



ICJL 2008 Judicial Candidate Questionnaire

1. What steps do/would you, as an elected judge, take to maintain your independence from campaign contributors and special interest groups? Do you impose any limits beyond those required by law on contributions?

ANSWER: I formed a campaign committee consistent with the Code of Judicial Conduct and the Illinois Supreme Court Rules. I chose carefully both my campaign Chairman and my campaign Treasurer. Both served this state with distinction as judges. My campaign's Chairman is Judge Brocton Lockwood, now retired. Judge Lockwood was instrumental in weeding out corrupt judges in Cook County, in what is famously known as the FBI's Operation Greylord. I could not have a better, more conscientious, more ethical Chairman. Judge Lockwood and my campaign Treasurer, Appellate Court Justice Robert Howerton, now retired, take their responsibilities very seriously, and they ensure that contributions to the campaign comport the rules of ethics, judicial conduct, and the dignity of the office. Moreover, the rules permit and indeed encourage judges to recuse themselves from cases where there may be an appearance of impropriety. Every judge should follow that rule, and I certainly pledge to do so as well.

2. Illinois currently has a mixed system of selecting judges. Most are elected by voters, some are appointed to fill vacancies, and others (associates) are selected by other judges. Is this the best way to select judges and to ensure the highest quality judiciary? Are there specific reforms in the judicial selection process that you would like to see? What are the pros and cons of merit selection of judges vs. election? Should sitting judges run for re-election rather than retention?

ANSWER: The present mixed system has served the First Judicial Circuit well, but I would favor additional minimum requirements to the office such as at least five or perhaps even ten years of practice experience, particularly courtroom experience. *(One lawyer in the First Circuit has suggested, only partly in jest, that a candidate for judicial office is not qualified unless he or she has to take a pay-cut to become a judge. What that lawyer is saying is that we need a minimum experience requirement.)* As for vacancies in elected positions, which are sometimes filled by the Supreme Court, the recall of a retired judge or appointment of a senior lawyer to serve as interim judge would be less political and increase confidence in the integrity of the judiciary. Merit selection is often a misnomer for political selection, which is why I favor our current mixed system. The retention of judges verses the re-election of judges balances well the notion that judges should remain accountable to the people while protecting the judiciary from the pressures of political considerations. I therefore favor retention.

3. What would you say to a frustrated voter faced with a ballot with dozens of judicial candidates, almost all of whom are unknown to the voter, about how to cast an informed ballot?

ANSWER: Prior to an election, citizens should work to familiarize themselves with the races and issues on the ballot. This is a civic duty – no less than the obligation to respond to jury duty or the call to arms to defend our country. It can be difficult, and while I do not wish to appear flippant – freedom is not free. Sample ballots can be obtained from the county clerk’s office. Contacting one’s precinct committeemen, talking with friends, neighbors, members of church and family, are all ways to become better informed.

4. Has the recent Supreme Court decision on the First Amendment rights of judicial candidates altered your views on and/or approach to “campaigning” for judicial office?

ANSWER: I remain reluctant to express views on matters because of the risk that some might interpret it as pre-judging an issue that may come before the court. People must understand and should be constantly reminded that the role of a judge is limited – to decide cases of actual controversy based on the facts and the law presented in the courtroom rather than to rule on a case as if it is an outlet for personal political expression.

5. In close cases, judges (particularly appellate judges) often have choices to make as to the direction in which they believe the law should go. In those circumstances, some of the greatest judges have been activists, others have practiced restraint, and others have followed no particular philosophy about the place of the judiciary in our system of separate branches sharing power. Which of these approaches/philosophies best captures your views of the proper role of judges in society?

ANSWER: I am the only candidate in the race for judge of the First Judicial Circuit that had the privilege of serving in the Illinois Appellate Court as counsel to one of the Justices faced with the very scenario that your question presents, a position I held for two years. I know from experience that cases of first impression are seldom so. The history of jurisprudence in this state is vast. Add to that the history of jurisprudence in fifty states and the federal system, and one recognizes that few issues presented are truly novel. Beyond precedent, law journals, legal organizations such as the American Law Institute, and secondary sources abound with information, trends, history and approaches toward unsettled law. It takes effort and experience to dig deep through our history, and when one does so, rarely if ever will that judge have to rely on his or her own vision of the world. A little sweat equity leads to precedent. Lazy judges make for bad law. In the rare occasion that a case presents a truly novel issue, the decision should be drafted in such a way as to limit it to the specific facts of the case at bar. This provides future cases to stand and fall on their own facts and own merits.

6. It is often said that because the judiciary neither commands the sword nor the purse, its power and legitimacy rest on the persuasiveness of its opinions. Yet a large number of cases -- even cases worth large sums of money and presenting significant and/or novel legal issues -- are resolved in the Circuit Courts of Illinois through the issuance of one line orders that fail to give even an inkling of the Court's reasoning. Do you see this as a problem for the judiciary? If so, do you have any ideas on how to remedy the problem? How should orders – particularly those subject to appeal – be written? As a prospective circuit judge, do you believe the parties are entitled to the basis of your ruling including the findings of fact and your application of the law to those findings of fact? If an appellate candidate, please offer your thoughts.

ANSWER: The answer to question 5 is somewhat responsive here. Lazy judges make for bad law. If issues are truly novel, which is rare, a decision should be drafted narrowly and limited to the facts of the particular case. Some decisions are reviewed by the Appellate Court utilizing a de novo standard of review, which means that the circuit court is given no deference. In those cases, the reasoning of the circuit court is not as important as when the Appellate Court must give the Circuit Court deference. Having served in the Appellate Court, I am keenly aware of the difference and would issue rulings accordingly. In all cases, it is critically important that the parties understand the ruling, its reasons, and its rationale.

7. Recently proponents of "Sunshine in Litigation" have sought legislation to eliminate or severely restrict the judicial entry of protective orders in litigation between private parties involving products that may be considered dangerous to the public. Opponents of these efforts argue that protective orders are necessary to ensure privacy, protect trade secrets and foster settlements. What is your view of the role which protective orders serve in the efficient resolution of private litigation? Do you agree that judges should have broad discretion to enter such orders when appropriate? How would you respond to each side of the debate?

ANSWER: This question may in my judgment cross the line of propriety because to comment on a debate about issues that will certainly come before the court is not proper. As a judge, I will consider Motions for Protective Orders based upon the unique facts and circumstances of the case, I will consult the law and precedent, and I will issue my rulings consistent with the last sentence of my answer in Question 6.

8. Are there civil litigation reforms that you would like to see enacted to remedy particular problems that you have detected, either as a practicing lawyer or as a sitting judge? Are there reforms that would benefit the civil justice system? What needs to be changed? Should the enactment of any such changes be the province of the legislature, the Supreme Court or by Constitutional amendment?

ANSWER: The Legislature, the Supreme Court and the amendment process of the Constitution are all appropriate forums or mechanisms for reform depending on the issue presented. It is important that Legislators and Judges fully understand their roles, so as to avoid judges legislating from the Courts and Legislators violating the generational promises that exist in our Constitution.

No citizen should be deterred from pursuing a rightful remedy because the system is too slow and thus too costly. Therefore, I will initiate court and case management mechanisms and techniques that narrow the issues in order to more efficiently resolve controversies and save on the cost and time spent in litigation. Justice delayed can mean that Justice is denied. I have spent my entire career as a Courtroom lawyer, not only practicing law but teaching Courtroom Advocacy and techniques at Southern Illinois University School of Law. With a little hard work, a more efficient, more equitable administration of the Courts is possible.

9. Do you feel that our judicial system adequately deters and penalizes frivolous litigation? If not, what reforms would you like to see?

ANSWER: Lawsuits filed to oppress or harass a citizen or corporation should be dealt with severely and the Circuit Courts are empowered to do so. Unfortunately, lawsuits have become a tool for businesses to interfere with competitors, and those lawsuits can be difficult to deal with, because some businesses are so large that sanctions may not sufficiently deter anti-competitive conduct. Litigation involving

non-compete clauses come to mind. For that, there has to be a legislative remedy. The word "frivolous," however, has become a political term, a soundbite of sorts, that does not describe litigation filed without any basis in law or fact, but rather litigation that has become politically unpopular to one group or another. Be assured, that lawsuits filed without any basis in law or fact will be dealt with swiftly and with the full force given to me as a judge. Those cases will be dismissed. The lawyer and/or parties will be sanctioned, and the lawyer will be reported to the Attorney Registration and Disciplinary Commission of the Illinois Supreme Court.

10. Do you believe the Illinois Constitution precludes legislative establishment of limitations on civil damages? Are there or should there be distinctions among economic, non-economic and punitive damages?

ANSWER: This issue is pending in Court presently, and to comment would violate the Code of Judicial Conduct. As to the latter question, I am not sure what is being asked. Those damages are distinct. The application of the law as to each is different, the rules of evidence as to each are different, and the standard of review as to each is different.

11. The so-called "English Rule," where the loser pays, seems to be a popular concept among Illinois citizens. Do you believe that a "loser pays" requirement in civil cases would help reduce the number of frivolous civil lawsuits filed in Illinois? Are there reasons why Illinois should/should not consider such a rule?

ANSWER: I oppose "loser pay" and "winner pay." Each party should bear their own costs unless the claims and/or defenses are without a basis in law or fact. In the event a claim is brought or defense raised without any basis in law or fact, sanctions will be levied. Many lawsuits, however, come about because of close questions on actual controversies, and "loser pay" would deter people of modest resources from filing valid and meritorious but perhaps legitimately contested claims. Bearing one's own costs does have a deterrent effect while serving to preserve the rights of the not so powerful. Moreover, "loser pay" without "winner pay" may be unconstitutional. "Winner pay," that is, the winner also becomes entitled to having his attorney's fees paid, means that cases of very limited consequence would more likely be filed, and the floodgates of litigation would open wide. Imagine a \$100.00 lawsuit resulting in a \$2500.00 judgment because attorney's fees are tacked on. The present system while not perfect serves us well, especially when compared to the alternative.

12. (For current sitting judges) What do you consider to be the most serious obstacle or detriment to you as a judge in fulfilling your duties? Has the problem been getting worse or has it been lessening in the past few years? How do you deal with this problem now, and what changes would you like to see to alleviate the problem in the future?