

DAILY NEWS

City should help judicial system

BY RICHARD ABORN, LAWYER AND JUDICIAL ACTIVIST

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The Supreme Court's decision last week upholding the way New York chooses judges was by no means an endorsement of the system - in fact, though not overturning New York's system of selecting judges, the Supreme Court does not exactly present it in a very complimentary light.

The decision only serves to cast the system into stark relief, and underscore the lack of action in Albany on judicial selection, judicial salaries and campaign finance reform. The only thing we know for sure is that New York's judges will continue to be grossly underpaid and money will continue to tarnish our political system.

Unless we provide judges in New York with a salary commensurate with the awesome responsibility we ask them to discharge, we limit our ability to attract highly skilled candidates to the bench, and we utterly fail to fairly compensate those who serve. Public service should not be public sacrifice.

We compound this sacrifice by requiring New York State trial judges to raise money if they hope to compete in judicial elections. This compels aspirants to the bench and judges seeking reelection to seek funding from the very constituency over which they may have to pass judgment. This unenviable position undoubtedly deters many qualified lawyers from seeking judicial office and puts an unnecessary strain on those seeking reelection.

Money is critical to any political campaign, though one need not look beyond Brooklyn to understand the potential for criminality when it is used to fund judicial races.

If the New York City Council were to pass a law that provides public financing of judicial races, it could with one simple, bold stroke drain the corrosive effect of money on judicial races, and provide a powerful legislative response to the judicial election scandal in Brooklyn that reverberated throughout the political arena.

At first blush it would appear the City Council lacks the power to legislate judicial elections, and that such authority lies with the state. Though the state governs the term of office, judicial powers, geographic area of responsibility, court structure and qualifications, the law does not restrict the sources from which judicial candidates can seek funding. In legal terms, the law is silent on this point. Indeed, judicial candidates are free to accept money from whomever they wish.

While the City Council could not pass a law that impacted the powers or terms of office of a judge, it is not precluded from offering candidates for judicial office the option of accepting public funds to run for office.

The City Council law could also be utilized to ensure the integrity of the system - in exchange for public money, the local law could impose reporting and auditing requirements that would be designed to ferret out any misuse of the funds.

The City Council-sponsored public financing law would be limited to those races in the city's judicial boundaries, which would eliminate an argument that the Council was encroaching into the jurisdiction of the state. The law may, however, also have the beneficial effect of causing local legislatures in other parts of the state to follow suit.

For far too long the important goal of public financing of campaigns has languished. It is beyond dispute that money plays both a critical and often disproportionate role in our democracy. Laudably, New York City already provides a 4-1 match to candidates seeking certain offices, but this is not extended to judges and does not provide full public financing.

Because it is a media epicenter, a successful public financing law in this, the nation's largest city, could well provide momentum to not only public financing of judicial races, but perhaps more broadly into other types of elections. While it would have to pass legal challenge, it is rare that a local legislature has a chance to have both a direct and much larger impact.

The City Council should give serious consideration to passing such legislation.

Richard Aborn is a partner at Constantine Cannon, a law firm with offices in New York and Washington, and is president of the Citizens Crime Commission of New York City. The views expressed herein are his own. It's time for the Council to act on N.Y. judges