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Greenbrier judge election, retirement raise eyebrows

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Greenbrier Circuit Judge Jim Rowe

On Jan. 30, the last day for candidates to file for election, longtime Greenbrier County Circuit Judge Jim Rowe walked to the Lewisburg post office. He had his re-election paperwork in his hand, he said.

“You going to run?” a passerby yelled at him.

“We’ll have to see after the mail runs,” Rowe allegedly answered.

But Rowe never filed for re-election. Two days later, he wrote a resignation letter, telling Gov. Earl Ray Tomblin that he would retire from the bench at the end of this month.

Some Greenbrier County lawyers and political observers believe Rowe kept his intention not to run secret, in an attempt to give a potential successor the upper hand.

Three people – assistant Greenbrier County prosecutor Jennifer Dent; assistant Kanawha County prosecutor Fred Giggenbach, a Greenbrier County native; and Lewisburg lawyer Jeffrey Rodgers – filed to run for Rowe's spot as judge. All three filed on the final day, Jan. 30.

At least one potential candidate – Greenbrier County Prosecuting Attorney Patrick Via – said he decided not to run for judge after a conversation with Rowe, in which he says the judge clearly stated his intention was to run again.

Rowe says he didn't delay his decision to purposefully mislead anyone.

"The folks who talked with me about my intentions, I said, 'Look, I don't own this seat. If you want to run, you have that right,'" Rowe said.

"I think I was candid about my intentions with everyone who asked me personally," he said. "I was struggling with this. I figured I had until that Saturday [Jan. 30] to make the final decision, and that's what I did."

Lawyers are often reluctant to run for election against an incumbent judge, because if they lose, they'll almost certainly have to try cases in front of that judge.

But all three candidates who filed to replace Rowe on the last day said they didn't know his plans.

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Three days before the deadline to file, Via decided he'd waited long enough to find out Rowe's plans. The Greenbrier prosecuting attorney, like many others, had been monitoring a list on the Secretary of State's website, updated as candidates filed to run.

If Rowe wasn't going to seek another term, Via was going to run for judge. But if Rowe ran for re-election, Via was going to file for a third term as prosecutor.

“Obviously I was not going to run against him,” Via said last week. “He is a longstanding incumbent judge and that was not in any way my intention. But if he had chosen not to run, then, clearly, that election was of great interest to me.”

Similarly interested in Rowe’s decision was assistant Greenbrier County prosecutor Ryan Blake.

If Rowe decided not to run and Via filed for the judge’s race, Blake, who has worked as an assistant about eight years, was going to run for prosecuting attorney. Blake said he would never run against his boss, Via, whom he described as his mentor and close friend.

The day after Via met with Rowe, Blake also met with him in an attempt to learn his plans.

Both Via and Blake said that Rowe described a period of uncertainty about why he had not yet announced his election plans.

But both Via and Blake said that, during their conversations, Rowe clearly stated his intention was to mail in the filing in order to seek another term.

It was quickly after that meeting that Via filed to seek another term as prosecuting attorney. He has no opposition on the ballot.

It wasn’t until Feb. 1 that Via and Blake, along with several others, found out that Rowe hadn’t filed for re-election. The judge announced it that morning in open court, they said.

“My word would be surprised,” Via said, “in terms of describing an emotion.”

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The passerby who asked Rowe if he was going to run on the way to the post office was a friend of Paul Moya, chairman of the Greenbrier County Democratic Executive Committee.

“I wasn’t one that asked him. I was assuming he was going to run, but with it being nonpartisan, it’s hard for me to even speak about it,” Moya told the Gazette-Mail.

For the first time, judicial elections in West Virginia are nonpartisan. In previous elections, Rowe has run as a Democrat, and the three people running to replace him, Dent, Giggenbach and Rodgers, are also Democrats. Via, the prosecuting attorney, is a Republican.

“There were those sitting in anticipation wanting to further their political careers,” Moya said. “But they didn’t know which way to move – until it was do or die.”

Paul Detch, a Lewisburg attorney who has practiced for 44 years, said he was also in the courtroom the morning Rowe said he hadn’t filed for re-election.

“It was that Monday in court and right off the bat I’m up with Jennifer Dent, the assistant prosecutor, and the first thing she says to me is, ‘I sent my thing in but since Judge Rowe is running, I’m going to withdraw it,’” Detch recalled.

“Like an idiot, I stand up and say to the judge, ‘Miss Dent has indicated she’s going to withdraw her [election filing] because you’re running for office.’”

Rowe “looked at me and said, ‘No, I’m not running,’” Detch said. “You could’ve knocked me over with a feather.”

Many attorneys were also surprised by Rowe’s sudden news that he had decided to abruptly resign and retire with nearly a year left on his term.

“We expected the judge would have given us [the county’s Democratic committee] a heads-up,” Moya said.

Besides his nearly 20 years as a circuit judge, Rowe ran for state Supreme Court in 2004 and 2012 and served four terms in the House of Delegates, including a stint as majority leader.

“Following a distinguished judicial career, it is somewhat disappointing that Judge Rowe chose to make his final exit in such a surprising manner,” said Detch. “Members of the Bar had ambitions that now must be delayed. But above all, it is a shame that the public is not necessarily going to be able to have the best, most qualified people, because they were not forewarned.”

In his letter to Tomblin, Rowe, 65, wrote that his resignation is contingent upon his retirement benefits being approved.

Rowe told the Gazette-Mail last week that he made the decision to retire to make room for other attorneys interested in serving in the seat he has held for nearly 20 years. Even though he doesn’t want to finish his term, he said, he does want to remain active in the judiciary in a senior-status capacity.

He said he had been thinking about retirement since he turned 65 in August. “It’s time to give others the chance to add new energy and new ideas and new enthusiasm to the job,” he said.

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Rowe acknowledged attorneys are often hesitant to run against a sitting judge.

“But no one owns the seat – it’s a fair game,” he said. “Anyone can go for it.”

The three in the race to replace Rowe each said last week that they blindly took the chance that the judge might not seek re-election.

Rodgers said he was already in Charleston on the afternoon of Jan. 30 when he decided to file. He had been keeping an eye on the candidacy filings, and as of the last day, no one had filed to run for Rowe’s seat.

“I just had a feeling, ‘Jim’s not going to file or he would’ve filed,’ so I filed,” Rodgers recalled.

He said that in previous elections, Rowe filed early in the open period, as many incumbent judges do. Last month, out of 61 incumbent judges who filed for re-election, only three waited until the last week.

Rodgers used to practice in the same law firm as Rowe in the 1990s, he said. His mother was a longtime secretary for Greenbrier Circuit Judge Frank Jolliffe, who was a circuit judge for more than 25 years and retired in 2006.

Giggenbach said he had also been watching the Secretary of State’s website. With only about an hour left in the filing period and Rowe still not having filed, Giggenbach said he decided to throw his hat in.

“I literally paced the Capitol floor, considering the importance of this decision, while my wife watched late into the last night,” Giggenbach said. “When Judge Rowe had not filed by midnight, I doubted he would mail it in, so I filed for the open position.”

Giggenbach officially moved back to Greenbrier County last week. He had already had a house there, which he visited often, and said had he known Rowe wasn’t going to file, he would have moved back earlier to begin a campaign.

Giggenbach talked about his decision to run with Kanawha Prosecuting Attorney Charles Miller, who he said, approved of him taking time off from work.

Unlike Dent, who said she would have withdrawn from the race had it turned out that Rowe had mailed in his filing, Giggenbach said he wouldn’t have withdrawn.

"If Judge Rowe had filed by mail I was going to go ahead and run, I had decided," Giggenbach said. "I would not have withdrawn. Simply because of the chance that other people could withdraw – including Judge Rowe," he said with a laugh.

Dent did file her application by mail. The Secretary of State's office received it several days after the filing period had closed, but the envelope was postmarked as being sent Jan. 30 from Covington, Virginia, which Dent said is near where she lives.

She said she's worked as an assistant prosecutor 21 years, and is confident it is her turn to be judge.

"How did I decide at the spur of the moment I'm going to put my name in there? I think now is my time," Dent said. "I basically just decided, well I'll give it a shot. I think everyone knew Judge Rowe was struggling with making a decision."

Asked about whether she discussed her filing with Via, her boss as prosecutor, Dent said that's not a requirement.

"But you know everybody works together up there and knows what other people's interests are," she said.

"I think it's my time. I think now is my time, it's now or I wouldn't do it. I'm 53 years old, I've got 25 years of legal experience, 21 years as a prosecutor and I basically figured, why isn't it my time?"

Rowe didn't want to make an endorsement last week about who should replace him.

"But call me May 11th," he said, "and I'll tell you who I had been hoping for."

In 1996, Rowe was appointed as a circuit judge to replace the retiring Charles Lobban by then-Gov. Gaston Caperton, about a month before Caperton left office.

"I was the beneficiary of my predecessor retiring before his term ended and have observed during my time on the bench that there are several lawyers in this circuit who have the requisite skill set and judgment to be good judges," Rowe said. "It would've been nice, I guess, if the timing had been such that I could've perhaps had a hand in choosing who my successor is. I think my predecessor to a degree made it easily possible for me to be appointed.

"I'd like to be able to tell my private thoughts [about my successor] but I'm not going to," Rowe said. "It could help them for me to be against them or it could help if I'm for them. ... I have my detractors, no doubt."