

IVI-IPO 2006 COOK COUNTY SUBCIRCUIT COURT QUESTIONNAIRE – Section 1
(Revised 1/5/06)

DATE January 6, 2006 PARTY Republican

DISTRICT 12th Subcircuit, Cook County CANDIDATE FOR Madden VACANCY

NAME Don R. Sampen

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NUMBER OF PETITION SIGNATURES FILED approx. 1100 NUMBER REQUIRED 500

Elective or appointive public and/or party offices previously held including dates.

Law clerk 7th Circuit (Judge Tone) 1975-76
Zoning Board of Appeals, Evanston, 1996-2002
Cable Commission, Evanston, 1986-92
Assistant Attorney General, 1995-2003

Other elective offices for which you have been a candidate.

Circuit Court Judge: 1992, 1994, 1998
9th Ward Alderman, Evanston, 1985

Principal business, educational, professional and civic activities of the past ten years.

I was a partner in Jenner & Bkicj frin 1992 to 1998; a partner in Martin Craig Chester & Sonneschein from 1988 to 1995; an assistanat attorney general with the Illinois Attorney General’s Office from 1995 to 2003, where I served as Chief of the Public Interest Division and Chief of the Special Litigation Bureau; and a partner in my current firm, Meckler Bulger & Tilson, from 2003 to present. My teaching activities are as follows:

- Adjunct Professor – Insurance Law, Loyola School of Law (2004, 2005, 2006)**
- Adjunct Professor – Trademarks and Unfair Competition, Chicago-Kent College of Law (1996)**
- Adjunct Professor – Pretrial Litigation, Northwestern University School of Law (1990, 1991, 1993, 1995)**
- Adjunct Professor – Advanced Trial Practice, Loyola School of Law (1991, 1992)**
- Adjunct Professor – Remedies, Loyola School of Law (1978)**
- Adjunct Professor – Remedies II, Chicago-Kent College of Law (1976)**

I am a member of the CBA, the ABA, and ISBA. I have served as chair of various bar association committes, including chair of the ISBA Antitrust and Trade Regulation Council, twice chair of the CBA Federal Civil Procedure Committee, and an editor of various ABA committee publications.

My civic activites have included Rotary (formerly a member for 14 years), Toastmasters, church choir, and local-access cable televsion production.

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

Most of the experiences listed above will be helpful. Perhaps the most helpful will be my litigation experience, which as made me well familiar with the strengths and weaknesses of our court system. Other useful experiences are my services as an arbitor, both for the American Arbiytration Association and the Cook County Mandatory Arbitration System, my clerkship for a federal judge, and my law review and other writing experiences.

Please detail your prior political activity, if any. Give positions held, dates, organizational memberships, role you played in political campaigns.

I served as a precinct captain for the Evanston Township Republican Organization while living in Evanston, and after moving to Wheeling, I have served as a precinct captain and deputy commiteeman for the Republicans of Wheeling Township, 2002-05.

As concisely as possible, state why you feel you should be endorsed over the other candidate(s). What goals for the office you seek are most important to you personally?

I believe that I am best qualified based on my proven background of hard work, writing ability, litigation experience and intellectual skills. Some of these are described in greater detail in my responses and attachements to the Alliance Questionnaire, submitted herewith.

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 was evaluated in connection with the associate judge selections that were made in the spring of 2005. The evaluations themselves I believe took place in 2001 and 2002. The results were as follows:

<u>Bar Assoication</u>	<u>Rating</u>
Chicago Bar	Qualified
Illinois State Bar	Recommended
Chicago Council of Lawyers	Well Qualified
Hispanic/Puerto Rican Bar	Highly Recommended
Cook County Bar	Recommended
Asian American Bar	Qualified
Women's Bar	Recommended

IVI-IPO COOK COUNTY SUBCIRCUIT COURT QUESTIONNAIRE – Section 2

Comment: Your invitation to “announce” my position on various controversial issues, although much appreciated, is not as easy and clear-cut as your invitation suggest. For one thing, one still-active justice of the Illinois Supreme Court, Justice McMorrow, dissented from the amendments to Rule 67 in 1993, suggesting that the amended rule “places candidates for judicial office in an unseemly position where they may feel compelled to ‘pander’ for votes by publicly adopting views which appear popular to the electorate.” Whatever my private views on some of these issues, I would agree with Justice Morrow that it is not appropriate to pander for votes or for endorsements.

The amended rule, moreover, continues to prohibit candidates from “mak[ing] statements that commit or appear to commit the candidate with respect to cases, controversies or issues within cases that are likely to come before the court.” The line between “announcing” one’s views and committing oneself to a particular position is not all that clear. Witness, for example, the recent United States Supreme Court confirmation hearing of now Chief Justice John Roberts, who repeatedly declined to answer certain questions because they bore upon issues that could come before the Court. If it was inappropriate for Supreme Court candidate Roberts to express his personal views on these kinds of issues, then it is probably inappropriate for trial-level state court judicial candidates to do so also since they are just as likely (if not more so, given the fact that they have no discretion to choose the cases they decide) to be asked to decide similar issues.

I would also like to make reference to a letter sent to all judicial candidates by the chair of the Illinois Judicial Ethics Committee which argues against providing a substantive response to some or all of the questions below, on the ground that such a response may well give rise to improper appearances and otherwise denigrate the office of the judge. A member of the Judicial Advisory Council Task Force, Robert Cummins, moreover, has proposed an alternative response which states, among other things, that the expression of:

personal views on various so-called “hot button” issues – views which will have absolutely no bearing on my impartial and independent application of the law including adherence to established and binding precedent – may lead to an erroneous conclusion that such expressions constitute a commitment as to my adjudicative responsibilities or performance. A candidate’s qualifications for judicial office should be based on one’s integrity, knowledge, experience and on an ability to be fair, impartial and independent and that their personal views of an otherwise qualified judicial candidate on the questions [below] should be and are wholly irrelevant.

While the IVI-IPO has expresses its disagreement with this approach, I believe it has a great deal of merit. With those thoughts in mind, I will do as best as I can with the questions you have raised.

1. Without committing or appearing to commit yourself with respect to the issue of capital punishment that may come before you as a judge, please “announce” your position concerning the death penalty. First, irrespective of the current moratorium on carrying out the death penalty in Illinois, are you for or against the death penalty? Second, whether you are for or against the death penalty, please “announce” your reasons for being for it or against it, with particular reference to the four traditional goals of criminal punishment (deterrence, retribution, incapacitation, and rehabilitation), as well as any other reasons that you care to add.

I am not aware of any successful constitutional challenges to the Illinois legislation authorizing imposition of the death penalty, at least since reinstated in 1977. Many people share the same

concerns that former Governor Ryan had when imposing a moratorium on execution in Illinois and appointing a “blue ribbon” commission to make recommendations to improve the caliber of justice in the state system. However, assuming the continued constitutionality of the death penalty, and subject to the due process and other safe guards applicable to the trial and sentencing process, I, as a judge, should the opportunity present itself, would put aside any personal predilections and apply the death penalty accordance with applicable legislation.

2. Without committing or appearing to commit yourself with respect to abortion issues that may come before you as a judge, please “announce” your position concerning the right of a woman to have an abortion. First, are you for it or against it? Second, whether you are for it or against it, please “announce” your reasons for being for it or against it.

As Justice Roberts repeatedly testified during his confirmation hearings, *Roe v. Wade*, as modified by Supreme Court case law since its decision, recognizes a woman’s right to an abortion under certain circumstances and appears to be settled as Supreme Court precedent and entitled to respect under principles of stare decisis. Applying the right in any particular case may, of course, depend on the circumstances. As a trial court judge asked to decide the basic existence of the right, however, I would, once again, put aside any personal reservations and recognize the right in accordance with the dictates of the Supreme Court in existence at the time of my decision.

3. Without committing or appearing to commit yourself with respect to the issue of mandatory minimum sentencing that may come before you as a judge, please “announce” your position concerning mandatory minimum sentencing. First, are you for it or against it? Second, whether you are for it or against it, please “announce” your reasons for being for it or against it.

Subject to applicable judicial and legislative guidelines, I think, as a general proposition, that convicted criminals should be sentenced primarily with a view toward (a) protection of society and (b) rehabilitation of the offender. Mandatory minimum sentencing appears to be an effort on the part of the legislature to codify those objectives. Assuming the constitutionality of such legislation, and subject to the due process and other safe guard applicable to the trial and sentencing processes, I would put aside any personal views concerning application of the legislation in any particular case to give effect to the spirit and intent of the legislative mandate.

4. Without committing or appearing to commit yourself with respect to the issue of treating juvenile criminal offenders as adults that may come before you as a judge, please “announce” your position concerning treating juvenile criminal offenders as adults. First, are you for it or against it? Second, whether you are for it or against it, please “announce” your reasons for being for it or against it.

My understanding of the law in this area is that, depending upon the nature of the offense (*e.g.*, murder, armed robbery), the age of the minor (*e.g.*, perhaps requiring a minimum age of 13), and perhaps other relevant circumstances, minors may be transferred from Juvenile Court to adult court. To my knowledge, the legislation and other applicable rules regarding such transfers have not been held unconstitutional and, as a judge, I would therefore apply the rules consistent with the dictates of due process. In so doing, I would try to be mindful of any disproportionate impact that the rules may have on certain minority groups, as suggested by a Special Commission examining the system a number of years ago. Depending upon the circumstances, it may be appropriate to commission a further study to investigate the effects of such transfers over a period of time, and, based on the results of such study, assess whether increased use of such transfers is appropriate or not.

5. Without committing or appearing to commit yourself with respect to the issue of gay rights that may come before you as a judge, please “announce” your position concerning gay rights. Putting aside whether this is

an issue for the legislature instead of the judiciary (since the Massachusetts Supreme Judicial Court seems to have done so), are you in favor of gay marriage? If not, are you in favor of civil unions instead?

As a judge, I would recognize that, regardless of my personal views and subject to equal protection and other constitutional limitations, regulation of the right to marry is a matter for legislative bodies to decide. My understanding is that Illinois law currently does not recognize gay marriage and, if my understanding of the law is correct, I would administer the law accordingly, subject to constitutional considerations. I am not sure what all is involved in a “civil union,” but to the extent that it involves knowing contractual commitments between two gay persons, and assuming that the contractual consideration involved is otherwise legal, I would view my obligation as a judge to enforce such commitments without regard to sexual orientation of the parties.

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

The strength of the Circuit Court lies in the superb quality of certain of its judges. Judges Evans and Kinnaird are examples. A major weakness, however, is the incredibly poor quality of some of the other judges. There are, of course, other weaknesses as well. One is the undue length of time that it continues to take for certain types of cases to get to trial, although, with the advent of mandatory arbitrations, the overall length of time has greatly improved. So far as changing the manner in which the court functions, I would like to see the court continue to move to greater use of the individual calendar system, and away from the “master” calendar system.

7. How should the Chief Judge of the Circuit Court be chosen?

The present system of selection by secret ballot election is satisfactory. The court might consider term limits of one or two terms, to help assure an infusion of new ideas.

8. How should judges be assigned to the various divisions of the Court? If you are elected, to what division would you like to be assigned and why?

I have no problem with the current system of the chief judge making assignments. My understanding is that most judges’ assignments are rotated every few years, which is probably a healthy thing, although judges on an individual calendar basis and those with specialized dockets (e.g., probate) should probably not rotate as often or many benefits of the system may be lost.

9. As a circuit court judge, how would you balance any moral or ethical/philosophical disagreements that you may have with any existing statutes or legal precedents?

Although, I did not always agree with former Illinois Supreme Court Justice Heiple, a statement made in his concurring opinion adopting the amended Illinois Supreme Court Rule 67 is relevant to your question:

Judges who adhere to the rule that their conscience is their guide and that the law must accommodate their conscience are especially deserving of close scrutiny and concern.

I think that constitutions, statutes and legal precedents should be a judge’s primary guide, with personal, moral and ethical considerations applying only where there is no clear rule of law. If judges frequently find themselves unable to apply the legal dictates of the legislature and higher courts, then they should reconsider their position as a judge.

In addition, my judicial philosophy includes the view that there is not room for partisan politics in our judicial system. Issues such as quality of justice, intolerable delays, corruption, procedural inequities and the like, do not break down along party lines. Judges should be ultra-sensitive to avoiding the appearance of deciding matters on the basis of politics, friendships or “connections.” I believe that impartiality is the true essence of the judicial system, and that essence is undermined whenever matters extraneous to the facts and law of a particular case are brought to bear.

10. If a sitting judge were indicted, should the judge remain on the bench, resign or take a leave of absence?
Please explain.

The judge should take a leave of absence until cleared, at least for crimes involving “moral turpitude,” which I would interpret broadly. I would exclude most traffic offenses. Naturally, the judge should resign if he or she has committed a serious offense, but that might not be known – by persons other than the judge – until after conviction.