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# Marion County slating reform gets new push

Dave Stafford August 29, 2012 KEYWORDS BAR ASSOCIATIONS/FOUNDATIONS, COURTS, INDIANA TRIAL COURTS, INDIANAPOLIS BAR ASSOCIATION, JUDICIAL ELECTIONS, MARION COUNTY

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The election of 20 Marion Superior judges is little more than two months away, but the 10 slated Democrats and 10 slated Republicans on the ballot needn't worry too much. They're all but guaranteed victory.

That's in large part because each of them made identical contributions to their respective county political parties, after which they won their party's endorsement, access to resources and backing in their party slating conventions and primary elections.

The result: The 10 slated candidates in each party won in the primary, and voters in the Nov. 6 general election select 10 candidates from each party.

Party leaders insist there are no "slating fees." But at least one former Supreme Court justice believes that whatever the Marion County system is called, it's broken.

"The whole perception of the judicial system is compromised," retired Indiana Justice Ted Boehm said. He said the slating system "forces judges to become an unwilling source of funding for the political parties."



Boehm

"I don't fault the judges; they have no choice," Boehm said. "The only way to fix it is to change the system."

Between November 2011 and January 2012, the 10 Democratic candidates for Superior Court judge who were slated at the party's convention in February each contributed individually or through their committees \$13,100 to the Marion County Democratic Central Committee, according to a review of campaign finance records at the Election Division of the Indiana Secretary of State's office.

The records also show each of the 10 Republican judicial candidates who were later slated at the Jan. 28 convention gave \$12,000 to the Marion County Republican Central Committee individually or through their committees by Jan. 17. Seven of the 10 paid in full or in part on that date, the date by which all candidates' final contributions were made, according to the records. Of those, four made identical contributions: \$5,000 on Aug. 31, 2011, and \$7,000 on Jan. 17.

Boehm believes the system is unconstitutional because it disenfranchises independent voters who don't participate in the primary election. "The slating convention is really the only significant event in that process."

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“This is like gerrymandering,” Boehm said. “Everybody hates it except for the people in control of it.”

The current system arose in the wake of the 1970s Watergate scandal when majority Republican judges were swept from office in a Democratic tide.

Indianapolis Bar Association President Scott Chinn said its board of directors recently resolved to push anew for reforming the Marion County judicial election and selection process.

Chinn said the IndyBar wants an open discussion that would welcome a variety of opinions about what reform might look like.



Chinn

“I believe it’s a critically important conversation to have, frankly, because so many people want to have it,” Chinn said. “It’s also going to create tension and heartache. We’re really trying to convene all the points of view and not be strident about any one system being better than the other.”

In a 2009 IndyBar survey, 83.4 percent of responding members said they favored nonpartisan merit selection and retention elections over the current system.

**The party line**

Marion County’s Democratic and Republican party chairmen agree on two things. They deny slating fees for judicial candidates exist, and they are suspicious of efforts to change the system.

The Indiana Commission on Judicial Qualifications in 1992 issued an advisory opinion on slating fees and whether they violate Canon 7 of the Code of Judicial Conduct. The guidance essentially said voluntary contributions to political parties were allowed, but not slating fees or assessments.



Treacy

“Judges who are elected in public elections with competing candidates may contribute to political parties and organizations. No judge may pay an assessment, slating fee, or similar mandatory political payment,” the commission concluded.

“There is no official slating mechanism and there’s no slating process,” said county Democratic Chairman Edward T. Treacy. He said candidates for judge who paid \$13,100 a piece to the party before the convention did so voluntarily as their share of the county party’s expense. “That money gets spent on those races.”

“It’s an absolutely unfair argument,” Republican Party Chairman Kyle Walker said of accusations that the \$12,000 contributed by each GOP candidate who was slated represents a pay-to-play system. “Judges don’t buy into this system. They’re asked to make a contribution to cover the costs of the convention” and support from the party, he said.

Treacy and Walker also agree that if the system in Marion County were changed, costs of judicial elections would soar.

“One has only to look at how much is spent on any other campaign in Marion County that is countywide and high-profile,” Walker said. In the current system, “far, far less is raised and spent on judicial election ... by orders of magnitude.”

“This is a heck of a lot cheaper way,” Treacy said.

“The only groups that seem to be dissatisfied with this process seems to be the bar,” Walker said. “They themselves want to have more political influence over who the judges are in Marion County.”

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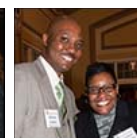
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"I think this is a lot better system to have than to have a whole bunch of lawyers sitting there deciding who the judges are. I would rather have democracy working at its best," said Treacy, whose wife, Rebekah Pierson-Treacy, is a Marion Superior judge running for re-election in November.

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Subway?

**president snow** April 8, 2015 2:34 PM

Subway, as in someone who was railroaded. A nice play on words, even if unintended! Paul Ogden has "rid dem rails" many a time. Reporters with stones wanting a real story of how the Indy system runs would do well to dial him up. And try to find a parallel outside of the Hoosier state for some of his true tales of those slicked up rails. He has the experience, knows the inside, is willing to share, methinks, what he knows ... for the good of the constitutional order.

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The voice of the prophet is written on the subway halls

**bryanjbrown** April 5, 2015 6:39 PM

Those few honorable Indy attorneys and judges who realize just how corrupted their system has become would do very well to spend a few hours with Paul Ogden to understand how the power is used to silence a prophetic voice. He has suffered for justice in a system that is not just.

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Reposting: IBA's Support of the Slate

**Paul K. Ogden** August 31, 2012 10:11 PM

It didn't like the paragraphs I used and ran everything together. Let me try again to make it more readable. . I certainly applaud Scott Chinn, President of the Indianapolis Bar Association, for welcoming reform of the judicial selection process in Marion County. However, he deserves criticism for not putting a stop to the IBA's PAC, the Judicial Excellence Political Action Committee, which uses a survey process to protect the slated judicial candidates and deride anyone who challenges it. . JEPAC's surveys are what we in the political business call a "self-selecting" poll, a poll in which you can choose or not choose to participate. They are notoriously inaccurate and subject to easy manipulation. They are especially useless when used to rate the judicial abilities of candidates who have never sat on the bench but who are challenging the slate. . The survey system is easily manipulated to target non-slated candidates for negative reviews. Attorneys at the big law firms (which get a lot of contract work from the local political parties and want to protect the status quo) simply get together to send in negative surveys on any attorney who challenges the slate. Those big firms have hundreds of attorneys. It's not difficult to manufacture a negative survey result on a candidate when there may only be a few hundred surveys returned. (In my case below, I only had 116 surveys returned.) . I knew the JEPAC survey process was rigged, so when I ran for the Republican nomination for judge in 2012, I deliberately chose not to participate in the survey. After all, other candidates had been allowed to opt out of the survey. Out of the blue, I got a call from the IBA asking for information about me for its website. I provided the info. Then they told me they were going to use the information

to do a survey on me, months after the deadline. I would never have provided the info if they had told me that was the intended use. I told them I did not want to be involved in the survey. The chairman of JEPAC said the survey would be conducted anyway. . The chairman of JEPAC is active in the Republican Party, contributing money to establishment GOP candidates. I was challenging the Republican slate and refusing to pay a slating fee to the GOP county chairman because it violated the ethical rules. I knew exactly why JEPAC's chairman had reopened the survey. The intent was to organize to get surveys sent in trashing me, then use the negative result in advertising against me. That's exactly what happened. . I received an 18% approval, which I believe is far and away the lowest score anyone has ever received, a score 1/3 of the lowest Republican slated judge candidate, also a non-incumbent. Did I deserve a negative rating from 82% of the respondents? I've worked in every branch of government, been an attorney for 25 years, never been disciplined, practiced in virtually every court in Marion County doing civil and criminal cases, served as a Deputy Attorney General and clerked at the Indiana Court of Appeals for 3 1/2 years. I would put my qualifications up against any non-incumbent judicial candidate on either the Republican or Democratic slate. Clearly the surveys were about the IBA's JEPAC, on behalf of a local Republican leadership, deliberately using the system to get an unqualified rating to use against me in a political campaign. . Again, I applaud IBA for doing this. But the Chinn and the IBA also needs to consider their own role, via JEPAC and its surveys, in promoting the slate and running down anyone who challenges it. The survey process needs to be ended and JEPAC disbanded.

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