

Indiana Law Blog Newsletter

Several special editions of the Indiana Law Blog Newsletter are being published today and tomorrow, featuring the reporting of Professor Joel Schumm, IU-McKinney School of Law, on the Marion County judicial selection process.

Retention Interviews for Seventeen Marion County Judges Today and Tomorrow

Among other offices, seventeen judges will be on the ballot in Marion County on November 6. Each judge has completed a retention application, which is a public document but not posted online. The 14-member Marion County Judicial Selection Committee (MCJSC), created last year by HEA 1036, will conduct a public interview; Tuesday afternoon the Committee will discuss the judges in executive session and then holding a public vote. A schedule appears at the end of this article. I will be attending the interviews, and summaries will be sent through the ILB newsletter twice on Monday and twice on Tuesdays.

The hearings are to determine “the judge’s qualifications and suitability to continue to hold judicial office.”

The statute imposes a high bar for the Committee to recommend against retention. According to statute, “A judge is presumed qualified. The affirmative votes of at least nine (9) committee members are required to find that a judge is not qualified.”

Even if this were to happen, and I’d be very surprised it did, the judge would remain on the ballot. The only negative consequence would be “(g) . . . the committee shall do the following:

(1) Through the chairperson, place on the appropriate Internet web site of the Indiana supreme court the following statement: “After considering Judge (insert name here)’s qualifications and Judge (insert name here)’s performance in office, the Marion County Judicial Selection Committee finds that Judge (insert name here) IS NOT qualified and SHOULD NOT BE retained in office.”

(2) Issue the following statement to news media and voter outreach organizations: “After considering Judge (insert name here)’s qualifications and Judge (insert name here)’s performance in office, the Marion County Judicial Selection Committee finds that Judge (insert name here) IS NOT

qualified and SHOULD NOT BE retained in office.”

(3) Take any other steps reasonably calculated to inform the general public in Marion County of the committee's determination.

Regardless of Tuesday's MCJSC vote, on November 6 voters will be asked whether each should be retained for another six-year term and given an opportunity to vote “yes” or “no.”

Some Interviews Specifics

At the MCJSC's February 19, 2018 meeting, the Committee approved the schedule, which was prepared by counsel Tom Carusillo using a random number generator. Although discussion in executive session will occur at the end of the first day, the public vote on all seventeen incumbent judges will be at the end of the second day.

Procedures

The Committee had a lengthy discussion of interview procedures, acknowledging at the outset the difficulty of fourteen members asking questions during twenty minute interviews.

The Committee decided to create panels of its members, which are primarily responsible for reviewing applications and asking questions of the assigned incumbent judges. The panel will spend about twelve minutes asking questions, followed by about five minutes of questions from other Committee members, and the incumbent judge will then be given an opportunity to close. The incumbent judges have been told of the general process for their interviews but not told which panel will be the primary questioners or what questions will be asked.

Mr. Johnson suggested the panels be assigned randomly, which Tom Carusillo promptly did and announced:

- Panel 1: Massa, Christie, Thuma
- Panel 2: Cline, Bradford, Gaerte
- Panel 3: Lewis Burks, Carpenter, Slash
- Panel 4: Johnson, Breaux, Mallon
- Panel 5: Hurst, Jackson-Lindsay

The Committee discussed whether three of its members could meet to discuss potential questions without violating open meeting laws and concluded such meetings would not be a violation. The Committee was divided regarding the concerns about the potential their emails could be obtained through a public records request. Some members expressed a clear preference for their panel to meet in person or have a telephone discussion, but the discussion ended with the understanding that each member could decide which medium to use.

No opening question

The Committee decided not to ask each applicant a standard opening question. Judge Bradford discussed some possible examples. Rather than a broad question about accomplishments, which is on the application, he suggested a question that goes to their leadership and innovation. For example, judges could be asked about system design issues, such as family courts, considering the opportunities presented with the move to a new justice center in a few years. Another potential question might be the challenges for Marion Superior Court faces going forward and how the judge plans to address them. Although the Committee will not ask applicants a standard opening question, I would not be surprised to see these questions asked of at least some applicants.

Application Access

Unlike the applications for the Indiana Supreme Court and Court of Appeals, the Marion County applications have not been posted on the web for easy and broad public access. At its February 19 meeting the Committee members had not yet seen the retention applications, which were submitted by February 9. They received access to the applications later that day through a link that requires no password. Bob Rath, Director of Appellate Court Technology, discussed other options, such as requiring everyone have a Microsoft log-in to access the applications. The Committee will revisit whether to use a secure link for the applications for vacancies.

No conflict concern

When the discussion was opened for new business, Katie Jackson-Lindsay, the Marion County Bar Association representative who practices exclusively criminal law, raised a concern regarding the possibility of judges recusing in her cases. She has been approached by one judge to discuss the issue and another raised the issue of a potential conflict in open court. Although at least one judge believed recusal had been “suggested,” Justice Massa responded the Court had advised Marion County judges they do not need to recuse in cases involving Committee members. Judge Bradford specifically mentioned the recent Indiana Supreme Court that held a lawyer serving as a reference for Judge Nation in his application to the Supreme Court did not require recusal:

... in order to complete his application for an appellate judge position, Judge Nation was required to list references who have appeared in his court as well as solicit recommendation letters. Recommendation letters by their nature are enthusiastic and flattering. This is not unusual and there is nothing about [the attorney’s] letter that indicates any sort of special relationship beyond a professional one.

L.G. v. S.L., 88 N.E.3d 1069, 1072–73 (Ind. 2018).

Looking Beyond the Retention Interviews

The retention interviews may be of interest to those outside of Marion County. The General Assembly designed a process unlike any other for retention. Depending on how this plays out, efforts could be made to change the retention process for Indiana’s appellate judges and/or the judges in counties with a merit selection process.

Moreover, these retention interviews will provide some clues about the members of the same Committee that will select new judges for the three vacancies, a process that concludes with interviews on May 21 and 22. A later newsletter will address that process.

Monday, March 12, 2018

- 9:00 - 9:20 Judge John Hanley
- 9:25 - 9:45 Judge Heather Welch
- 9:50 - 10:10 Judge Clark Rogers
- 10:15 - 10:35 Judge Jose Salinas
- 10:35 - 10:55 Break
- 10:55 - 11:15 Judge Grant Hawkins
- 11:20 - 11:40 Judge Linda Brown
- 11:45 - 12:05 Judge John MT Chavis II
- 12:05 - 1:15 Lunch
- 1:15 - 1:35 Judge Mark Stoner
- 1:40 - 2:00 Judge Helen Marchal
- 2:05 - 2:25 Judge Lisa Borges
- 2:30 - 2:50 Judge Sheila Carlisle
- 2:50 - 3:10 Break
- 3:10 Executive Session

Tuesday, March 13, 2018

- 9:00 - 9:20 Judge William Nelson
- 9:25 - 9:45 Judge Alicia Gooden
- 9:50 - 10:10 Judge Steven Eichholtz
- 10:15 - 10:35 Judge Amy Jones
- 10:35 - 10:55 Break
- 10:55 - 11:15 Judge James Joven
- 11:20 - 11:40 Judge Clayton Graham
- 11:45 - 1:00 Lunch
- 1:00 Executive Session

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2/ Could your organization or firm use some help with a challenging short or long-term project? Then let's talk.



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