

NY CONST, ART VI, § 20(a); ART XIII, § 1; ELECTION LAW § 6-122;  
JUDICIARY LAW § 140-a; PUBLIC OFFICERS LAW § 30(1)(h); L 1993,  
CH 511.

A person may serve as justice of the Supreme Court if he or she meets constitutional or statutory qualifications within 30 days of commencement of the term of office and timely files his or her oath of office.

April 28, 1998

Hon. Jonathan Lippman  
Chief Administrative Judge  
Unified Court System  
25 Beaver Street  
New York, NY 10004

Formal Opinion  
No. 98-F6

Dear Judge Lippman:

This responds to your counsel's recent opinion request regarding eligibility requirements for the office of justice of the Supreme Court. New York Constitution, Art VI, § 20(a) provides that a person may not assume "the office of . . . justice of the supreme court . . . unless he has been admitted to practice law in this state at least ten years." Honorable Joseph M. Sise, County Court Judge of Montgomery County, wishes to be a candidate for Supreme Court justice in the November, 1998 election. Judge Sise was admitted to the practice of law on January 24, 1989 and, therefore, if elected will meet the ten-year admission requirement on January 24, 1999. Your counsel has requested our opinion whether Judge Sise legally can assume the office of justice of the Supreme Court if he is elected and files his oath of office between the 24th and 30th day following the commencement of his term on January 1, 1999.

In our view, Judge Sise legally may be a candidate for the office of justice of the Supreme Court and, if elected, legally may assume that office. Judiciary Law § 140-a provides that no person may serve as justice of the Supreme Court "unless he or she has been admitted to practice law in the state of New York for at least ten years as of the date he or she commences the duties of office." This provision was added by Chapter 511 of

the Laws of 1993. Chapter 511 also amended section 6-122 of the Election Law to provide that a person may not be designated or nominated to judicial office "who will not meet . . . [constitutional or statutory qualifications for the office] within thirty days of the commencement of the term of such office." The legislative history of Chapter 511 indicates that the purpose of these amendments was to remove a discrepancy that would have disqualified many persons seeking judicial offices. Bill Jacket, L 1993, Ch 511, July 7, 1993 letter to the Counsel to the Governor from Hon. Angelo Del Toro, Member of the Assembly. Beginning in 1983, persons passing the bar examination were not admitted until January of the following year. Id. Specifically, in 1983 candidates passing the July, 1983 bar examination were not admitted until January, 1984 and, therefore, would have had to wait eleven years under prior statutory authority to be eligible for certain judgeships, including justice of the Supreme Court. Id. The amendments to the Judiciary Law and Election Law were designed to overcome this problem.<sup>1</sup> These amendments are consistent with Article VI, § 20(a) of the Constitution.

Before public officers, including justices of the Supreme Court, undertake the duties of their offices they must take the required oath of office. NY Const, Art XIII, § 1. The oath for an elective officer must be filed within thirty days of commencement of his or her term of office. Public Officers Law § 30(1)(h). Therefore, if Judge Sise is elected and files his oath of office between the 24th and 30th day of January, 1999, he will meet all legal requirements for candidacy and to hold the office of Supreme Court justice.

Very truly yours,

DENNIS C. VACCO  
Attorney General

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<sup>1</sup>Prior section 6-122 of the Election Law provided that a public officer had to meet constitutional or statutory qualifications at the time of commencement of his or her term of office.