

**Independent Voters of Illinois-Independent Precinct Organization**  
**2012 APPELLATE COURT QUESTIONNAIRE – page 1**

DATE 1/11/12

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CAMPAIGN MANAGER Peter Hayes

***Please provide the following background information:***

Elective or appointive public and/or party offices previously held including dates. The La Grange Park Village Board appointed me to serve, as a volunteer, on the La Grange Park Police Commission. I served on this commission since 2004. I have held no other public or party offices.

Other elective offices for which you have been a candidate. None

Principal business, educational, professional and civic activities of the past ten years. I work as an Assistant Public Guardian in the Appeals Division. I handle child protection cases, private child custody disputes in which the court appoints a child representative, and disabled adult guardianship cases. Most of my cases there are before the First District Appellate Court, although I also have handled cases in the Illinois Supreme Court and the Seventh Circuit. I present at, and participate in continuing legal education courses on an ongoing basis. I help train new attorneys and I team teach a course in advanced legal writing for the Public Guardian. For the La Grange Park Police Commission, when called upon to do so I participate in interviewing for hiring and promotion. Rarely, the Commission is called upon to address discipline matters. I also volunteer for the Community Park District of La Grange Park as a girls softball coach, for our local school as a volleyball coach, and as a cook team member for BEDS, a network of shelters in our community.

What subjects have you studied and what experience have you had which will be most helpful to you in the office you seek?

I earned a law degree from Northwestern in 1989 and a bachelors in psychology from Loyola in 1986. I began my career as a criminal prosecutor in the criminal appeals division at the Cook County State's Attorney's Office, and continued in criminal appeals at the Illinois Attorney General's Office. I had a dispute with then-Attorney General Roland Burriss over the ethical duties of a criminal prosecutor in the Rolando Cruz case, and

resigned in 1992 rather than ask the Illinois Supreme Court to execute Cruz because I did not believe that he had a fair trial. Cruz eventually won a new trial and an acquittal. The Cruz case, however, did not end my career in public service. In 1993 I went to work at Juvenile Court for the Cook County Public Guardian representing abused and neglected children and other children in private child custody disputes, as well as working on guardianships of disabled adults. I belong to the Appellate Lawyers Association. Most of my current cases are before the Illinois Appellate Court, where I first presented argument in 1990. The Cruz case, and the many other wrongful conviction cases in Illinois, convince me of the importance of meaningful appellate review. I attended law school for the express purpose of public service, and I would welcome the opportunity to continue my service by joining the court.

Please detail your prior political activity, if any. Give positions held, dates, organizational memberships, role you played in political campaigns. Prior to my own campaign, which began in December 2011, I have held no positions in political campaigns or in political organizations.

Please state any evaluation ratings you have ever received for any judicial office by any bar association. List the office and the date of the election for which the evaluation was made. Please use the following format:

<i>Date</i>	<i>Position</i>	<i>Bar Association</i>	<i>Rating</i>
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*I submitted an application for evaluation to the Chicago Bar Association on January 4, 2012, and have not yet been evaluated. I plan to submit an application for evaluation to Alliance of Bar Associations through the Illinois State Bar Association on or before January 17, 2012. I can forward ratings upon receipt if requested.*

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2012 APPELLATE COURT QUESTIONNAIRE – page 2**

1. What do you believe are the major strengths and weaknesses of the Appellate Court? Would you change the manner in which the Appellate Court functions?

Generally, I think the Appellate Court has many strengths and fulfills its role very well. Whether elected or not, I intend to encourage the Court to remedy one particular weakness: even though many of the documents contained in a record on appeal do exist elsewhere in electronic format, the record itself still consists of paper. Making more parts of the record on appeal available to the Court, to counsel, and to the parties in a write-protected electronic format could improve accuracy and efficiency.

2. Please discuss the Appellate Court's practice of assigning each case prior to oral argument to one member of the panel to write the opinion?

From my discussions with Justices, primarily at Appellate Lawyers Association meetings, I gather that this practice sometimes poses a problem, but not an insurmountable one. Sometimes the assigned justice and the other panel members do not agree, and the assigned justice dissents (or concurs separately), and the panel needs to assign another justice to write for the majority.

3. What would be the reasons for not publishing an opinion?

Illinois Supreme Court Rule 23 sets out the criteria for the court to consider in deciding whether to publish an opinion or not. Recently amended, Rule 23 now provides that “Rule 23 orders” (previously not published) are now publicly available. In my opinion, Rule 23 has worked pretty well. We do not need hundreds or thousands of published opinions that say the same thing, and the Court generally publishes an opinion if something new or different about a case merits publication, if a conflict exists in the districts, or if the case clarifies something important. In instances where the parties see something new or different, but the Court did not issue an opinion, they can timely seek to publish a Rule 23 order. Recently, though, a colleague came across a Rule 23 order that would have clarified a delinquency question, and we lamented the fact that the Court did not publish an opinion instead of issuing a Rule 23 order. Hopefully, alert parties and the Court will not miss opportunities to clarify the law with published opinions in the future.

4. What is the role of dissent in an intermediate appellate court? Under what conditions would you write a dissenting or concurring opinion?

A clear and concise dissent in an intermediate appellate court can prove important in different ways. First, a good dissent can help a party petition for leave to appeal to the Illinois Supreme Court. Second, a good dissent can help counsel in future cases to make arguments that may eventually win the day in another case. I would dissent or concur anytime I thought it necessary to explain a difference of opinion.

5. What procedural changes, if any, do you think would be helpful to ensure that Appellate Court decisions in child custody disputes are made effectively and promptly?

I work on many Rule 311 expedited child custody appeals, and in my cases the Court usually meets its goal of deciding within 150 days. This change has made a big difference for children who may remain in limbo pending child custody appeals, as these cases used to really languish. There is, however, some room for improvement still. I think that moving toward use of write-protected records on appeal (electronic transcripts and exhibits) could increase the speed with which parties file briefs and allow the Court to decide more cases more quickly. Electronic records could be made available to all the parties at once, and appellees would have access to the record more quickly this way.

6. The Lockstep Doctrine that the protections of the Illinois Constitution's Bill of Rights must be interpreted in lockstep with the U.S. Supreme Court's interpretation of parallel provisions of the Federal Bill of Rights please comment.

In *People v. Caballes*, 221 Ill. 2d 282 (2006), the Illinois Supreme Court explained when to apply what it calls the “limited lockstep approach.” This approach does not apply to unique provisions in our Illinois Constitution (such as the express right of privacy) for which there is no federal parallel, nor does it apply when provisions differ in some significant respect. *Caballes* instructs that the limited lockstep approach should be followed when a provision of the Illinois Constitution has an identical or nearly identical parallel provision in the U.S. Constitution. Under this approach, the state court looks first to the federal constitution. If federal law provides no relief, then the state court should examine the Illinois Constitution to determine whether a departure is warranted. To do so, the state court should look at language differences (if any), at debates and committee reports from the Illinois Constitutional Convention, and at our state’s traditions and pre-existing law. *Caballes*, 221 Ill.2d at 309-310

7. What is the appropriate role of economic analysis, and particularly cost benefit analysis, in appellate jurisprudence?

Although some courts seem inclined to conduct cost benefit analysis often, it seems to me that appellate court cases need to be decided application of the law to the record before the court. Often the record does not really contain adequate information for an informed cost benefit analysis. In such cases, it may be best for the Court to suggest that the legislature act.

8. What are the pros and cons of an elected, an appointed, or a hybrid system for the judiciary? How might the Illinois courts benefit or suffer from a change?

In Illinois, judicial appointments come only from the judicial branch, and there is no other branch of government to provide a balancing check. Fortunately, we do see many fine judges appointed, but that is not always the case. Judicial elections also prove cumbersome, especially as many voters forego judicial races. Others vote without adequate information. Again, we do see many fine judges elected, but we have also elected judges who perform poorly. I think that there is room for improvement in both the election and appointment processes, and that Illinois would benefit from an improved hybrid system

9. How has mandatory sentencing affected the criminal justice system in Illinois?

Some aspects of mandatory sentencing, such as truth-in-sentencing, have laudable affects. Mandatory sentencing also removes the possibility for improper discrimination in sentencing. I fear, however, that mandatory sentencing may sometimes result in unnecessary incarceration.

10. How has automatic transfer of juveniles affected the criminal justice system in Illinois? How has it affected the recidivism rate of juveniles?

Theoretically, automatic transfer of juveniles should reduce the recidivism rate of juveniles, but many other factors may also affect recidivism. Hopefully, automatic transfer makes it less likely that adult wrongdoers will be able to utilize juveniles to do their dirty work. I am unaware, however, of any studies focusing on automatic transfer as the single variable in recidivism.

11. Do you think the juvenile justice system should focus on rehabilitation or punishment? Why?

In 1997 and 1998, I had the privilege of working as a guardian ad litem making recommendations about appropriate placements of juveniles for whom there were no good community options. My experience working on those cases convinces me that our juvenile justice system should focus on rehabilitation (while also teaching youth that their actions have consequences). Some of the children on whose cases I worked had been given little or no guidance on how live productively and lawfully in our society – until they got in trouble. Juvenile Court Judges and Probation Officers work very hard and provide many good opportunities for these youth to get the guidance that they need. I saw some truly tremendous successes in these cases, and view the resources directed at rehabilitation of juveniles as very beneficial for our society.

12. How do you account for the disproportionate number of minorities prosecuted and incarcerated? What can the courts do to correct the disparity?

Many variables affect prosecution and incarceration. Courts can, and should, examine what role, if any, the courts play in disproportionate prosecution and incarceration. Courts can also encourage prosecutors to think objectively about what role, if any, prosecutors play in disproportionate prosecution and incarceration. I think that academic involvement might also prove beneficial.

13. What do you consider the important aspects of a judge's decision in handling a petition by a minor for a waiver of parental notice with the intent to have an abortion?

In Illinois, the law is clear that a minor may seek judicial bypass under 750 ILCS 70/1 et seq. Illinois Supreme Court Rule 303A applies in such cases, and requires that courts act most expeditiously in these cases. We may get some additional guidance when the Illinois Supreme Court decides the currently pending Hope Clinic case. The Illinois Constitution includes an express right to privacy not present in the federal constitution, so Illinois courts need to consider more than just federal cases in considering questions in these cases. Some judges, such as those with religious or other objections to abortions, should decide judicial bypass cases unless they can set aside their personal opinions and follow the law. Other judges, especially those in smaller communities with many pro-life voters, may fear repercussions from participating in such cases. Of course, decisions in these cases affect a minor deeply, and should only be undertaken by judges who do not fear such repercussions.

14. What options available to a judge under Illinois law do you consider most effective in sentencing perpetrators of hate crimes? Please explain your choices.

I have not worked on criminal cases in a long time, but I do know that counseling and anger management courses are among the options available to judges in sentencing perpetrators of hate crimes. Because I have not worked on such cases in a long time, I lack information about the quality and availability of such services. I believe, however, that rehabilitation of such offenders should be an important goal for our criminal justice system if, of course, good treatment is available. To protect society, we should make rehabilitative efforts before releasing offenders from incarceration.