

Members

Sen. Richard Bray, Chairperson
Sen. Joseph Zakas
Sen. John Broden
Sen. Timothy Lanane
Rep. Linda Lawson, Vice-Chairperson
Rep. Ryan Dvorak
Rep. Kathy Richardson
Rep. Eric Koch
Chief Justice Randall Shepard
Thomas Felts
David Whicker
Kevin Kubash
Jacqueline Rowan



COMMISSION ON COURTS

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MEETING MINUTES¹

Meeting Date: October 3, 2008
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington
St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Sen. Richard Bray, Chairperson; Sen. John Broden; Sen. Timothy Lanane; Rep. Linda Lawson, Vice-Chairperson; Rep. Ryan Dvorak; Rep. Eric Koch; Justice Brent Dickson (for Chief Justice Randall Shepard); Thomas Felts; David Whicker.

Members Absent: Sen. Joseph Zakas; Rep. Kathy Richardson; Kevin Kubash; Jacqueline Rowan.

Sen. Richard Bray, Chairperson of the Commission on Courts (Commission), called the meeting to order at 1:30 P.M. Sen. Bray stated the first topic the Commission would consider was the merit selection of superior court judges in Lake County and St. Joseph County.

The first person to testify was Justice Frank Sullivan, Jr. of the Indiana Supreme Court. Justice Sullivan first paid tribute to the late Sen. Marvin Riegsecker. Justice Sullivan then

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stated that he, as Chairperson of the St. Joseph County Judicial Nominating Commission, and Justice Robert Rucker of the Indiana Supreme Court, Chairperson of the Lake County Judicial Nominating Commission, would present a brief history and overview of the merit selection process in the two counties.

Justice Sullivan stated judges of the Indiana Supreme Court and Court of Appeals were once selected in partisan elections. He stated that in 1962 an interest group organized to defeat one of the judges on the Supreme Court because the group disagreed with a decision handed down by the Court. He said this episode started a movement to reform the method for selecting judges for those appellate courts. Justice Sullivan then described the chain of events that lead to an amendment to the Indiana Constitution that was approved by voters in 1970. He said that amendment provided for merit selection of Indiana Supreme Court justices and Indiana Court of Appeals judges in which a nominating commission would submit nominees to the Governor, who would then appoint one of the nominees to fill a judicial vacancy.

Justice Sullivan continued by stating that in 1973, the Indiana General Assembly enacted legislation to provide the same merit selection process for superior court judges in Lake County and St. Joseph County. He said this legislation was motivated by a "strong sentiment" in the Lake County and St. Joseph County legal communities and was not a partisan attempt by Republicans in the General Assembly to influence the make-up of the judiciary in two counties that trended Democratic.

The next person to testify was Justice Rucker. Justice Rucker stated that in 1974 the Lake Superior Court consisted of 13 judges, all of whom were male and Caucasian. He said in 1995, the General Assembly amended provisions concerning the Lake County Judicial Nominating Commission. He said these amendments changed the composition of the Commission and changed the factors the Commission must consider when making nominations, including factors related to racial and gender diversity. He said that there are now 16 judges on the Lake Superior Court, 10 of whom are male and six of whom are female. He also said that, of these 16 judges, seven are minorities and nine are Caucasian. (Handout #1)

Justice Rucker continued by stating the current composition of the Lake Superior Court more accurately reflects the demographics of Lake County and was "a tribute to diversity." Justice Rucker concluded by stating the General Assembly should not change the merit selection process in Lake County except to extend it to the four judges of the County Division who are still subject to partisan elections.

Justice Sullivan stated the General Assembly should also retain the merit selection process for the St. Joseph Superior Court to keep those judges "free from political pressure." Justices Sullivan and Rucker then distributed copies of the applications for judicial vacancies in Lake County and St. Joseph County (Handout #2 and Handout #3)

In response to questions from Rep. Dvorak, Justice Sullivan stated there were several methods currently used to select superior court judges in Indiana, including partisan elections, used by most counties, as well as nonpartisan elections and the merit selection process. Rep. Dvorak stated his concern was judges in St. Joseph County were being selected by partisan Governors and not by the voters of the county. Justice Sullivan then cited three examples in which a Republican Governor had appointed Democratic judges.

Justice Rucker stated the Lake County Judicial Nominating Commission was "diligent" about not inquiring into the political affiliation of applicants.

In response to questions from Rep. Dvorak and Sen. Lanane, Justice Sullivan stated he was not aware of any challenges made to the judicial selection process in Lake County or St. Joseph County based on a "special legislation" theory. He stated there was a history in Indiana for statutes creating court systems to be written "on a county by county" basis. Justice Sullivan reiterated that the merit selection process was first brought to Lake County and St. Joseph County because of strong local sentiment that the selection systems being used in those counties were not bringing the best possible judges to the bench.

The next person to testify was Scott Yahne, President of the Lake County Bar Association. Mr. Yahne stated the Lake County Bar Association had consistently supported the merit selection process in Lake County. He stated he supports extending this merit selection process to the four elected judges of the Lake Superior Court County Division. Mr. Yahne distributed a booklet of material to the Commission concerning merit selection of judges in Lake County. (Handout #4)

The next person to testify was Roosevelt Allen, a member of the Lake County Board of Commissioners. Mr. Allen stated merit selection of judges in Lake County had caused a dramatic and progressive change to the composition of the Superior Court. He stated the membership of the current court "mirrors the general population of Lake County."

Mr. Allen continued by stating Lake County was the only county that did not have an income tax. He said property taxes were the primary sources of income for the county. He said recent legislation passed by the General Assembly would result in "a catastrophic reduction" of property tax income. He said the county had to reduce expenditures and become more efficient and using the merit selection system to choose judges of the County Division would have this result. He added that a recent Lake County "good government" study found in the booklet of material (Handout #4) submitted to the Commission also recommended making this change.

The next person to testify was Judge Julie Cantrell of the Lake Superior Court, County Division III. Judge Cantrell stated she had to run in the primary election last May. She said she spent almost \$100,000 on this election and her opponent spent \$130,000. Judge Cantrell said running in elections also took time away from her judicial responsibilities.

Judge Cantrell stated she supported the County Division judges joining the rest of the court in the merit selection process. She said this was important because it was necessary for the Lake Superior Court to "think as one court."

The next person to testify was Judge John Pera of the Lake Superior Court, Civil Division, Room 6. Judge Pera said that, as Chief Judge of the Lake Superior Court, it was a "daunting task" to make the court a cohesive unit. He said this task was made more difficult because some judges were selected under the merit system and some were elected in partisan elections.

Judge Pera went on to say that consolidating court programs was made more difficult because two different judicial selection processes are used in Lake County. He also stated he felt that the use of partisan politics to select judges made the system "less credible."

Judge Cantrell and Judge Pera both agreed the use of two different processes, one of which involved partisan politics, to select superior court judges in Lake County made it more difficult for courts to share personnel. They said this was because some court employees are allowed to engage in partisan political activities while others are not.

In response to questions from Sen. Lanane, Mike Pagano, Lake Superior Court

Magistrate, stated that if the General Assembly made the County Division subject to the merit selection process, the plan was to "grandfather" the four current judges into the merit selection system and have those judges stand for a retention vote when their current terms expired.

Mr. Pagano also said he believed two judges had not been retained by Lake County voters since the merit selection procedure was put in place in Lake County. He said another judge had been removed by the Supreme Court.

Sen. Bray then asked if there was any further testimony for or against making the Lake Superior Court County Division judges subject to the merit selection process. Hearing no further testimony concerning Lake County, Sen. Bray said the Commission would hear testimony concerning the merit selection of superior court judges in St. Joseph County.

The first person to testify was Judge Robert Miller, Jr., Chief Judge of the United States District Court, Northern District of Indiana. Judge Miller said he was one of the first two judges selected to serve on the St. Joseph Superior Court under the St. Joseph merit selection system. He stated that since the merit selection system began in St. Joseph County, there had never been "a whiff" of professional, personal, or ethical scandal involving any of the judges selected under the system.

Judge Miller stated the merit selection process eliminated the "head to head contest" between judicial candidates in which special interest groups are able to elect a judge. He said that with merit selection, special interest groups do not know who might replace a judge who is not retained in office.

The next person to testify was Judge Michael Scopelitis, Presiding Judge of the St. Joseph Superior Court. Judge Scopelitis submitted a written statement to the Commission. (Handout #5)

Judge Scopelitis said the merit selection system had served the citizens of St. Joseph County well. He stated the merit selection system was a model of fairness, impartiality, independence, and accountability to the law.

Judge Scopelitis went on to say that if persons in St. Joseph County were displeased with the decision of an individual judge, that was not a reason to change the entire system. He said judicial elections allowed for retaliation against court decisions that threatened judicial independence and impartiality.

Judge Scopelitis stated judicial elections discouraged the best persons from attempting to become judges. He also said elections undermine public confidence in judges and had a destabilizing effect on courts. He said the St. Joseph merit selection system should be left intact.

In response to questions from Rep. Dvorak, Judge Scopelitis said that, outside of Marion County, he could not name a specific problem involving an elected judge. However, he stated several other neighboring states had begun having "scandalous elections" involving both trial court and appellate court judges.

Rep. Dvorak then stated that as of January 1, 2009, Indiana Supreme Court rules will allow judges subject to retention elections to respond to campaigns waged against them. He said merit selection systems do not completely remove politics from the process but only minimize politics.

The next person to testify was Judge Michael Gotsch of the St. Joseph Circuit Court. Judge Gotsch stated he was the only elected judge with general jurisdiction in St. Joseph County. However, he stated he supported the merit selection system.

Judge Gotsch submitted a written statement to the Commission along with other written material. (Handout #6) Judge Gotsch stated the merit selection system was the best system for selecting judges because it was the most fair and impartial system.

Judge Gotsch said the merit selection system provided the appropriate balance between judicial independence and judicial accountability and it had worked well in St. Joseph County. He said the merit system had provided for the integrity of the judiciary in St. Joseph County and should be retained.

Rep. Dvorak then stated that Judge Gotsch proved that elected judges could be fair, impartial, and respected by the community. Rep. Dvorak stated some of his constituents were asking him to change the selection process because they felt there was not enough accountability concerning the operation of courts in St. Joseph County.

Judge Gotsch stated he knew that some people were upset with certain decisions, particularly decisions involving criminal sentencing, and certain judges in St. Joseph County. However, he added that criminal sentences handed down by courts in St. Joseph County were not reversed very often by appellate courts.

Judge Gotsch said sometimes judges that are simply following the law and doing what they were supposed to do handed down unpopular decisions. He said this was often difficult for a judge to explain in a "sound bite." He added that even in a merit selection system, judges can be removed from the bench.

Rep. Dvorak then stated he believed the problem was most people don't vote in retention elections.

The next person to testify was Carl Greci, President of the St. Joseph County Bar Association. Mr. Greci said there was no perfect system to select judges. However, he stated judicial independence was important and judges must be able to make unpopular rulings that are free from politics. He said the merit selection system was the best way to facilitate this judicial independence. Mr. Greci then submitted a copy of a column submitted to the South Bend Tribune by the Bar Association concerning independent judges. (Handout #7)

The next person to testify was Aladean DeRose, outgoing president of the St. Joseph County Bar Association. Ms. DeRose stated the County Bar Association did not want to change the current merit selection system. She added that, if anything, the merit selection system should be extended to other counties.

The next person to testify was William Jonas, Jr., President of the Indiana State Bar Association. Mr. Jonas said the State Bar Association had passed a resolution on this day reiterating its support for the merit selection system. Mr. Jonas stated the General Assembly should make the four Lake Superior Court County Division judges subject to the merit selection system and keep the St. Joseph merit selection system the way it is.

Sen. Bray then asked if there was any testimony in opposition to the current St. Joseph Superior Court merit selection system.

The next person to testify was Katherine Karczewski. Ms. Karczewski said she was not

representing any group but was a St. Joseph County resident and voter as well as a mother.

Ms. Karczewski asked if the merit selection system was so good, why weren't any of the 88 counties that did not have it requesting it? She stated retention elections were always placed last on ballots and voters did not notice them unless they had a reason to do so.

Ms. Karczewski said her son was Scott Severns, an officer with the South Bend Police Department who had been shot and killed in the line of duty. She said the driver of the getaway car involved in the shooting had received a 45 year sentence while the gunman had received only a 65 year sentence. She stated "this is not justice."

Ms. Karczewski said the crime rate was so bad in St. Joseph County because of a large number of repeat offenders that were only given a "slap on the hand" and then sent back out on the streets. She stated the courts in St. Joseph County needed to be more accountable to the community.

Sen. Broden then thanked Ms. Karczewski for her testimony and her son's service. He said he felt the location of judicial retention elections on ballots should be addressed.

Sen. Bray stated since most voters usually don't know anything about the judges standing for election or retention, the ballot location may not make a difference.

Sen. Bray then stated the Commission would vote on recommendations concerning judicial selection systems in Lake County and St. Joseph County at the Commission's final meeting.

The final person to testify was Judge Thomas Felts of the Allen Circuit Court. Judge Felts said he was asking the Commission to remove his authority to appoint a hearing officer under IC 33-33-2-4(b) and instead allow him to appoint a second magistrate under IC 33-33-2-3.

Judge Felts then introduced John Kitch, III, the current hearing officer. Judge Felts said that since this hearing officer position handled Title IV-D child support enforcement cases, part of his salary was paid by the federal government instead of the county. (Handout #8) Judge Felts said that the fiscal impact to the state for creating this magistrate position could be reduced if this magistrate continued to handle these cases and the federal government paid a portion of the salary.

After a brief Commission discussion, Sen. Bray announced the next Commission meeting would occur on Friday, October 24, 2008, at 1:30 P.M.

Sen. Bray adjourned the meeting at 3:53 P.M.