

Lawyer to Pursue Suit On Cross-Endorsement

By TESSA MELVIN

A WHITE PLAINS lawyer said last week that she would continue her fight to prevent political parties from cross-endorsing local judges. She vowed to challenge a ruling handed down this month by an appellate panel that included judges who had themselves been cross-endorsed.

Doris L. Sassower, the lawyer, said she would seek to vacate the decision, which was issued unanimously in Albany on May 2 and dismissed her claim on procedural grounds. The Appellate Division of the State Supreme Court found that Ms. Sassower had failed to name the proper parties in the case, and it dismissed her appeal without considering the merits of the case.

The ruling lets stand a State Supreme Court decision allowing cross-endorsing, a process in which political party organizations agree on one slate of judicial candidates endorsed by both parties. The court found that cross-endorsement of judicial candidates is not prohibited by the election law and that the challenged candidates were properly nominated by their judicial conventions.

Mrs. Sassower brought the case on behalf of the Ninth Judicial Committee, a group opposed to cross-endorsement. Challenging the terms of what she called "a corrupt political deal," she said a cross-endorsement agreement in Westchester disfranchised county voters. Under a three-year plan that is to end with elections

this November, County Republican and Democratic Party leaders have agreed on most judicial candidates, virtually assuring their election.

Judges' Personal Interests

Negotiations among party leaders to decide which candidates to cross-endorse this year are under way, and a decision in Mrs. Sassower's favor could make that plan difficult to carry out.

Mrs. Sassower said last week that she would try to win permission to argue her case before the court of Appeals, contending that the appellate ruling should be thrown out on the ground that three of the five judges had a personal stake in the decision. "This is precisely what the case is all about: judges who do not decide cases on the merits but who are products of the political system," Mrs. Sassower said.

"By ducking the crucial issue of cross-endorsement," she said, Presiding Judge A. Franklin Mahoney "is committing a serious ethical transgression."

Mrs. Sassower is asking that the judicial nominations of two Supreme Court Justices, Howard Miller and Francis A. Nicolai, and a Surrogate Court judge, Albert J. Emanuelli, be invalidated and that the seats be declared vacant.

The way judges are chosen in the state has been the subject of considerable debate in the legal profession, among court-reform advocates and in the halls of the State Legislature. Judges in 13 states are chosen by "merit selection," in which screening panels review the qualifications of

candidates for appointment to judicial posts. This process is used for members of the Court of Appeals, the state's highest court, and for those serving on the Family and Criminal Court in New York City.

Although Chief Justice Sol M. Wachtler of the Court of Appeals has spearheaded efforts to have a complete merit-selection system in the state and bills to that effect have been introduced in the Legislature by Assemblyman Terence M. Zaleski, Democrat of Yonkers, legislative and political opposition has prevented consideration of the measure.

A Personal Court Case, Too

In addition to the public-policy issues raised by her suit, Mrs. Sassower is involved personally in a court case that is being handled by a cross-endorsed judge. Supreme Court Judge Samuel G. Fredman is expected to issue a ruling shortly in a contempt-of-court proceeding against Mrs. Sassower. Judge Fredman was cross-endorsed for his election to the bench in November 1989, several months after he was nominated to fill a vacancy on the district bench and four months after Mrs. Sassower's case came before him.

When Mrs. Sassower, a matrimonial lawyer, refused to turn over a former client's file in a payment dispute despite an Appeals Court ruling ordering her to do so, a contempt proceeding was begun. The case was delayed several times by Mrs. Sassower, who first said she misunder-

stood an order to appear and who later offered medical reasons, including testimony by a psychiatrist, for her failure to appear. She has since turned over the files.

Mrs. Sassower agreed last week that her own case had helped motivate her concern for the cross-endorsement issue. "It brought to the fore the reality of what it means to have a person on the bench who is biased," Mrs. Sassower said.

But she said the arguments go well beyond her particular dispute with Judge Fredman. "Bartering judge-ships is just as bad as buying them," Mrs. Sassower said in her court brief. "Payment in kind, rather than in cash, is no defense to the penal sanction prohibits the corrupt use of position or authority."

Political leaders have viewed judicial posts as a kind of "musical chairs" or "chess pieces to be manipulated for their own personal and political convenience," Mrs. Sassower said. The arrangement in Westchester permits Democrats to win State Supreme Courts seats in the predominantly Republican Ninth Judicial District, which includes other Hudson Valley counties as well as Westchester, while reserving County Court and Family Court seats for Republicans in a county with a Democratic plurality.

Mrs. Sassower would not name other members of the the Ninth Judicial Committee, on whose behalf she filed

the suit, saying that several lawyers in the group "fear retaliation" in the courts where they practice.

County political leaders said last week that they and the members of the judicial system support a cross-endorsement plan because it produces a better judiciary.

"Any system that removes judicial candidates from campaigning tends to get better people involved," said Anthony J. Colavita, chairman of the Westchester County Republican Party. "Elections discourage lawyers who have to raise money." Winning a judicial post in the county can cost candidates more than \$100,000, elections officials say.

The fact that three judges on the Appellate panel were themselves

proves that the practice is a recognized procedure in other counties, Mr. Colavita said, calling the idea "a major step toward the nonpartisan election of judges."

Richard Weingarten, former head of the County Democratic Party, who helped develop the the three-year plan, agreed that "candidates should not have to shake their tambourines to fill campaign coffers." Political parties, he added, do a better job of picking candidates than what he called the "elitist bodies" governing the merit-selection process.

Mrs. Sassower's case, he said, raised important issues. "I'm disappointed that the substantial issues in the case were not reached." ■