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## **Judge extends deadline for Senate dispute**

'Progress is being made' in Smith-Espada legal battle

By **ROBERT GAVIN**, Staff writer

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ALBANY -- Acting state Supreme Court Justice Thomas McNamara met at 10 a.m. in chambers with both sides in the ongoing Senate battle, and once again extended his deadline for a resolution to the dispute, until 1 p.m.

"Progress is being made," McNamara said, after reiterating that the solution to the problem should not be made by the court. Peter Kiernan, a counsel to Gov. David Paterson who took part in Monday's in-chambers discussion, took part in this morning's conclave as well.

Democratic leader Malcolm Smith has brought suit against Sen. Pedro Espada Jr., claiming his hold on the position of Senate president pro tempore is illegitimate because last week's coup was not conducted according to the chamber's rules -- a charge that Espada and the Republicans dispute. Espada and his fellow Democrat Hiram Monserrate joined the 30 Republicans to oust the Democrats from power after less than six months in the majority. On Monday, Monserrate announced he was returning to the Democratic conference, leaving the chamber deadlocked 31-31.

The Senate is scheduled to go into session at 3 p.m., although without any members of the Democratic conference attending -- other than Espada -- the proceedings will fall one vote short of a quorum.

On Monday afternoon, Espada and Republican leader Dean Skelos rejected a power-sharing deal drawn up by the Democrats, and said that no agreement would be reached until the Democrats acknowledged the legitimacy of last week's coup, and Espada's hold on the president pro tem post -- a role that puts him next in line to Paterson in order of succession to the governorship.

After Friday's initial hearing of the case, McNamara asked the parties to work things out over the weekend. When the judge announced his latest extension this morning, someone in the back of the courtroom laughed.

"The laughs that I hear are understandable," McNamara said, before noting the gravity of the matter at hand.