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## Schwarzenegger Can Leave Mark on Third District

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The Recorder August 20, 2011

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Chief Justice Ronald George's carefully timed retirement may be the gift that keeps on giving to Arnold Schwarzenegger.

Within a week, the governor nominated Third District Court of Appeal Justice Tani Cantil-Sakauye to take George's place, creating the third of five expected openings on the 11-seat appellate court.

Schwarzenegger named one replacement this month and could fill three more seats before he leaves office, leaving a lasting imprint on the Sacramento-based court where political issues dominate the docket.

"Initiative and referendum litigation goes through this court," noted Charity Kenyon, an appellate litigator at Sacramento-based Kenyon Yeates. "The court determines what goes on ballots and the changes to ballot summary arguments."

The justices also wield power over challenges to the operation of state agencies and, often, preside over the separation-of-powers fights between the legislative and executive branches.

For example, in July the court handed Schwarzenegger a significant budget victory, holding he had authority to cut wages to 200,000 state workers to the federal minimum wage of \$7.25 an hour while he grappled with the budget crisis.

That sort of thing makes Third District judicial appointments juicy jobs for any governor to fill, and worrisome for anyone challenging state policy.

"The impact of the Third District is particularly important because they are dealing with statewide issues," said Anne Giese, a senior attorney with the Service Employees International Union, which has done battle over state worker furloughs, privatization of state jobs and a host of other personnel issues.

"Our experience is [the governor] does not believe in upholding worker rights or collective bargaining. When he appoints, he selects people that go along with that," Giese said.

"I don't think he is someone who is an ideologue either way," countered Andrew Stroud of Mennemeier, Glassman & Stroud, who represents the governor's office in complex litigation. He said the governor will face three competing interests in filling the seats.

"It is almost a company town, and naturally having people on the Third District who understand the issues and complexities of government is important," said Stroud. "Others don't want a totally Sacramento-sensitive court, particularly those representing rural counties. And third, it is important to consider people with a criminal background and knowledge of criminal law."

The governor's office has already sent several names to the State Bar's Judicial Nominees Evaluation Commission. "I would think the governor would attempt to fill all vacancies he could before he leaves office. That is the tradition," said Gibson Dunn & Crutcher partner Dan Kolkey, a former legal affairs secretary to Gov. Pete Wilson, and a former appeals court justice.

### IN THE PIPELINE

The Third District has been working for 18 months with two vacancies. Justice Fred Morrison departed for JAMS and Justice Rodney Davis stepped down to become an Episcopal priest.

Presiding Justice Arthur Scotland initially planned to keep those two seats open as a cost-cutting move. "I

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communicated to the governor that we needed the salary savings for the court," said Scotland. "We were being responsible citizens. I thought we could do it on the short term, but now it has been 18 months and it is taking its toll."

The elevation of Cantil-Sakauye creates a third opening.

Scotland himself announced he will step down Sept. 30, creating the fourth opening. And Justice Rick Sims III said earlier this year he plans to leave between Oct. 31 and Jan. 31, possibly giving Schwarzenegger another opportunity to shape the court before leaving office on Jan. 3.

As a practical matter, Schwarzenegger can't fill Cantil-Sakauye's seat because it won't become vacant until she takes George's seat at the end of the governor's term.

Even with the other openings, the timing is tricky because nominees need time to be approved by the three-member Commission on Judicial Appointments.

The governor is now moving quickly to fill vacancies. Earlier this month he nominated Judge Louis Mauro of the Sacramento Superior Court to fill out the nine years remaining on Morrison's seat. His confirmation hearing is next week.

Mauro comes with a political pedigree. He served as the governor's chief deputy legal affairs secretary for three years and had a 12-year stint in the state attorney general's office.

There are a generous handful of other names being floated as possible nominees.

Judge William Murray Jr., the former presiding judge in San Joaquin County, would bring geographic diversity to a court that has not had a Stockton justice on the court since Judge Connie Callahan left for the Ninth Circuit U.S. Court of Appeals in 2003. If nominated, Murray would be the second African-American on the current court. He spent nine years as a prosecutor. As head of the court in San Joaquin County he battled for funds to replace the cramped Stockton courthouse.

Suzanne Kingsbury, the presiding judge from rural El Dorado County, was the first woman elected to the Superior Court in El Dorado history in 1996. She comes from a criminal practice background serving as both a deputy district attorney and a public defender in the county. As a judge, she was appointed to the Judicial Council in 2004.

Another rural court judge is Charles Wachob of the Placer County Superior Court. He specialized in civil litigation with Leupp, Wachob & Woodall before Schwarzenegger appointed him to the bench in 2007. Wachob served as city attorney for Auburn handling municipal affairs, land use and employment issues.

Several names come from the Sacramento Superior Court bench. Stacy Boulware Eurie was appointed by Schwarzenegger in 2007. She was named presiding judge of the county's juvenile court in July. She served as a supervising deputy attorney general for seven years prior to her appointment and worked at Rothschild, Wishek & Sands.

Judge David DeAlba is also on the Sacramento court. He served as a deputy attorney general in the 1980s, handling numerous lawsuits following severe flooding in the Central Valley. He has been praised as a consensus-builder. DeAlba was appointed to the bench by Gov. Gray Davis and has been a member of La Raza Lawyers Association and the Hispanic Law Enforcement Task Force.

Sacramento Judge Thadd Blizzard, also said to be under consideration, was appointed to the trial court by Schwarzenegger last year. He comes from private civil practice with Weintraub, Genshlea, Chediak. Blizzard began his career as a staff attorney at the First District Court of Appeal in San Francisco.

Although Sacramento Superior Court Judge Maryanne Gilliard has been mentioned as a potential candidate, she has let it be known in Sacramento legal circles she's not interested in a Third District appointment. Gilliard has also been an outspoken critic of the Administrative Office of the Courts, spending practices, a sharp contrast to Cantil-Sakauye, who chaired a Judicial Council committee on financial accountability.

## THE WEEKS AHEAD

The number of openings may hinge on the governor's race. Sims, who was originally appointed by former Gov. Jerry Brown, may sit tight if Brown wins, allowing the Democrat to name his replacement. But if Republican Meg Whitman prevails, Sims could leave early to let the more moderate Schwarzenegger fill the seat.

Scotland has four years remaining on his term as presiding justice, which raises the question of who will get his plum job. "I would not be surprised if it went to someone within the court," said Stroud. He said Justices Kathleen Butz, a Gray Davis appointee, or Vance Raye, a George Deukmejian appointee, would be excellent choices.

In 2005, Raye was widely reported on Schwarzenegger's short list for a spot on the California Supreme Court that later went to Carol Corrigan. The smart money has Raye as the favorite to be elevated to Scotland's seat. Raye also has four years remaining on his term.



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It will probably be some time before the court is at full strength. It takes new governor 5 months to get their administration in a position to make judicial appointments. So the seats now held by Cantil-Sakauye and Sims could stay open until well into 2010.

But the SEIU's Giese is focused for now on Schwarzenegger's potential nominees.

"It's extremely important if he appoints nearly half the court," said the SEIU's Giese. In the past, "we did not hesitate about going to Sacramento Superior Court or the Third District for state protections. But I think we are growing very much more cautious. We would be very careful about venue."

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