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Judicial selections not quite non-partisan Review shows most gain seat through appointment

By Laurel Walker of the Journal Sentinel Posted: Dec. 25, 2009

Breakdown by county

- In Milwaukee County, 27 of 47 current circuit judges, or 57%, were first appointed, and seven were opposed in their first election. In Waukesha County, four (including the pending appointment) of 12 judges were appointed, with only Circuit Judge Richard Congdon likely in a contested election next spring against state Rep. Mark Gundrum (R-New Berlin). In Racine County, four of 10 judges were appointed, with just one challenged in his first election. In Washington County, three of four judges were appointed, and all were unopposed in their first election. In Ozaukee County, two of three judges were appointed, and all were unopposed in their first election.

The state's constitution says Wisconsinites elect their judges in non-partisan elections. But a Journal Sentinel review of how judges arrived at the bench in five southeastern counties suggests something different. With the retirement Tuesday of Waukesha County Circuit Judge Robert Mawdsley before his six-year term is up, Gov. Jim Doyle gets to appoint a replacement. Nothing new there. More than half - 53% - of the 76 circuit judges in five southeastern Wisconsin counties of Milwaukee, Waukesha, Ozaukee, Washington and Racine became judges by appointment first. Another Doyle appointee, Waukesha County Circuit Judge Richard Congdon, who took the bench in February, faces a contested election in April with the announced challenge by state Rep. Mark Gundrum (R-New Berlin). That election contest is a rarity - constitutional requirement notwithstanding. In the five counties, three out of four sitting county judges who first were appointed to the bench had no opponent on the ballot when they faced their first election. Peter K. Rofes, professor of law with expertise in judicial selection and associate dean for academic affairs at Marquette University, said the information explodes some myths. "For all the commitment that Wisconsin has to judicial elections, the truth is a bit more complex because a majority of the trial judges in the state become judges not because the people have voted for them, as such, but because the governors of the state have placed them in office," he said.

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"Your data makes it abundantly clear that this harsh dichotomy between so-called elector systems and appointment doesn't really exist." Furthermore, he said, "the advantage of incumbency automatically attaches to those folks who have been put on the bench by appointment." Based on a search of election reports and career histories provided in a state directory of judges, the Journal Sentinel found that 39 of the 76 circuit judges in the five-county area were appointed by a governor. The 40th will be appointed any day to replace Mawdsley, according to the governor's office. Only eight of the 39 appointed judges had competition in their first election. The analysis did not measure how many of those same 76 judges ever faced competition for new six-year terms. However, challenges to sitting judges are uncommon, whether appointed or not. One need only look at the Wisconsin Government Accountability Web site listing judicial offices up for election next spring - and the number of declared candidates in each - to recognize the absence of competition. It also shows that judges who complete their terms and then step down

encourage electoral competition, compared with mid-term appointments that discourage it. With just days left for candidates to come forward for the April election to fill 44 circuit judge seats statewide, 33 of them so far have only a single candidate. With one exception - in Crawford County, where one candidate has declared for a vacant seat - every single candidate is the incumbent.

Among the 11 contests shaping up for circuit judges statewide, eight are for open seats where the incumbent is stepping down at the end of his or her term. In only two cases - Waukesha County and Iowa County - are the incumbents being challenged. The other likely contest is in Monroe County, where two candidates are seeking election to a newly created judgeship.

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