



Illinois Civil Justice League

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?

Although I have not set any additional limits beyond those set by state law and rules, I have enlisted the Honorable Philip J. Rarick, a well respected former Illinois Supreme Court Justice, to serve as my campaign chairman to ensure adherence to all ethical standards. In my position as Chairman of the Workers' Compensation Commission I believe I have earned a reputation for listening and dealing fairly and effectively with numerous special interest groups including the Illinois Hospital Association, the Illinois State Medical Society, the Illinois Manufacturers Association, the Illinois Retail Merchants Association, the Illinois and Chicagoland Chambers of Commerce, the Illinois AFL-CIO, and Illinois' major Bar Associations. I plan to continue to conduct myself in the same manner as I have as Chairman.

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?

No system of selecting judges will ever be perfect. In my first couple years in the practice of law I worked in Missouri, which has a more extensive appointment process. The judges were no more or less qualified than judges in Illinois, and though not as public the process is just as political. I tend to favor maintaining Illinois' current system. However, this ultimately is a question for the Illinois legislature and the voters who elect them, and won't be decided by judges.

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?

In my circuit and most other circuits outside of the Chicago area this is not quite as problematic as there generally are only a few judges elected in any

one election cycle. I would suggest voters read as much as they can and become as informed as possible about candidates through their websites, which have become common to elections and consult those groups they feel are credible in commenting upon and evaluating candidates for election.

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?

My primary guide will be Illinois campaign statutes and rules and any court opinions interpreting them.

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?

I believe that at the trial level a judge's duty is to ensure that a fair hearing is conducted and apply the law to the facts without concern for creating precedent. However, at the Appellate and Supreme Court levels their decisions create precedent to serve as guidance to the state's trial judges and thus must carefully consider the effect the decision in a case will have on the direction of the law. In doing so, the courts must carefully consider the legislative intent of a law and not interpret it in a manner that was not intended.

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.

I do believe one-line, hand-written orders resolving major issues do present a problem for the judiciary. Such orders erode the public's confidence that courts give cases the consideration they deserve even though the decision may be correct. As an arbitrator at the Workers' Compensation Commission, I was required to write findings of fact and conclusions of law on all cases tried before me. I believe that Circuit Judges should write orders substantiating the basis of their ruling if the ruling is dispositive of the case. I do not believe that judges should become bogged down in rendering detailed orders in the numerous case management decisions they render on a daily basis.

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?

While fostering settlements should be promoted and protections of legitimate interests are valid, judges' discretion in entering protective orders should be narrowly tailored to balance concepts of open court proceedings. Any changes to the presumption of open court proceedings should be authorized through the legislative process.

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?

Our civil justice system needs to be continually monitored to better serve the needs of the public. Reforms can come in many forms whether by legislation, Supreme Court Rules or even local rules as has occurred recently in the Third Circuit. An area that would be most helpful to our courts would be the complete computerization of our case filing systems. As Chairman of the Workers' Compensation Commission I have overseen the development of a website that contains case status information on cases as far back as 1980; a medical fee schedule that lists medical provider reimbursement levels by ZIP codes throughout the state; complete information on employers' insurance carriers; monthly dockets, calendars, and trial settings; and numerous other items, which has resulted in over 1 million hits to the site per year.

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

I feel that any discussion of frivolous litigation should not only contemplate the frivolous filing of claims, but also the frivolous defense of legitimate claims. Although it would be hard to quantify, as Chairman and an arbitrator at the Workers' Compensation Commission I know that both situations occur. I believe that existing rules and laws do provide the tools to deter such conduct although they may not always be invoked.

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?

While laws passed by the legislature are initially presumed to be constitutional, ultimately it is the Illinois Supreme Court's duty to rule on the constitutionality of any statute including limitations on damages.

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?

A loser pays rule would discourage frivolous lawsuits. I also believe that it would have a chilling effect on the filing of legitimate lawsuits where the outcome of the lawsuit is not clear. For that reason I do not believe Illinois should adopt such a rule.

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?

Not applicable as I am not currently a sitting judge.