

State's top court poised to be all white

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MATT KRYGER /THE STAR

Justice Loretta Rush became the 108th Justice of the Indiana Supreme Court Friday morning at the State House. Justice Steven David, Justice Robert Rucker, Chief Justice Brent Dickson, Justice Loretta Rush and Justice Mark Massa, right.

INDIANAPOLIS - The Indiana Supreme Court is poised to have an all white court for the first time since 1999, raising concern in Indiana's minority community and questions about whether the state's legal system does enough to foster a pipeline of diverse lawyers and judges.

Because Justice Robert Rucker - the court's second black justice - is retiring this week, a selection committee has presented Gov. Eric Holcomb with a list of three nominees: Clark Circuit Judge Vicki L. Carmichael, Boone Superior Judge Matthew C. Kincaid and Wabash Superior Judge Christopher M. Goff.

The judges are longtime Hoosier lawyers, qualified and knowledgeable about Indiana civil and criminal law. In conversations with IndyStar, Carmichael and Kincaid highlighted key issues, such as Indiana's opioid epidemic, lack of funding for public defenders and fair and equal access for all in civil courts, regardless of one's economic reality. (Goff declined to comment before the governor makes a decision.) They are also all white.

For some, this roster of nominees is an example of how merit selection systems disenfranchise minority voters, creating a slate of judges that are mostly white and male. Under the merit selection system, nominees are vetted by a selection committee and the governor makes the final appointment.

Similarly, black community leaders in Marion County have raised fairness questions about merit selection this year, after a Republican-dominated legislature decided to use merit selection to choose Marion Superior Court judges. Most counties choose

judges by direct election. But merit selection has been imposed on three counties, all of which are dominated by Democratic voters: Lake, St. Joseph and Marion.

“The community has lost its voice,” said Rev. David Greene, a pastor at Purpose of Life Ministries.

Supreme Court Chief Justice Loretta Rush, who heads the Supreme Court selection committee, said despite recruitment efforts, the pool of applicants was not as diverse as she would like. She acknowledged the state needs to do a better job of fostering diversity at the trial court level, and on the Supreme Court.

Still, the slate of nominees offers one promising sign for advocates of diversity: For the first time, the Supreme Court could have two women serving at the same time.

Only two women have served on the Indiana Supreme Court: Rush, and Myra Selby, who was the first woman appointed to the court, and the first black justice. If chosen, Carmichael would serve alongside Rush as the third woman ever selected.

Carmichael noted that Rush’s service adds a necessary perspective for the court. But she said: “I think adding another female voice to the court is important.”

The court doesn’t look like the people it serves

Lack of diversity has long plagued Indiana courts.

In 2010, half of Indiana’s population was female, but only about 21 percent of sitting judges were women, according to an analysis by the Indiana Law Review. And while about 16 percent of the state’s population was non-white, according to the article, only seven percent of Indiana’s judges were not white.

In 2016, nearly half of the criminal cases on which the Supreme Court issued an opinion involved minority defendants, according to an IndyStar analysis.

“Diversity of many kinds is important for the court,” said Selby, who served on the Supreme Court from 1995 to 1999, “so the court reflects the makeup of the citizens that the court is sworn to represent.”

Selby recalls students touring the Supreme Court during her tenure on the bench. Portraits of former justices hang on the walls - white men, in nearly all cases. The students noticed, with some saying, “Where are the girls?”

“Two is a reasonable improvement,” Selby said, referring to herself and Rush as the only two women appointed to the court, “but still not when you look at that room where every wall, save one, are male and white.”

Greene, vocal in his opposition to the bill signed last month by Holcomb that required Marion County to no longer elect judges, noted that in St. Joseph County, where merit selection has long been practiced, all Circuit and Superior Court judges are white. South Bend, the county’s largest city, has a sizable minority population.

“We’re losing our right to vote for our judges, so we end up with a less diverse bench, as we’re getting right here in the Supreme Court,” Greene said. “You lose diversity of thought.”

But those who support selecting rather than electing judges note that the process allows judges to take the bench free of conflicts of interest that can come with elections. Carmichael pointed out that multimillion-dollar elections arise in states that elect their Supreme Court justices.

Still, both Carmichael and Kincaid highlighted the importance of an inclusive bench with a wide swath of perspectives.

“I think whoever constitutes its body at any time has a great responsibility to be fair and impartial,” Kincaid said, “to treat all people with respect and fairness.”

‘We have a seat for you’

The American Bar Association estimates that in 2013, there were more than 15,000 active lawyers in Indiana. Yet only 21 applied for the recent Supreme Court vacancy.

Of those, only two applicants were not white. Six were women.

Those numbers can help explain the lack of diversity in the trio of Supreme Court nominees, said Joel Schumm, a law professor at the Indiana University Robert H. McKinney School of Law.

“A tiny fraction of lawyers who could have applied for the Supreme Court applied for it,” he said. “Some of it is motivated by political party.”

Schumm said many potential applicants will opt out if they are not a member of the governor’s party. Because of this, in the past, he said, Democrat governors have seen more diverse applicants for the state’s high courts.

“Part of the thinking,” he said, “is that the commission wants to send people to the governor that the governor would consider appointing.”

However, this year, Schumm noted, Carmichael, a Democrat, made it to the final round, a promising show of bipartisanship that hasn’t happened in more than 30 years.

Another issue, those familiar with the legal system say, is a lack of diversity in the career pipelines that lead to the Supreme Court.

Only about 1,100 Indiana attorneys are not white, Rush noted, citing self-reported figures from Indiana’s Roll of Attorneys. And just 24 percent of Circuit and Superior Court judges in Indiana are women, according to an IndyStar count.

“I can’t think of a facet of Hoosier life that we don’t see in the courtrooms, so diversity plays in on that,” Rush said. “We want to make sure people trust the judiciary.”

Rush sees promise in the future, though.

About half of the law students at IU McKinney School of Law are women. And though only two women have served on the Indiana Supreme Court, more women are

serving in high-profile judgeships in Indiana than ever before. Rush pointed to Judge Robyn Moberly, who is chief judge of the federal bankruptcy court in Southern Indiana, and U.S. District Judge Jane Magnus-Stinson, who serves as chief judge of the U.S. District Court of Southern Indiana.

The state has also graduated more than 500 students from a state pre-law school program that seeks to recruit and prepare minority and low-income students for law school. Rush hopes the program, Indiana Conference for Legal Education Opportunity, or ICLEO, will expand the state's non-white legal community.

Rush has spent time with many of these students. She has taken some of them through the courtroom, and encouraged them to sit on the bench, where the justices listen to oral arguments.

"I want you to imagine yourself here someday," she tells them. "We have a seat for you."

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