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## Court hears arguments over residency rules for judges

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SPRINGFIELD — The Illinois Supreme Court could soon rule in a case that has the potential to affect candidates running in almost every statewide election.

At the crux of the case, which was argued before the court Tuesday, is the state Constitution's residency requirement for judicial candidates.

Under Section 11, Article 6 of the Illinois Constitution, a candidate must be a United States citizen, a licensed attorney and a resident of the unit which selects him in order to be eligible to run for judicial office.

On one side of the issue is Michael J. Kasper, a Chicago attorney with Fletcher, O'Brien, Kasper & Nottage PC., who made the argument that judicial candidates do not need to satisfy the constitutional residency requirement until they are selected on Election Day.

Arguing on behalf of the other side, Joshua Karsh, an attorney with Hughes, Socol, Piers, Resnick & Dym Ltd. in Chicago, told the justices that judicial candidates must satisfy the residency requirement by the deadline to file their nominating papers, which is one year prior to the election.

And in the middle of the matter is the justices, who asked dozens of questions during the argument and will soon rule on the issue that stems from a challenge to Christopher S. Ward's nominating papers.

Ward, who was represented by Kasper before the court, sought a 4th Subcircuit judgeship (in western Cook County) in the Nov. 2, 2010, general election. He was not a resident of the subcircuit at the time he filed his nominating papers on Nov. 2, 2009, but planned to move into it by the general election.

Daniel E. Goodman filed an objection to Ward's papers, claiming that the Will County attorney was not eligible to run because he failed to meet the residency requirement by not living in the subcircuit at the time he filed his papers.

Goodman was represented by Karsh before the state high court. His wife, Carmen Goodman, ran for the 4th Subcircuit judgeship in the Democratic primary.

The Will County electoral board overruled Goodman's objection, saying the Constitution only requires candidates to live in the unit that selects them by the time of the general election.

But the Will County Circuit Court reversed the board, a ruling that was affirmed by the 3rd District Appellate Court and removed Ward's name from the ballot.

Ward appealed to the Illinois Supreme Court, which agreed to hear the case this past spring, but denied Kasper's request to rule on the matter before the February primary election.

Justice Robert R. Thomas asked Kasper when exactly a judicial candidate must satisfy the residency requirement.

"Is there a grace period? Is at that moment that the clocks ticks when the board certifies, on that day? How would that work?" Thomas asked.

Kasper told Thomas he thinks the answer is clear: It's Election Day.

"Every decision of any court or any electoral board anywhere in Illinois, of which I am aware, has determined that residency is measured beginning on Election Day," Kasper said. "That's the starting point and in fact, I think that's consistent with Article 6, Section 11 — you must be a resident of the unit that selects you. Well, that selection only happens on one day."

Karsh, however, said it's safe to assume that the delegates to the 1970 Constitutional Convention were aware of the need to match a deadline to eligibility requirements.

"They knew when they drafted that no one is a lawyer at birth. They also knew that most of us don't reside in the same home for the entirety of our lives," Karsh said. "There had to be a point in time by which you had to become a lawyer and there had to be point in time in which you established residency."

He added, "They knew and, just as we know, that you can't measure that in a vacuum. It has to be by reference to a point in time."

That point in time, Karsh contends, is by the time the candidate files his nominating papers one year before the election.

To bolster his argument, Karsh pointed to

Section 12 of Article 6, which states that "a person eligible for the office of judge may cause his name to appear on the ballot as a candidate for judge at the primary. ..."

"Unless you're eligible for judicial office, you can't cause your name to appear on the ballot," Karsh said.

Kasper said he believes Section 12 means that a judicial candidate only needs to be able to meet those requirements by the time he could be selected, which is in the general election.

Justice Anne M. Burke asked Kasper if his interpretation would produce a result in which judicial candidates could wait until Election Day to satisfy the other two constitutional requirements: being a U.S. citizen and a licensed attorney.

"I think that there is some ambiguity about that," Kasper responded. "Section 11 has a temporal reference of the unit that selects him. That is absent from the other two elements, citizenship and licensure."

Following up on Burke's question, Justice Charles E. Freeman asked, "So a senior in law school, anticipating he will take the bar, that he passes the bar, can become a candidate?"

Kasper told Freeman that he believes that would be the proper interpretation, explaining that "[S]ection 11 provides that you must have that qualification to be a judge, not to be a candidate."

After Kasper said any challenge to a candidate's eligibility would have to be made after the election, Justice Rita B. Garman asked Kasper if his position would encourage people to run even if they wouldn't be able to meet the requirements.

"Then, we've had an election for nothing. I mean, what's the purpose?" Garman asked. "Then, that office, I assume, becomes vacant and so in a judicial case, there's no one to serve the needs of the people so how is that any kind of public policy?"

While Kasper said public policy is set by the Constitution, Karsh said his opponent's interpretation would result in the state having to spend money on another election if a candidate is found to be ineligible.

The case is *Daniel Goodman et al., v. Chris Ward*, No. 109796.