

3 justices' own cross-endorsement questioned after decision

By David McKay Wilson
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ALBANY — Three of five appellate division justices who this week dismissed a challenge to the cross-endorsement of local judges were themselves cross-endorsed in their last races, according to a state elections official.

Doris Sassower, who argued the case for the Ninth Judicial Committee, charged yesterday that the justices violated the Code of Judicial Conduct by not disclosing the political arrangements that won them seats on the bench. She maintains they should have disqualified themselves from the case, a claim rejected by the clerk of the court.

Sassower said the justices may have been wary to rule that cross-endorsement was unconstitutional because that's how they won their jobs.

"It's easy for them to win when you're playing with a stacked deck," said the attorney from White Plains. "This decision is suspect. They had a personal stake in the decision."

On Thursday, the Appellate Division of the Supreme Court, Third Department in Albany, rejected Sassower's challenge to the cross-endorsement of three judges. She sought the removal of Surrogate Albert Emanuelli, and Supreme Court Justice Francis Nicolai, who serve in White Plains, and Howard Miller, a Rockland County Supreme

Court justice. All three were endorsed by both major parties last year. The Ninth District includes Westchester, Rockland, Putnam, Dutchess and Orange counties.

Dismissed in state Supreme Court in October, the appeal failed this week when the appeals panel ruled that Sassower had failed to name the proper parties in the case. The ruling did not address the constitutionality of the cross-endorsement process.

Writing the decision was Presiding Justice Franklin Mahoney, who was re-elected to a 14-year term in 1982 with the endorsement of the Democratic, Republican and Conservative parties, said state Board of Elections spokesman

David Flanagan. Justice Norman Harvey ran on those same lines in his reelection bid in 1981. Justice Ann Mikoll ran on the Democratic, Conservative and Liberal lines in 1985.

Sassower said the justices personal involvement in cross-endorsement would serve as the basis for a motion seeking to vacate the ruling.

According to the ethics code: "a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including instances where he has ... personal knowledge of disputed evidentiary facts concerning the proceeding."

None of the justices could be

reached for comment late Friday. But Michael Novack, clerk of courts, said Sassower was obliged to raise the issue earlier.

"This is something that should have been raised prior to the argument," Novack said. "There is nothing that requires them to come forward in the first instance."

Guy Parisi, counsel to the Westchester County Republican Committee, who was named in the case, declined to give his opinion on what the justices should have done.

"It was a decision only they could make," he said.