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## Judge tells Senate opponents to work out agreement

If they fail, both parties will return to court Monday

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ALBANY -- A state Supreme Court judge in Albany told both sides in the battle over the state Senate to spend the weekend looking for a resolution to the question of control of the contested chamber. If they fail, both sides will be back in court on Monday.

If the politicians remain at an impasse, Justice Thomas McNamara said he would rule on the matter well before a Senate session tentatively scheduled for 3 p.m.

McNamara heard arguments from Andrew Celli, representing Democratic Leader Malcolm Smith, and John Ciampoli, a lawyer for Pedro Espada Jr., the Bronx Democrat who on Monday appropriated the role of the Senate's President Pro Tem after the dramatic coup that returned Republicans -- aided by Espada and his fellow breakaway Democrat Hiram Monserrate of Queens -- to power after five months of Democratic rule.

Smith and the 29 remaining members of his conference are contesting the legality of the Senate proceedings that allowed the coup to go forward, and resulted in Espada's being named president pro tem and Republican leader Dean Skelos being named Majority Leader -- positions that Smith had held under Democratic rule.

McNamara requested copies of the Senate's rules, and expressed his concern over the awkwardness of the judiciary meddling in legislative affairs.

He cited a headline on the front page of Friday's Times Union that suggested the legislative combat was headed for a "judicial merry-go-round."

"There is an inference that comes from that (idea) that I find troubling," said McNamara, who referred to the case as an "absurdity."

Outside the courthouse, Smith spokesman Austin Shafran told reporters the situation has been "an absolute circus" and "sideshow," and blasted Espada's camp.

Shafran evaded the question of whether or not Smith's representatives would meet with Espada and the Republicans over the weekend, as the judge had requested.

Ciampoli was similarly vague about whether Espada's side would agree to meet with the opposition, but insisted Monday's coup was legal and binding. "The light were turned off, but the Senate session continued," he said.

On Thursday, a state Supreme Court justice in Troy denied a motion filed by lawyers for Smith for an injunction to resolve the leadership standoff. Saying he doesn't have the authority, Supreme Court Justice George B. Ceresia criticized both sides for not being able to work out an agreement -- the same kind of colution McNamara is asking them to pursue.

Thursday afternoon, the Democratic legal team appealed their complaint before state Court of Appeals Judge Karen Peters in Kingston, who subsequently issued a temporary restraining order removing Espada from the line of succession that would make him governor in the event that David Paterson

becomes incapacitated.