

Tom Miller: State partisan politics won't allow nonpartisan judicial selections

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Gov. Joe Manchin's earlier indications that he would ask the 2009 Legislature to consider a daring change in state government by electing judges on a nonpartisan basis now seems to be dead in the water. Give credit to Sen. Truman Chafin, D-Mingo, who heads up the organization of 55 Democratic county chairmen in the state.

Chafin prides himself on being a "yellow dog Democrat," leaving absolutely no doubt about his party loyalty at all levels. He sent a letter to the other 54 county Democrat chairpersons, telling them this was another "back door" effort to let Republican candidates for the state's judicial offices disguise their political views.

His call to action apparently worked on the nearly 100 members of the West Virginia Judiciary Association, which includes both active and retired judges. Meeting last week in Morgantown, that group, most of them Democrats, voted to support the current method of electing judges at all levels in this state based on political affiliation.

Manchin will need the full support of the 2-to-1 Democrat voting majority in this state for his likely next campaign in 2012 for the U.S. Senate, so he's now insisting that he has no plans to recommend any changes.

The state judiciary, like the legislative and executive branches, has been mostly run by the Democratic Party for decades. More to the point, it's the branch that has been a source of embarrassment recently, and that's not limited to one political party.

There are about 275 elected judges statewide, ranging from the five members of the State Supreme Court of Appeals down to the 158 county magistrates. In between, there are 69 circuit judges (the last three added this year) and 45 family court judges -- 10 new ones taking office Jan. 1.

Decisions to add new judges or increase their salaries at any level are always a hot political issue in the Legislature. And some circuit judges who have recently taken advantage of a loophole to retire with a lucrative judicial pension and then resume their job as a judge at full pay will cause more political consternation at the 2009 session.

The salary for Supreme Court justices was \$95,000 until 2005, when legislators gave them a raise to \$121,000 a year. Rest assured, politics was involved. And the 69 circuit judges -- three more were added by the Legislature earlier this year in a political bloodbath where several other proposed new judges didn't make the cut -- saw their salaries boosted from \$90,000 to \$116,000 as well.

At the lowest level, there are county magistrates (158 in all) and a relatively new family court system. Originally 35 family court judges were created, but now that number has jumped to 45 in a highly charged political atmosphere. The salary was boosted from \$62,500 to \$82,500 three years ago as well.

Family court judges can hire both a secretary-clerk and a family case coordinator who can be paid up to \$35,000 and \$46,060 respectively -- which means more political patronage. The precise figure is left up to the Supreme Court administrator in Charleston.

So party designations on the ballot for candidates seeking the office of judge at any level in West Virginia is only the tip of the iceberg in partisan political activity.

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The notoriety of the state's highest court got more national exposure last week when the U. S. Supreme Court unanimously refused to consider the appeal by Massey Energy Co. of a \$260 million jury verdict upheld at the state level. The appeal was filed on the grounds that Justice Larry Starcher was biased against Massey and its colorful chief executive, Don Blankenship.

But even though the nation's highest court only accepts a very limited number of cases each year, those nine justices have agreed to hear a separate matter involving Justice Brent Benjamin, the first Republican elected to the state Supreme Court in 32 years after Blankenship spent more than \$3 million to help Benjamin win his seat in 2004.

Blankenship's influence on the court has repeatedly made national headlines, including photos of him and Justice Elliott (Spike) Maynard together during a vacation on the French Riviera. This publicity is credited with helping defeat Maynard in his bid for re-election to another 12-year term in last spring's Democrat primary.

These scandals involving both political parties seem to be more of a reason to advocate consideration of the best method to select our judges than the elimination of partisan politics.

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One of the most compelling statistics to illustrate West Virginia's plight on the national stage is the fact that we have the smallest percentage of our population that "participates in the labor force," according to findings in a report released last week by the West Virginia Center on Budget and Policy. With only 56.3 percent of our 1.9 million men and women either employed or looking for work, it follows that the other 43.7 percent are not.

The average nationwide is 67 percent, or two-thirds of the population, and some states have almost three-fourths of their residents in the labor force. And even though West Virginia has recently enjoyed a record low unemployment rate of less than 4 percent, it nevertheless means state government must help provide for the needs of nearly half the people living here.

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