

## Selecting judges a tough job for voters

By Jim Nowlan

Selecting judges in Illinois by election and retention has always been, I believe, an awkward process. We simply don't know much about the candidates. There must be a better way.

Take the case of Illinois Supreme Court Justice Thomas L. Kilbride of Rock Island, who seeks retention in his post after completing a 10-year term as the 3<sup>rd</sup> District's justice, which includes this newspaper's circulation area. To be retained, Justice Kilbride will need a positive vote of 60 percent of those who vote on the question.

A few months back, I wrote that the justice would be challenged by business and medical groups for his vote to invalidate a law they basically wrote, which put a cap on pain and suffering awards for victims of medical malpractice.

Should a justice be retained or not on the basis of a single decision out of scores, maybe hundreds over a 10-year period? I think not.

But how to evaluate a justices' performance? We can't be expected to pore over his votes and opinions, even if we could understand the issues.

Fortunately, there are some informed sources of guidance for voters. I checked with the Illinois State Bar Association, the society of lawyers, and they are preparing two separate evaluations of candidates for the bench, including Kilbride.

First, the bar group sends out questionnaires to all attorneys in the 3<sup>rd</sup> District, asking if they would recommend or not recommend his retention. Only the responses of those attorneys who say they have knowledge of a professional nature of the justice are recorded. The questionnaire asks about impartiality, integrity and legal ability, among other qualities. A 65 percent vote for recommendation is required before the candidate is “recommended.” This represents the lawyers’ position, and not that of the state bar.

Then the bar association does its own evaluation. They ask candidates to submit lengthy questionnaires, after which they are interviewed personally by members of the association. This results in the bar association’s decision to recommend or not recommend retention.

All of this will be available at [www.isba.org](http://www.isba.org), click on “public” and then “judicial evaluations.” The results are not in yet but will be posted in the coming weeks.

Of course, lawyers have their biases as much as do the rest of us folk, so the bar evaluations are not without their flaws. Nevertheless, the observations are better informed than the blank slates of the general public. And don’t expect the campaign ads to be illuminating.

Newspaper endorsements provide another source of informed opinion. The editorial boards of the major newspapers bring the candidates in for interviews and often render judgments about whom should be elected or retained.

Is election and retention the best way to select our judges? After all, federal judges are appointed to life terms by the President with the consent of the U.S. Senate, and the federal judiciary generally has much higher prestige than do state courts.

Thirty-four states use a system patterned after that in Missouri, in which non-partisan judicial commissions of lawyers and non-lawyers forward a short list of names to the governor, who has 60 days to select one of them. The selected judge then stands for retention one year later, so we're back to the same problem we have in Illinois.

The Missouri Plan, as it is called, has its critics. Minority groups, which can be underrepresented in the judicial commissions, sometimes feel they are disenfranchised.

I would still feel better if judges were appointed for me by a somewhat objective panel of knowledgeable students of the judicial candidates. Then if retention elections were required, I would generally defer to the state bar association and newspaper evaluations, imperfect though they may be. By the way, to change from elective to appointive judges would require a constitutional amendment, which is not likely forthcoming from the legislature, some of whom think their names would have a name ID advantage on a judicial ballot.

There is no perfect way to select judges, but the better informed those doing the selecting, the better.