

ICJL 2006 Judicial Candidate Questionnaire Response Eugene G. Doherty

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?

The most important steps to maintaining judicial independence are taken in the courtroom, where the focus must always be on deciding the case on the basis of the facts presented and according to the law. On those occasions when a well-meaning attorney or litigant might mention something in court regarding the upcoming election, I politely but clearly inform them that I cannot discuss political matters while on the bench. This helps demonstrate to those appearing before me that my status as a candidate for office is completely separate from my duties as a judge. I believe that, as a practical matter, Illinois law regarding contributions to judicial campaigns is adequate. Should I receive a contribution which I felt was disproportionate or excessive, I would review the situation to determine if it should be returned.

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?

These questions present, for the most part, policy judgments which should be resolved by the political branches of government. It is not the role of a judge to stake out positions on such matters.

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?

My advice would be to seek out information on the judges from those in the best position to know their qualifications. Chief among these sources would be the ratings of the bar associations, which take great effort to rate the candidates; the

Illinois State Bar Association surveys its membership on contested judicial elections statewide.

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?

No. I firmly believe that a judge should not stake out positions on controverted political issues because the judiciary is not a political branch of government. If the issue is one which may come before the court, then the judge must ensure that he or she has an open mind on the issue if it is presented in court. If the issue is one which will not come before the court, then for what purpose would a judge offer his or her views on it? It would be easy for judicial candidates to pander to interest groups by stating positions on issues which they know have nothing to do with their offices, but it degrades the process to do so.

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 the proper role of a judge is, as Chief Justice Roberts put it, that of an umpire: not making the rules, but simply calling them as he or she sees them. That being said, there are instances in which the legislature or the Constitution may vest a certain degree of discretion in the trial judge. In those situation, it is important to be guided by the wisdom of higher courts, and with regard to the factors to be considered in making a particular discretionary decision. There are very few situations in which a trial judge's decision will be completely untethered from the directives laid down by the legislature or higher courts. In those rare instances, one must decide the case with an eye toward both practicality and justice.

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 err on the side of thorough, written decisions in cases which present a legal question which requires any degree of research. I want the parties to understand that I thoroughly considered the case and decided it on the basis of the law and the facts. This is what gives the judiciary its legitimacy in the eyes of the public: it decides cases on the basis of neutral principles applied to each party's case with due consideration.

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?

If presented with such an issue, I would first look to the current state of the law as specified by the legislature or higher courts. In considering such an issue, two competing considerations must be kept in mind. First, it is the policy of this State to promote settlement. Due consideration must be given to the parties' requested terms in reaching a settlement. Second, it must also be remembered that the parties are not the only ones with an interest in the matter. Our courts are a public forum, doing the public's business, at the public's expense. The Illinois Supreme Court has spelled out a fairly strict standard to meet in terms of sealing court files. These considerations would have to be weighed against each other should the issue be presented to me.

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?

Substantive changes to our civil litigation system should come from either the legislature or from higher courts. It is not the role of a trial judge to address matters of competing public policy concerns.

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

Supreme Court Rule 137 empowers a judge to assess appropriate sanctions against a party or its attorney for filing pleadings which are not reasonably well-grounded in fact or law. Whether this is sufficient power depends on the judge's willingness to use it. Requests for sanctions are not common in my court, but I have granted the motion when I concluded that a party's deficient pleading went beyond mere mistake and represented a clear failure to present a good-faith claim.

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?

Whether there should be a limitation on civil damages is a question which should be resolved by the political branches of State government. Whether the legislature can constitutionally adopt such limitations is a question which could come before my court, and I believe it would be improper to offer an opinion on it. Should the issue be presented to me in court, the parties must be confident that I am open to their arguments and have not prejudged the issue.

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?

Whether Illinois should adopt a "loser pays" rule is a policy decision that should be made by the political branches of State government.

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?

The greatest burden on our courts is volume, something which is true in both our criminal and civil courts. It becomes a challenge to administer justice with appropriate quality when it must be dealt out in such large quantity. I am a firm believer that our judicial system must implement greater technological improvement to its case management procedures. Technology has improved productivity in almost every private sector business, and there is no reason to believe that it cannot do the same for our courts.