

THE NEW YORK TIMES, SUNDAY, OCTOBER 14, 1990

Agreement on Judicial Candidates

By TESSA MELVIN

ATHOUGH six judges are to be elected on November's ballot, four of the contests have already been settled. The Democrats and Republicans have cross-endorsed two candidates for State Supreme Court and one for re-election to Family Court, and have agreed on one candidate for Surrogate Court.

The agreement between the two parties is part of a three-year pact that won approval last year at the party conventions. The arrangement permits Democrats to win State Supreme Court seats in the predominantly Republican Ninth Judicial District, which includes Westchester, while reserving County and Family Court seats for Republicans in a county with a Democratic plurality, and keeping the Surrogate Court seat in Republican hands.

In this year's elections, the second under the agreement, a Westchester County Court Judge, Francis A. Nicolai, a Democrat, and a former Rockland County Court Judge, Howard Miller, a Republican, have been cross-endorsed for election to the State Supreme Court, from the Ninth

Political leaders exchange endorsements for court openings.

Judicial District. Adrienne Hofmann Scancarelli, Administrative Judge of the Family Court, has been cross-endorsed for election to a second term. And a former Supreme Court judge, Albert J. Emanuelli, a Republican, will not be opposed for the Surrogate Court seat.

Two Contested Races Remain

This leaves two contested races for Westchester voters this year. One is to fill a new position on the State Supreme Court, created by the State Legislature after the party agreement had been worked out. The Democratic candidate is a Family Court judge, Joan B. Lefkowitz of Scarsdale. Her Republican opponent is a

town justice, George Hunter Roberts of Lewisboro. The Right to Life Party candidate is John P. Hale, a lawyer from Bronxville.

The other contested race is to fill an opening on the Westchester County Court. Jeanine Ferris Pirro, chief of the County Domestic Violence and Child Abuse Bureau, is the Republican candidate. She faces a town justice, Lawrence D. Lenihan of New Castle, a Democrat. The Right to Life Party candidate is August C. Nymphius Jr., a lawyer in Pelham.

Although Republican and Democratic leaders have called their cross-endorsement agreement a "historic" effort to create a nonpartisan judiciary system, advocates of court reform have argued that it makes a mockery of the election process.

One group of lawyers in Westchester is seeking to invalidate the cross-endorsement arrangement, arguing that it "disenfranchises" voters. Late last week a Supreme Court judge in Albany was scheduled to conduct a hearing into the allegations by the group, which calls itself the Ninth Judicial Committee and charges that the judicial nominations resulted from an illegal contract between the county Republican chairman and the county Democratic chairman. A similar lawsuit filed last year by the

group was dismissed.

Another critic of the agreement between the political parties is the former dean of the law school at Pace University, Janet A. Johnson, who said it lacked not only the benefits of an electoral process but also those of a more traditional appointive approach. "There's no real screening process," said Professor Johnson, who now teaches at the law school. "And there's no heat of the campaign."

A retired Family Court judge, Barbara L. Kaiser, agreed. "Cross-endorsement constitutes an elective judgment filled by predetermination in a smoke-filled room. It's the worst of both worlds."

The county's political party leaders

argue that cross-endorsement protects the interests of voters, who they say have been ill-served under both the elective and appointive systems. "We have cross-endorsed only acknowledged, highly qualified candidates," said Richard L. Weingarten, the former chairman of the Democratic Party in the county, who arranged the agreement with the Republican chairman, Anthony J. Colavita.

"Most voters don't care," Mr. Weingarten said, whether judges are appointed by screening panels or elected. "We think political parties do a better job than the elite commissions because we are close to the community and the blue-ribbon panels are not."

Is it a step toward a nonpartisan judiciary, or a mockery of elections?

The agreement has been well-received by local lawyers and incumbent members of the judiciary, Mr. Weingarten said, explaining that cross-endorsement means they "are not called to stand on corners and shake tamborines." Winning a judicial post in the county can cost candidates more than \$100,000, said offi-

cials at the Board of Elections.

Voters are often baffled about how to decide among judicial candidates, who are legally prevented from conducting issue-oriented campaigns and are often forced to spend thousands of dollars to achieve name recognition in electoral contests.

This has led 13 states to adopt a

"merit selection" process, in which screening panels review the qualifications of candidates for all judicial posts. In New York this process is used for members of the Court of Appeals, the state's highest court, and for those serving on Family Court and Criminal Court in New York City.

Although an effort to adopt a merit-selection process statewide has been led by Chief Justice Sol M. Wachtler of the Court of Appeals, it has failed to overcome legislative and political opposition.

A Bill on Merit Selection

For two years, Assemblyman Terrence M. Zaleski, Democrat of Yonkers, has unsuccessfully co-spon-

sored a bill to create a merit-selection system.

His bill would establish a 15-member commission to screen candidates. The commission, selected by state and local party leaders, would submit finalists to county executives for final approval. Judicial appointees would serve a two-year probationary period and then appear before voters for approval to continue in office.

Opposition to merit selection of judges will continue, predicted M. L. Henry, executive director of the Committee for Modern Courts, an organization that advocates improvements in the justice system. "Party leaders view control of judgeships as a political asset rather than as a public trust," he said.