labeling of any of the nominees as being perceived to be "pro" or "anti" one position or another by focusing on a single case, or even several cases, as evidence that the nominee is biased towards one party, especially when such remarks are directed to a judicial officer. Some commentators have focused on only a small part of the judicial record of Judge James Colins and have somehow gleaned a "pro-governor" bias on his part. This is totally unfair. It is only through an examination of Judge Colins' entire body of judicial opinions that one may, with any accuracy whatsoever, discern the judicial philosophy of this judicial officer. But, to be accurate in any sense in this labeling, one must necessarily consider how the Supreme Court dealt with Judge Colins' thousands of opinions on appeal. However, such an in-depth analysis is more

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appropriate for a law review article and not for the confirmation process, especially where any delay is inimical to dispensing justice.

Furthermore, to hold against a judge a position that a qualified judge takes in any legal matter is a direct assault against judicial independence. Judges are sworn to decide matters on the law and on the facts and not to please one party or another. In every decision rendered on appeal, there is usually a disappointed party: the non-prevailing party. But that does not mean the jurist is biased. Having dealt with many of Judge Colins' opinions that have been appealed to this Court on the fourteen years that I have served on this Court, I can only conclude that Judge Colins decides all matters that come before him with integrity, fairness, and by faithful application of the law to the facts of the case.

The Senate will do a great service to the Commonwealth by acting promptly on the Governor's nominations of the four individuals for the appellate courts.

Very truly yours,

Chief Justice Ronald D. Castille

cc: Hon. Dominic Pileggi, Senate Majority Leader
Hon. Robert J. Mellow, Democratic Leader
Hon. Stewart J. Greenleaf, Chair, Senate Judiciary Committee
Hon. Jay Costa, Judiciary Committee, Democratic Chairman