

## 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:

The unfortunate reality is that campaign fundraising is necessary to compete in judicial elections. Ideally, public financing of judicial campaigns would eliminate the public perception of a quid pro quo between donors and judicial candidates. However, until public financing becomes reality, existing laws prohibiting a judicial candidate from soliciting or accepting campaign contributions, and the disclosure of contributions to a judicial committee, is the best system available at this time. The Code of Judicial Conduct with respect to campaign fundraising and contributions are strictly followed by my committee.

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:

Although Illinois has a mixed system of selecting judges, for each system there is an evaluation process. The process is required for individuals appointed to fill vacancies, and for individuals seeking associate judgeships. Individuals running for elections may choose to submit to the evaluation, and most do..

It is anticipated that the detailed questionnaire required for these evaluations, allows the committees and bar associations to conduct thorough investigations on the backgrounds and credentials of potentials of jurists. The process, while not perfect, appears to render objective recommendations, based on stringent investigative interviews.

The pros of merit selection would ideally provide a mechanism to select the best and brightest to the judiciary, without regard to race, sex, political affiliation, national origin or sexual orientation, but rather based strictly on experience and performance as viewed by colleagues and judges before whom the applicant has appeared.

The cons of merit selection is the fear , whether real or perceived, that diversity on the bench would be impaired.

I believe that sitting judges should run for re-election rather than retention. Re-election would give voters the opportunity to consider the record of the incumbent and compare other candidates' positions to that record. The retention process affords voters no real opportunity to replace a sitting judge. Should a judge not win retention, it is the judiciary who appoints a replacement, and not the voting community. So the voting community must wait for years to be able to consider a judge of their choice.

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:

Voters confronted with unknown judicial candidates should be encouraged to consult with bar associations who have evaluated these candidates. They may also be referred to endorsements given by organizations and the media. If time permits, the voter should be encouraged to sit in the courtroom of any sitting judge they are considering to make first hand observations of the temperament, knowledge, and abilities of the judge being considered.

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:

It is important that Supreme Court decisions have recognized that a candidate does not lose the protection of the First Amendment when he or she runs for a judicial seat. The previous restrictions on judicial candidates had a chilling affect on a candidate's political speech. I do not believe that the decisions have affected the expectations that judicial candidates will conduct themselves and their speech with dignity and respect.

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:

In close cases, and consistent with first amendment rights, I believe a judge has the responsibility to discuss the direction in which he believes the law should go. While a judge is required to follow the law as it exists, he or she has the authority and responsibility to make findings, give reasons for his views, and express his beliefs regarding the directions the legislature should consider. In some instances, where the law at hand appears to violate state or federal constitutions, the judge has the authority to declare that statute or law unconstitutional, providing his findings of fact, reasons, and legal support for his position. My philosophy is consistent with being an activist with respect to laws which I view as violating the constitution.

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? Is 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 you application of the law to those findings of fact? If an appellate candidate, please offer your thoughts.

ANSWER:

One line orders disposing of a case, either on motion for summary judgment, or on a motion to dismiss, are problematic for purposes of appeal. I believe that litigants are entitled to know the reason(s) the judge ruled as she did. Parties are entitled to well written orders which provide the findings of fact and the applicable law which formed the basis for the judge’s order.

7. Recently proponents of “Sunshine 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:

Proponents of Sunshine in Litigation believe that corporations are not encouraged to correct dangerous problems when it views the costs of settlement of injury or fatality cases may be less costly than making corrections necessary to eliminate the dangers of the product. They believe that the only way to get the corporation's prompt and proper attention is to disclose public health and safety violations of the defective product.

Opponents of Sunshine in Litigation believe that opening files to discovery can cause a loss of public trust, loss of profit, and the trickle down effect of loss to the economy by displacing workers.

I believe there is a great danger in failing to provide public information regarding public health and safety hazards. I believe that judges are required to make a factual determination, on a case by case basis, as to whether the public interest in disclosure outweighs any legitimate interest in secrecy. Recognizing trade secrets as legitimate matters for protective orders, I do not believe protective orders are appropriate if used to hide public safety information, when such information is neither a trade secret nor proprietary.

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:

Over the past few years, politicians, legislators, and the Supreme Court have weighed in on tort reform debates. Proponents claim that the present system is too expensive, that meritless lawsuits clog the courts, and that trial lawyers receive unusually large portions of the punitive damages awarded to plaintiffs. Opponents say that the proponents exaggerate the costs and ignore the benefits, one of which is to encourage corporations to produce safer products, and to encourage more safe and effective medical practices.

The current dispute seems to be on the issue of whether there should be caps on awards. I do not believe that there should be caps. I believe that each side of the litigation should be free to attempt to persuade the jury, who is in the best position to make an unbiased assessment of what an appropriate award should be.

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

ANSWER:

I do not believe that attorneys intentionally bring frivolous litigation. The code of professional responsibility requires an attorney to make a reasonable investigation before filing suit. The code of civil procedure provides a mechanism for attorneys to engage in pre-suit discovery to determine whether a claim is viable. Should the litigation prove to be frivolous, and the frivolity should have been discovered prior to filing suit, then appropriate sanctions can be brought against the attorney. I do not believe that additional reform is necessary to deal with this issue.

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:

I am aware the United States Supreme Court has determined that the Constitution places limits on punitive damages in the seminal case of *BMW v. Gore*, 517 U.S. 559 (1996). The views expressed in *BMW* may clear the way for the Illinois legislature to establish such limitations. There are presently distinctions among economic, non-economic and punitive damages, and attorneys should be free to present and argue the appropriateness of these damages to a jury.

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 do not believe that a “loser pay” rule would reduce the number of frivolous civil suits. As stated above I do not believe that attorneys intentionally file frivolous suits. I am not convinced that “loser pays” is an appropriate sanction for bringing litigation, particularly in cases involving public interest or cases where the party is attempting to persuade a change in established law. I am in favor of cost adjustments where a proffered settlement has been rejected and the prevailing party does worse at trial, and I think that is the direction Illinois is leaning.

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?

ANSWER:

The most serious obstacle in performing my duties is the availability of affordable resources to refer parties for assistance...this is true regardless of the division where a judge sits. In the traffic division, for example, defendants charged with DUI's are sentenced to costly treatment that most cannot afford to pay...when they don't pay, the agreed disposition is then revoked. Another example is in domestic relations, where the costs of counseling and supervised visits must be paid by the parties, many of whom are without the financial resources to pay, then when they don't pay they may be held in contempt for failing to abide by the court's order. The social services offered to the courts have become big business, with costs that are prohibitive to the average individual appearing on matters. I do not know what the answer to this problem is, but I do not believe that poor people should be penalized for not having the funds to obtain court ordered services