

Becoming a Judicial Delegate and Participating at a Judicial Convention May 22, 2024

This paper was developed from Four Freedom's zoom forum "What is a Judicial Convention Anyway." The forum was conducted by Kim Moscaritolo, District Leader, 76AD Part B, with input by Matthew Lombardi. It has been reviewed by Jerry Skurnik and Kathryn Freed.

Purpose

Judicial Delegates and Judicial Alternates have the responsibility to determine which candidates for New York State Supreme Court will be selected by the Democratic Party for election. Most Delegates and Alternates are persuaded by their District Leaders, and club leaders to run for Delegate and many have little knowledge of what is entailed in actually serving as a Judicial Delegate. They may also have little knowledge, not only of the composition of the court system, but of the process of how New York State Justices are actually selected in Manhattan. Since Judicial Delegates and Alternates are elected by the Manhattan electorate, they are not bound by the will of party leaders, and thus have a tremendous responsibility to ensure that candidates for Supreme Court are of the highest caliber. Hopefully this paper will clarify how this entire process works.

Court System Overview

The Supreme Court of New York state is established by the New York Constitution. That is why it is sometimes referred to as a "Constitutional Court." Under the New York State Constitution, the State Supreme Court has unlimited jurisdiction in both civil and criminal matters with exceptions – for example, some monetary claims against the state of New York itself. By and large any civil case above \$50,000, whether a commercial or tort matter, as well as criminal felonies, are heard in the Supreme Court here in New York County.

Under that level is Civil Court, with less than \$50,000; small claims sort of cases, as well as criminal matters like arraignments that are less than the felony level. Many Civil Court judges also serve in Housing Court and Family Court. Outside of the City there are also lower level Courts such as County Courts.

While not in any way diminishing the importance of the Civil Court, and the status of its judges, to use a baseball analogy, the Civil Court level is the minor leagues where you get your start. It is why most Supreme Court Justices come from the Civil Court where they cut their teeth on the smaller types of cases. They understand how the room works and how to become a judge because there is a learning curve.

Civil Court terms are ten years. Because of vacancies and backlog in Supreme Court, the court system itself will often take a Civil Court Judge who has several years of Civil Court experience and elevate them to Acting Supreme Court Justice.

Something that's really important to understand is that the State Supreme Court is a bit of a misnomer because in most places the Supreme Court is the highest court in the land. That is actually not the case here in New York State. While the Supreme Court is the highest level Trial Court, there are two appeals courts above State Supreme: the Appellate Division and the Court of Appeals. Thus, the Supreme Court is not the highest court in New York State.

Qualifications to become a Supreme Court Justice

Who can be a Supreme Court Justice legally? A Supreme Court Justice must be admitted to practice as an attorney in New York for a minimum of 10 years. Legally that is the only requirement. There is no requirement that a Supreme Court Justice even serve as a judge in a lower court here in Manhattan. It is fairly unheard of to have any justices of the Supreme Court who were not previously judges in Civil Court. There are some judges in Housing Court but primarily, judges move from Civil Court up to the State Supreme Court.

A Supreme Court Justice may serve until December 31st of the year in which they reach age 70. Only Supreme Court Justices can apply for recertification which essentially allows them to continue serving for two more years, and they can apply three times. Thus, Supreme Court Justices could serve until the age of 76, The age limit for judges is 70 in New York State.

There are a number of Acting Supreme Court Justices. Essentially, we only are given a certain number of Supreme Court Justices depending on population. Obviously in Manhattan there is a very big caseload and we just do not have enough Supreme Court Justices to handle it all. The Chief Administrator has the power to appoint certain Civil Court Judges to the role of Acting Supreme Court Justice. Thus, many of the justices serving on the State Supreme Court are **Acting** Supreme Court Justices. If a justice wants to elevate to the Appellate Division, they must be an **Elected** Supreme Court Justice.

How Are Supreme Court Justices Elected?

They are elected in the November general election just like most other elected officials. You will see justices for the Supreme Court on the ballot, but likely only on the Democratic line. Republicans do not generally run people for those positions in New York County.

Unlike other general elections, there is no primary to determine the Democratic nominee. Since 1921 New York has selected its nominees for state trial court justices by party convention which are made up of elected Judicial Delegates.

Many Democratic Club members are serving either as a judicial Delegate or an Alternate Delegate. Since there is no primary, the decision of which Acting Supreme Court candidate will appear on the November is decided at these Judicial Conventions that take place once a year when there are vacancies.

The Judicial Convention

This is where Judicial Delegates and Alternates come in and the procedure is a little bit unorthodox.

The Judicial Convention is held in August. At this convention, candidates have their names placed into nomination and the Judicial Delegates then vote to decide which nominees appear on the general election ballot in November.

The number of Judicial Delegates is determined in every Assembly District by a formula set forth in the state Democratic Party rules: one delegate and one alternate from each Assembly District plus an additional delegate and alternate for every 2500 votes or fraction of 2500 votes cast on the Democratic line in that assembly district for the party candidate for governor at the last general state election.

The total number of delegates now is 155, so a candidate running for Supreme Court needs $\frac{1}{2}$ of 155 plus 1 or 79 delegates to have a majority and thus be one of the nominees.

Who Can Seek the Nomination:

According to New York County Democratic Party rules, in order to be nominated a candidate must have been approved by an Independent Judicial Screening Panel or have been approved by two of the last four panels. Only Manhattan uses this Independent Screening Panel procedure, and it was adopted to help choose Judges based on qualifications and to be somewhat removed from the political system.

The screening panels were established to review applicants for election to Supreme Court. The Judiciary Committee of the County Democratic Party invites numerous groups to send representatives to serve on the panel. They also pick who will serve as the Administrator, since it is always critical to have a good Panel Administrator. They are comprised of appointees from a number of legal and non-legal organizations, as well as community groups. Panel members are **not** appointed by

the Manhattan Democratic Party, and are chosen from a combination of bar associations, and also community organizations. The panel members are chosen by these organizations themselves. A diverse panel might include New York Women's Bar Association, the Asian Americans for Equality, the Fortune Society, NAACP, New York State Trial Lawyers Association, the Jewish Lawyers Guild, New York County Lawyers, to name a few.

Screening panels have to send out no fewer than two and no more than three candidates that they deem most highly qualified for each vacancy. The panelists must consider the need for candidates of diverse backgrounds.

Depending on how many candidates decide to run, the panel will say that these two or three candidates per vacancy are most qualified to come out and act as judges. Thus, when a candidate is deemed most highly qualified this is what is meant by saying "I/he/she came out of a panel."

The panel administrator will send a packet to each candidate seeking background information on candidates: work history, where they have practiced, what do they practice, are they a sitting judge now, what cases have they worked on, how many trials have they done, in what courts have they worked in the city, etc.

Candidates will submit references. The panel may also reach out to attorneys from some of the candidates' more recent trials and will call their adversaries as well. This speaks to temperament and how a candidate will treat litigants. The panel will look at writing samples, copies of decisions made while a sitting Civil Court, Housing Court, or Family Court Judge.

The panels often will break down into smaller subcommittees and interview each candidate one-on-one. The subcommittees then report their impressions and their findings to the entire screening panel which will then interview each candidate.

The first thing the panel is endorsing is a certain legal acumen: written decisions that make sense, cases that weren't overturned by the Appellate Division, etc. The second thing that the panel looks at is the judge's temperament. The judge holds all the power in a courtroom and needs to be someone who will respect both sides.

At this point, the panel will release names of the most highly qualified candidates. This lets the delegates know that a judge is ready and seasoned enough to be elevated to the big leagues.

Judicial Delegates and the Political Process

At the end of the day this is a political process. Technically anybody can run for Judicial Delegate if you are a democrat and you live in the county. You need to collect 500 valid signatures to get on the ballot. Often local democratic clubs run slates of Delegates and Alternates and they carry them on their club petitions with other candidates which makes it much easier to get signatures. Nearly all Delegates and Alternates end up coming through local political clubs but it is not impossible for somebody to run as a Delegate on their own.

Candidates running for Supreme Court or Civil Court know the process and often spend years building relationships with the political democratic clubs, with club leaders, with party leaders. They attend club events and fundraisers trying to earn support with the delegates. If you've been to these events, you've met many judges there seeking to elevate to Supreme Court. The hope for this entire process is that we at least know that everybody vying for the position is well qualified.

What Actually Happens at The Convention?

The convention begins with a roll call of Delegates. If a Delegate is not present, their seat is given to the first Alternate and so on. The delegates then elect a temporary chair to run the meeting and one by one candidates are nominated via nomination speech. The candidate will then speak and they either accept or decline the nomination.

Many candidates know they just don't have the support of enough Delegates to get through that year and so they will give a speech, thank everybody and they will very politely decline the nomination. Some Delegates new to the process feel it is very rehearsed, and to a sense it is. The candidates and the county leader have an idea ahead of time who does and doesn't have the votes so usually the first people nominated are people who've maybe just come out of panel for the first time or just haven't quite acquired the votes that they need to win the nomination that year.

If a candidate thinks he or she has the votes, they may go for a floor fight, which is when two candidates for the nomination go up against each other for the same seat. It is rare but does happen.

The Delegates are broken into delegations by Assembly District and the leader of the delegation then polls their Delegates and announces the number of votes each candidate has. Those votes are counted and ultimately whoever has the most votes wins.

There is a lot of politicking leading up to the convention. Delegates and Alternates have been invited to receptions for candidates attempting to win support for that convention.

How Might This Process Be Improved

As stated previously, Justices go from club to club, often for a number of years meeting Judicial Delegates and Alternates. The issue is that it is difficult to present a case at a party that is noisy and crowded. It is also critical that there be a good panel administrator. Judicial Delegates need solid information, and contact with individuals whose fate they help determine. Justices need more exposure than has been the norm in the past.

1. It might be useful to hold an annual standardized countywide forum with Judicial Delegates/Alternates, and all candidates going in to the panel. This would give all candidates ten minutes each to fully present their case. The timing is good as clubs will have submitted their petitions, most club fundraisers are past, and the June primary is still a month away.
2. When there is a vacancy, the panel generally reports candidates out in July, and the Judicial Convention is generally in early August. This gives little time for Justices to prepare for the convention. They simply can't go from club to club to fully present their case. A second standardized countywide forum could then be held in this short timeframe in which only those who come out of the panel would be given their ten minutes, with questions and answers. A package of all their resumes would be sent to all Delegates and Alternates a week in advance.
3. A serious effort could be made by clubs in close proximity to coordinate their fundraisers to ensure that dates, times and proximity help ensure that Justices are able to move easily from club to club. It is exceedingly difficult for Justices to run in the space of four hours to Harlem, Washington Heights, Midtown and then Downtown. Some clubs like Three Parks Independent Democrats and Broadway Democrats already do this.
4. Some political clubs also join with other clubs in their area to hold joint forums, where candidates are given a chance to present themselves and take questions, much like a county forum. Usually, the clubs then vote after these forums and determine who the individual clubs will support. Most clubs strongly recommend a preferred candidate to their Judicial Delegates, at least for the first or second round.
5. The New York County Democratic Committee's excellent "*Procedural Handbook of the Independent Judicial Screening Panel*," issued in 2008, should complete its updating and be widely distributed to District Leaders and Judicial Delegates and Alternates.

6. Some clubs interview candidates extensively. Perhaps more clubs could provide these in-depth interviews – even join together in these interviews.
7. Set up visits by Delegates and Alternates to court sessions. This would increase familiarity with court procedure, and allow Delegates and Alternates to observe Justices’ “Demeaner” toward litigants, lawyers, witnesses etc.

