SNG-Justice to the highest bidder?

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By Jim Nowlan

Serious political money has begun to infect judicial elections in Illinois (and across the nation). What should be done about it, if anything? Will we do it?

I am still rankled by the election for the Illinois Supreme Court more than a decade ago. At the last minute Democratic Speaker of the House Mike Madigan poured about a million dollars into a campaign for unknown Thomas Kilbride of Rock Island to defeat a highly qualified candidate in Carl Hawkinson of Galesburg (Harvard Law; distinguished service as chair of the state senate judiciary committee).

(By the way, Mr. Kilbride may have developed into a fine justice; I just don't know. And that is the problem: you and I just don't know.)

I think that election was the start of it. Then in 2004, business, health care and trial lawyer interests spent almost $10 million in a state Supreme Court race in southern Illinois won by Republican Lloyd Karmeier.

The issue was tort reform, that is, big, even multi-billion dollar awards to plaintiffs suing for malpractice of one sort or another. Karmeier was seen as a defendant's judge and his opponent as a plaintiff's judge.

In November of this year, after 10 years on the high court, Karmeier was up for a retention vote, as required by the state constitution, which requires a 60 percent favorable vote to remain on the court.

This time, plaintiff law firms with an interest in a $10.1 billion judgment case against Philip Morris, which will come before the state high court again soon, poured about $2 million into a last-minute campaign to knock Karmeier off the bench. He barely survived, with 60.7 percent of the vote.

More and more, judicial campaigns are turning into plain old nasty, big money political jousts, and the judges may be pulled down from their high perches into the swamps of low respect with other politicians.

My first brush with judicial politics goes back to 1960, when I was just out of high school and a delegate to a GOP judicial nominating convention for a state high court slot in my region of the state. I remember it wasn't pretty, as few of the delegates knew anything about the candidates other than where they came from—"and it was our turn to name the judge."

In 1962, Illinois passed a constitutional amendment that called for popular election of judges (taking it out of the hands of a small group of politicians at conventions) with retention elections after 10 years. That is what we have today.

I was a young state lawmaker in the heyday of Boss Richard J. Daley of Chicago. Daley slated all judicial candidates personally, including those for the high court, who were then dutifully elected and knew where their bread was buttered. On political issues that came before the court, they did his bidding.

Illinois is one of only 10 states that still elect supreme court justices.

A majority of states use a procedure patterned after the "Missouri Plan," in which panels of lawyers and other citizens make recommendations to the governor, who then selects judges.

There is no perfect process for selecting judges.

The president appoints all federal judges with the advice and consent of the Senate, who serve for life. Even here, politics (the struggle for power and position) seeps in. Home state senators of the President's party enjoy senatorial courtesy, which means they can play a big part in who is selected, so there has been sometimes furious politicking to get a senator's nod.

I think, overall, the Missouri Plan would be better than election by voters who know nothing about the candidates.

But it will never happen in Illinois, because it would require a two-thirds vote of the legislature to get the idea onto the ballot. Many lawmakers sincerely prefer election to appointment. Many other lawyer-legislators see themselves as future judges, where they can roll their lawmaker pension credits into those of the judicial system, where salaries and pensions are much richer.

So what can be done?

I propose that the state high court justices clarify and tighten the standards for recusal, to provide clear direction that judges up and down the line be required to take themselves out of cases in which their big contributors have an interest.

At the least, this might reduce the enthusiasm of law firms and interest groups to make big donations to their favorite judicial candidates.