

Party leaders repackage deal on judges

That on-again, off-again proposal for bipartisan selection of judges in Westchester, is on again. And it appears to be a better arrangement than earlier attempts because it helps take politics out of the courts.

Undaunted by a series of setbacks all summer, leaders of the two major parties have come up with a deal they believe is palatable to their party committeemen while also falling under the heading of "good government."

Tonight, the Westchester Democratic Party's Executive Committee will hear a three-step presentation by Chairman Richard Weingarten. If the Democrats ratify the proposed agreement, Republican County Chairman Anthony Colavita will get the same opportunity to present the proposal to the Republican executive committee tomorrow.

Under the arrangement, Supreme Court Justice Samuel Fredman of White Plains, a Democrat serving by appointment to fill a vacancy, would be endorsed by both parties for a full term this year. Both parties then would endorse two Republicans for Supreme Court this year, Justice Joseph Giudice of Dutchess, running for re-election, and Albert Emanuelli of White Plains, a well-known matrimonial lawyer.

Under the proposal, Act II would take place next year. Emanuelli would resign from the state Supreme Court post late in the year and run for Westchester surrogate with the blessing of both parties. Both parties would then nominate Westchester County Judge Francis Nicolai of Thornwood, a Democrat, to fill Emanuelli's vacated Supreme Court seat.

For the third part of the arrangement, both parties would endorse Westchester Family Judge Adrienne Hofmann Scancarelli of Mount Vernon, a Republican, for a second term. She is administrative judge for family courts in the 9th Judicial District. Once Nicolai becomes a state Supreme Court justice, both parties would then back Judge J. Emmett Murphy of Yonkers, a Democrat, for the county judge seat Nicolai would vacate. Murphy is administrative judge of his court.

Democrats would benefit by having two of their members elected to the state Supreme Court's 9th Judicial District.

That court has 24 elected positions, but only one Democrat, Justice Sondra Miller of Larchmont, has been able to win on the



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Democratic line alone during the past 25 years.

Republicans would benefit by keeping the surrogate post they have held all but one year in this century.

The judges now on the bench would benefit by not having to run a partisan race for re-election.

The court reform movement would benefit because judges running for election could be truly non-partisan. No longer would they have to go begging for campaign funds among the lawyers who practice in their courts. Once the judges get the bipartisan endorsement, they would have to drop out of the campaign. And they would have to pledge to keep an open mind in receiving suggestions and making appointments from the bench.

Additionally, the deal would insure a bipartisan judiciary on the state Supreme Court, which now is virtually all-Republican, and the county-level courts in Westchester, which have been tending to become all-Democratic.

Finally, the deal marks a start for a system of retaining experienced judges. Although the proposal for such a system is supported by Chief Judge Sol Wachtler and has been before the state Legislature for two years, it has not passed and there is no sign that it will.

An earlier attempt at the deal failed when Republicans mentioned state Supreme Court Justice Nicholas Colabella as the possible candidate for surrogate next year. Colabella, according to reports, was a reluctant participant. He didn't like the idea of resigning from the Supreme Court bench to run for surrogate and open up his present seat so that it could be filled by Nicolai or someone else. There was additional resistance to Colabella among Democrats because he accepted the Right to Life endorsement.

Although Emanuelli is an active Republi-

can (his law office is in the same building as GOP headquarters), he is more acceptable to Democrats. He has not run for office before, but he has a fine reputation as a lawyer, establishing a precedent in matrimonial law by winning O'Brien vs. O'Brien. In that case, a nurse who worked and helped put her husband through medical school was found to have a share in the salary from his professional license after they were divorced. A number of women's groups have hailed the decision, a major ruling in the state's equitable distribution law.

Fredman is also key to the arrangement. He is a former Democratic chairman of Westchester, with an established reputation as a matrimonial lawyer and as a civic activist in the county. He has friends in both political parties. Although he might have difficulty winning in the Orange, Dutchess and Putnam parts of the district, his name at the top of the ticket could help Democratic candidates for county executive and other posts in Westchester and Rockland. If he is also on the Republican line, he would be neutralized in the overall campaign.

Democrats are eager to complete the deal as a way to ensure the election of Fredman, and the elevation of Nicolai and Murphy. Republicans want to keep the surrogate post that Republican Evans Brewster will vacate at the end of next year and ensure that Scancarelli does not have a Democratic opponent next year. Brewster was cross-endorsed by the Democrats last time.

Surely, there will be critics of the deal who will say that the judge candidates are still being picked by the political leaders, and that competition is being eliminated. But if competition depends on judges virtually standing on a street corner with a tin cup and begging for campaign contributions, what kind of a system is that?

A better system might be picking judges through non-partisan merit selection, but that proposal has been around for years and hasn't gotten to first base.

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