

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

DATE 1/20/06 PARTY DEMOCRAT

DISTRICT 7TH JUDICIAL SUBCIRCUIT, COOK COUNTY CANDIDATE FOR CIRCUIT CT JUDGE VACANCY “A”

NAME KENNETH K. McNEIL

WEB SITE _____

CAMPAIGN ADDRESS 921 S. LAFLIN STREET, CHICAGO, ILLINOIS

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CAMPAIGN MANAGER RICHARD BARNETT

NUMBER OF PETITION SIGNATURES FILED 1500 NUMBER REQUIRED 500

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

None

Other elective offices for which you have been a candidate.

State Representative (1998)

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

Private Attorney

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

- 1. I studied law at Harvard.**
- 2. I have been poor.**

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

1. **Treasurer, Michael Radzilowsky's campaign for 48th Ward Alderman (1991?)**
2. **Candidate for State Representative, 18th District (1998)**
3. **Board member and holder of various committee chairmanships, IVI-IPO (member, 1991-2000?)**

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 am far more experienced than at least two of the candidates who have filed for the office. I do not know enough about the other filed candidate to make a meaningful comparison of our qualifications. My main goals in office would be to (1) keep a completely open mind until all evidence on a given question has been presented, (2) accurately apply the law, and (3) treat all litigants with respect.

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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This is the only endorsement sought to date.

IVI-IPO COOK COUNTY SUBCIRCUIT COURT QUESTIONNAIRE – Section 2

In *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), the United States Supreme Court held that it violated the First Amendment to the United States Constitution for states to forbid judges and judicial candidates from “announcing” their positions on issues of interest to prospective voters. *See id.* at 788; *see also Buckley v. Illinois Judicial Inquiry Board*, 997 F.2d 224, 229 (7th Cir. 1993). It is IVI-IPO’s position that *White* created a “safe harbor” for judicial candidates to “announce” their views without running afoul of judicial canons, such as Illinois’s current Canon 67, that purport to restrict judicial candidates’ free speech rights.

Illinois’s Canon 67 A.(3)(d)(i) states that all judges and candidates shall not “make 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.” IVI-IPO hereby expressly states that by answering the following questions we do not intend you to “make statements that commit or appear to commit [yourself] with respect to cases, controversies, or issues within cases that are likely to come before the court.” However, it is IVI-IPO’s position that in order for Canon 67 to survive constitutional scrutiny after *White* (at least “as applied”), it must permit judicial candidates to “announce” their positions on issues such as those the following questions present.

We have included this list of questions to assist us in determining whether to endorse your candidacy. Of course, you may answer or not answer the questions as you may choose. Although IVI-IPO strongly believes that “announcing” your answers to these questions without committing or appearing to commit yourself to ruling a certain way on them does not violate Canon 67, we recognize that the Illinois Judicial Ethics Committee has issued a different opinion. IVI-IPO disagrees with that opinion.¹ But if you are not comfortable answering the questions as posed, please respond as best as you can with an answer that can give us greater insight into who you are and how you feel personally about these issues. Any answer you are able to give will help us in our endorsement decision.

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 would vote against capital punishment as it is currently administered if this question were put to me as a voter by referendum because of insufficient safeguards against the execution of the innocent. In my view, deterrence is the only one of the “four traditional goals” that has any merit as a justification for capital punishment. Nevertheless as judge, I would apply the laws of the State of Illinois as determined by the legislature and applicable judicial precedent without regard to my personal opinion on these questions, even if it meant ordering an execution.

¹ In particular, IVI-IPO vigorously disputes the opinion’s statement that it “defies credulity to suppose that [IVI-IPO] would have asked the Questions unless it believed the answers would have some bearing on how the candidates would rule on those legal issues.” Op. at 3. We most decidedly do not so believe. We are merely asking the questions to determine your political orientation in general, across a broad spectrum of issues, not to determine how you might rule on any given issue in any given case.

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.

I would vote in favor of a woman’s right to have an abortion if this question were put to me as a voter by referendum because society should avoid laws that restrict what an individual may do with his or her own body. Nevertheless as judge, I would apply the laws of the State of Illinois as determined by the legislature and applicable judicial precedent (including those concerning the right of privacy under the U.S. Constitution) without regard to my personal opinion on this question, even if it meant restricting a woman’s right to an abortion.

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.

I would vote against mandatory minimum sentences if this question were put to me as a voter by referendum because it gives prosecutors too much leverage in plea negotiations. Nevertheless as judge, I would apply the laws of the State of Illinois as determined by the legislature and applicable judicial precedent without regard to my personal opinion on this question, even if it meant applying a mandatory minimum sentence.

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.

I would vote against treating juvenile offenders as adults if this question were put to me as a voter by referendum because, lacking the same capacity for sound decision making that an adult would have, a juvenile should not be held as responsible for his or her actions as an adult should be. Generally, they are also more likely to be successfully rehabilitated. Nevertheless as judge, I would apply the laws of the State of Illinois as determined by the legislature and applicable judicial precedent without regard to my personal opinion on this question, even if it meant treating a juvenile offender as an adult.

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?

I would vote in favor of gays and lesbians having all the rights and privileges that heterosexuals have, including the right to marry the persons of their choice (i.e., gay marriage), if this question were put to me as a voter by referendum because absent compelling state justification, people should be allowed to be who they are. Nevertheless as judge, I would apply the laws of the State of Illinois as determined by the legislature and applicable judicial precedent without regard to my personal opinion on this question, even if it meant restricting the rights of gays and lesbians.

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 Circuit Court has a more common sense, and less rigid approach to the administration of cases than the U.S. District Court for the Northern District of Illinois (the only other trial court about which I have any experience). However, the federal rules of civil procedure are superior in certain respects to the rules governing the Circuit Court. (For example, there is no Illinois counterpart for F.R.C.P. 68, which provides for an offer of judgment.) If I had the power to do so, (which I would not as a circuit court judge), I would (1) raise the standard of proof in capital cases, (2) allow jury trials in all civil cases, including those that are “equitable” in nature, (3) with respect to any defect raised in a motion attacking a pleading, require an attorney’s certification that he or she reasonably believes that the defect cannot be cured by amendment, and (4) adopt a rule that would provide for an award of both attorney’s fees and costs under circumstances that would allow for an award of costs under F.R.C.P. 68.

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

The Chief Judge should be chosen by vote of all circuit court judges.

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?

In order of seniority, judges should be allowed to choose their divisions as openings arise. If elected, I would like to be assigned to the Domestic Relations Division because that is the area in which I have the most experience.

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?

If I cannot apply the law in a given case without regard to any moral or ethical/philosophical disagreement that I might have with existing statutes or legal precedent, I would recuse myself.

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

Construing this question to be asking what the indicted judge should do (as opposed to what he or she should be allowed to do), the answer depends upon whether or not he or she is guilty of the charge. If innocent, the judge should remain on the bench unless the charge pertains to the performance of his official duties, in which case he or she should take a leave of absence. If guilty, the judge should resign.