

Margarita Kulys Hoffman

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?

I do not impose any limits beyond those imposed by law. As a judge, I strive to maintain independence from campaign contributors and special interest groups by insulating myself from information regarding the names of the contributors and the amounts of the contributions. Insulation can be accomplished by establishing a campaign committee that performs fund-raising functions and files all required reports with the State Board of Elections.

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?

I think that the associate judges and judges appointed to fill vacancies are generally high quality judges. I do not believe that elections are the best way to ensure the highest quality judiciary because, unfortunately, many of the voters have no information about the judicial candidates and vote based upon such factors as sex or ethnic heritage or do not vote at all.

The pros of merit selection are that judges would not have to engage in the politics of election and could be selected based upon their qualifications. The cons are that the people would lose a voice in selecting their judiciary.

I do not believe that judges should run for re-elections rather than retention. A judge should be retained or not retained based upon his or her performance. If judges were required to run for re-election, many judges could lose their positions not because of their performance, but because of factors irrelevant to the job such as ballot name. Also, I believe that requiring judges to run for re-election would further politicize the process and could affect a judge's independence.

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?

I advise voters to examine the candidates' qualifications and to obtain bar association rating for the 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?

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No.

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 legislative branch should make the laws and that the judiciary should interpret the laws. In close cases, judges should look to the public policy of the State, as expressed in its laws, as to the direction in which the law should go.

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 believe that litigants are entitled to know the basis for a judge's ruling so that they can understand the ruling. This can be done either in a memorandum order or on the record.

When I issue decisions which involve a significant issue, I provide a full basis for my ruling and address all of the issues raised by the parties. Having practiced appellate law for approximately 15 years, I believe that this permits the parties to evaluate their appellate options and also assists the courts of review in reviewing the decision.

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?

Under the law, individuals and companies that sell products to the public owe duties to the public. If those duties are breached because the products are dangerous, I believe that the public has a right to know. I also believe that court proceedings and files should be accessible to the public.

I think that there are instances in which protective orders may be appropriate, such as when trade secrets are involved, but that they should be used sparingly. The judge hearing the specific case would be in the best position to determine if a protective order is truly necessary based upon the circumstances of that case and, consequently, judges should have some discretion in that regard.

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?

I believe the civil justice system should be reformed to reduce costs and delay. While due process is obviously concern, litigation often gets drawn out with unnecessary discovery and motion practice, increasing both the cost of the litigation and the time period within which a case is resolved. It would be difficult to regulate the cost of litigation either through legislation or by Supreme Court Rule. Reforms regarding the discovery process or the progression of cases, however, should be enacted by the Supreme Court since they would affect the workings of the courts.

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

I believe that the tools to deter or penalize frivolous litigation are present, they just need to be utilized.

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?

No.

Yes.

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 believe that such a rule could help reduce the number of frivolous lawsuits filed, but it may also inhibit plaintiffs from pursuing legitimate lawsuits.

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?

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One of the more serious obstacles to a judge in fulfilling his or her duties is administrative and involves files that are incomplete. When orders and pleadings filed by litigants are not in the files, a judge either cannot adequately prepare for a hearing or wastes time trying to locate documents. This problem has been getting worse in recent years.

This problem can partially be remedied by requesting courtesy copies from the litigants. This is an issues that should be addressed by the clerk's office and may be possibly be alleviated through electronic filing.