



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?

Maintaining judicial independence is a crucial function of being a judge. Anytime you have had a prior relationship with an attorney, whether in connection with your election or otherwise, you must address the question of whether your relationship could give rise to an appearance of impropriety. I have not established limits beyond those required by law. However, every situation concerning ethical issues in campaign financing would need to be addressed on an individualized basis.

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?

The selection of judges in Illinois, as with every other approach, has its shortcomings. Ultimately, I believe public accountability has a real value. I believe the current system works well in DuPage County, while at the same time I recognize that some Circuits have experienced problems with nominating qualified judicial candidates. Having judges run in partisan political campaigns creates many ethical issues unique to judicial races. There are obvious tensions between public election, which provides direct public accountability, versus processes which subjectively assess the qualifications of each candidate by persons familiar with the candidates. Regardless of the system, truly "objective" assessment and selection is easy to describe, yet hard to implement in a truly fair and non-political manner. I believe requiring judges to run for re-election would only serve the purpose of further involving judges in partisan politics, which seems to give rise to many of the criticisms we hear today.

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?

The only solution seems to be the wide dissemination of background information, combined with voters educating themselves concerning the candidates. Political parties play a major role in the current system, which can be both good and bad, depending on your perspective. Political parties have a responsibility to nominate qualified attorneys to ensure that voters have genuinely qualified candidates to select from. Give the current situation, local political organizations can be, and must be, a conduit for information on judicial candidates.

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?

There is no doubt that the decision provides some clarity about the limits on the expression of personal views, as opposed to making public pronouncements concerning legal issues. It does appear to have altered how candidates address certain issues while "campaigning" for a judgeship. But there remains a compelling public policy need to permit a candidate for public office to articulate some information about his core personal beliefs in order to properly inform voters.

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 legislature is the appropriate body for the crafting of our laws. When Judges become "activists" they usurp that power and thus weaken our government of divided powers. That having been said, I am also a realist. A trial judge must adhere to the decisions of the higher courts, and the courts of appeal are often called upon to establish precedent or re-examine an area of law. While there may be times to re-visit prior rulings, I believe it should be done sparingly and from a presumption of judicial restraint. Lower courts and practitioners must expect that existing precedents will only be abandoned for truly compelling factual or public policy reasons.

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.

It is vital that rulings of the court are clear and concise. Clarity requires clearly stated findings of fact which provide a proper record for appeal.

Ambiguity helps neither side in the dispute, and it does not help the Appellate Court to do its job. The trial court should identify and document each relevant precedent that the court is relying upon in reaching its decision, particularly when specifically requested by a party to the litigation.

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?

Protective orders have a proper role in some litigation. A proper balance can be drawn between the public's right to know and the protection of a legitimate private interest of a party. Judges must have some discretion in protecting these sometimes conflicting interests. However, the underlying presumption must be to protect the public's right to know and a rationale for overriding that presumption must be compelling.

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?

All procedural rules must be constantly reviewed and examined to ensure that the system is serving the interests of justice. While I am not proposing a particular reform, I would propose that we do all that we can to foster debate and review. We must encourage innovation and find means to improve the system. These innovations must be pursued in both legislation and through rule changes by the court. Constitutional amendments are certainly an option for change, however I would caution against populist changes in the Constitution to address a particular issue of the day. Often we find many unintended consequences to such precipitous actions that try to respond to a perceived wrong.

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

The existing rules and attorney disciplinary procedures should be adequate to prevent frivolous litigation and to deter such filings if they are properly enforced. But I applaud the efforts of the legislature to reform and improve the civil justice system. I am interested to see how the appellate courts will handle the pending challenge to the medical malpractice reform legislation. Perhaps the legislature will have an opportunity to fine tune any portion of the statute that does not survive judicial review.

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?

There are distinctions between economic, non-economic, and punitive damages. I cannot offer a prediction on how the Constitution will be interpreted. However, as a statement of personal belief, it is my philosophical opinion that the law should provide some limitations which recognize fully the consequences of limitless liability in some cases.

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?

I do not have an opinion on the "loser pays" proposal. But I do understand the real cost of frivolous litigation to both the directly affected parties, as well as the costs to society. However, I am cautious about potentially denying persons who believe they have been wronged an opportunity to pursue their claim. I would be more amenable to rules and policies that police the legal profession in this regard.

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 single obstacle to fulfilling my job as a sitting judge is the bad practice habits of incompetent or unprepared attorneys. Fortunately, I have only experienced this occasionally. Often this issue arises with young and inexperienced counsel and can be dealt with in light of that reality. The more awkward situations arise with attorneys who are doing something that they have no experience doing, and should know better; or the attorney who truly appears to be professionally incompetent. There are many different ways to deal with this problem and the individual facts largely dictate the approach.