

Judicial Election Questionnaire - Judge version

1) Full name and any prior names:

**Daniel Rives Kistler**

2) Office Address and Phone Number:

**Oregon Supreme Court**

**1163 State Street  
Salem, Oregon 97301**

**(503) 986-5713**

3) Web site:

[www.judgekistler.com](http://www.judgekistler.com) (not yet live)

4) List high school, college and law school attended, including dates of attendance, degrees awarded and your reasons for leaving each school if no degree from that institution was awarded.

**Georgetown University Law School, J.D., *summa cum laude* (1978-1981)**

**University of North Carolina, M.A. (1972-1974; degree awarded 1978)**

**Williams College, B.A., *cum laude* (1967-1971)**

**Ben L. Smith High School (Greensboro, North Carolina) (1964-1967)**

5) List employment since graduation from law school, including dates employed, your position and the nature of the practice or activity.

**Justice, Oregon Supreme Court (2003 to present)**

**Judge, Oregon Court of Appeals (1999 to 2003)**

**Assistant Attorney General, Oregon Department of Justice (1987 to 1999) (briefed and argued criminal and civil appeals on behalf of the State of Oregon in the Oregon Court of Appeals, the Oregon Supreme Court, and the United States Court of Appeals for the Ninth Circuit)**

**Adjunct Professor, Northwestern School of Law at Lewis and Clark College (1997**

**and 1999) (co-taught state constitutional law)**

**Associate, Stoel Rives LLP (1983 to 1987) (litigated business and commercial matters)**

**Law Clerk for the Honorable Lewis F. Powell, Jr., Associate Justice, Supreme Court of the United States (1982 to 1983) (made recommendations and worked on cases before the Supreme Court)**

**Law Clerk for the Honorable Charles Clark, Chief Judge, United States Court of Appeals for the Fifth Circuit (1981 to 1982) (made recommendations and worked on cases before the Fifth Circuit)**

**Extern for the Honorable Harry T. Edwards, Judge, United States Court of Appeals for the District of Columbia Circuit (1980 to 1981) (continued working on opinions for Judge Edwards after graduating from law school)**

6a) List state and federal bars, courts and administrative bodies to which you are presently admitted and the date of admission.

**Oregon State Bar (admitted 1984)**

**United States District Court for the District of Oregon (admitted 1985)**

**United States Court of Appeals for the Ninth Circuit (admitted 1984)**

**Supreme Court of the United States (admitted 1989)**

6b) List any previous admissions, including dates, and the reason why you are no longer admitted.

**There are no previous admissions.**

7) List publications and/or articles you have authored.

**Kistler, *Focusing on Legislative Intent: Judicial Review of Administrative Law Decisions*, 70 Or L Rev 895 (1991).**

**Gartlan & Kistler, *Search and Seizure*, Oregon State Bar Criminal Law (1994).**

**Atkinson, Brown, Kistler & Lewton, *Briefing the Merits -- Oregon Court of Appeals*, Oregon State Bar Appeal and Review (1993).**

8) List community, teaching (CLE or otherwise) or civic activities

**Adjunct Professor, Northwestern School of Law at Lewis and Clark College, State Constitutional Law (1997 and 1999)**

**I have spoken at symposiums on the initiative and referendum, tort law, and administrative law at Willamette University Law School.**

**I have also spoken on appellate practice at continuing education seminars sponsored by the Oregon State Bar and the Oregon Law Institute.**

**While in the Attorney General's office, I was a member of National Association of Attorneys General Working Groups on criminal law, free speech, and federalism. The purpose of National Association of Attorney Generals working groups was to help states brief and argue issues before the United States Supreme Court.**

9) Prior to your becoming a judge, what was the general character of your legal practice? Indicate the nature of your typical clients and mention any legal areas in which you concentrated.

**Before I became a judge in 1999, I worked for twelve years as an Assistant Attorney General in the Oregon Department of Justice. For the most part, my work involved briefing and arguing criminal and civil appeals on behalf of the state before the state and federal courts. More specifically, my work at the Department of Justice included criminal law, constitutional law, administrative law, tort law, and contracts issues in which the state was involved. The work ranged from drafting an opinion for the Attorney General on the free speech provision of the state constitution to handling the appeal of Frank Gable's conviction for murdering Michael Francke.**

10) List your judicial experience, including as a pro tem, and/or service on an administrative tribunal, or justice, municipal, tax, circuit, or appellate court.

**Justice, Oregon Supreme Court (2003 to present).**

**Judge, Oregon Court of Appeals (1999 to 2003)**

11) Describe the general character of your judicial work over the past five years. Indicate the nature of the cases over which you preside, any specialty courts or court programs, and any legal areas in which you concentrate.

**My work as a judge over the past five years divides into two categories.**

**The Oregon Supreme Court reviews cases from the Court of Appeals, the Tax Court, death penalty cases, ballot titles, and some original jurisdiction cases. The Oregon Supreme Court also is responsible for regulating and disciplining lawyers.**

**As a Supreme Court Justice, I have reviewed cases presenting those issues and written opinions on criminal law, post-conviction, ballot titles, and regulatory matters.**

**In my four and a half years as a Judge on the Oregon Court of Appeals, I wrote almost 200 majority opinions. The opinions covered a broad range of topics: criminal law, torts, contracts, family law, workers' compensation, civil procedure, free speech, probate, federal preemption, disciplinary sanctions, and appellate law. Because of the nature of the practice on both the Court of Appeals and the Supreme Court, a judge must have a broad legal background.**

12) Describe any appellate court experience not included above.

**My other appellate experience consists of serving as a law clerk for Justice Powell on the United States Supreme Court and Chief Judge Clark on the United States Court of Appeals for the Fifth Circuit and as an extern for Judge Harry Edwards on the United States Court of Appeals for the District of Columbia Circuit.**

**As a law clerk, I made recommendations before oral argument on cases and typically wrote first draft on the cases that were assigned to the judge. Law clerks do not make decisions for the judge; they are, however, privy to the inner workings of the court and assist the judge in writing opinions for the court.**

13) State the approximate number of trials or contested hearings over which you have presided as the judicial officer during each of the past five years. Indicate how many were jury trials and how many were trials to the court. Include citations of appellate opinions that arose from cases over which you were a judge.

**Because I have been an appellate judge, I have not presided over any trials or contested hearings.**

14) Describe any experience serving as an arbitrator or mediator

**I have not served as an arbitrator or mediator.**

15) List all bar association memberships, offices held and committee assignments.

**I am a member of the Oregon State Bar and the Multnomah County Bar Association. I have served as a member of an Oregon State Bar committee charged with developing rules for admitting experienced lawyers from other states to practice in Oregon. Before I became a judge, I was a member of the Board of Bar Examiners for three years and the vice-chair of the Board for the last year that I was on the Board.**

16) Describe any bar association or judicial department committees, task forces, or special projects in which you have been involved.

**I have served as a member of a judicial department task force charged with developing a technology plan to meet the future needs of the court system.**

17) Have you ever been convicted of or pleaded guilty to a violation of any federal, state, county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations for which a fine of less than \$500 was imposed.

**When I was a senior in college in 1970, some of my friends and I camped out on what we mistakenly thought was open land. We were charged with trespassing and pleaded nolo contendere. The court entered a conviction but did not assess a fine or any penalty.**

18) Have you ever been the subject of a formal disciplinary proceeding as an attorney or judge? If so, please give the particulars and the result. *Include formal proceedings only.*

**I have not been the subject of any disciplinary complaint or proceeding.**

19) What attracted you to a judicial career?

**My experience working for Justice Powell, Chief Judge Clark, and Judge Edwards made me want to be a judge. Working with them, I saw the role that they and the courts played in resolving disputes fairly and impartially. I left those jobs with a respect for the court as an institution that made me want to make a contribution to it.**

20) Briefly describe your philosophy of the judicial role, the qualities that are most important for the role, and the greatest challenges to the role.

**In my view, a judge should follow the policy set in the statutes and in the constitution. A judge's role is not to make policy or substitute his or her views for those of the legislature or the framers.**

**Four qualities are important for a judge: Experience, competence, integrity, and fairness.**

**To me, the greatest challenge for a judge is adhering to the principle that courts have limited authority. Judges and courts should interpret the law, not create it. Judges always have to keep that principle in mind when they decide cases.**

21) Briefly describe a case, or a legal issue on which you worked, of which you are particularly proud, or which is reflective of your legal ability, work ethic, judicial philosophy, or temperament.

**The best way to get a sense of my judicial philosophy is to look at all my opinions on the Court of Appeals and the Supreme Court. That body of work, I believe, reflects my attempt to analyze each case carefully, to apply legal rules fairly and equally, and to discover and follow the legislature's intent.**

**If I had to pick a single case, I would choose *International Brotherhood of Electrical Workers v. Oregon Steel Mills*, 168 Or App 101, 5 P3d 1122 (2000). The question in that case was whether a federal pension law prevented a union trustee from filing a lien against Oregon Steel Mills to recover unpaid union pension benefits. Writing for the Court of Appeals, I explained that the state lien laws were not the kind of state statutes that Congress intended to preempt when it passed the federal pension law. The opinion accordingly permitted the trustees to file a lien against Oregon Steel Mills' property.**

(22) Briefly describe an issue, related to Oregon's justice system, that concerns you, or that you have interest in working toward improving.

**One of the most important challenges for the courts is getting the public to appreciate the limited role that judges play. It is important that the public understand that, in performing their judicial duties, judges are not simply expressing their own policy views. Rather, they are or should be applying the law, as expressed in statutes and in our constitution, to the case before them.**

23) Briefly describe a legal figure, personal, fictional or historical, whom you admire and why.

**The one judge whom I've always admired is Justice John M. Harlan, one of President Eisenhower's appointments to the United States Supreme Court. Three words describe Justice Harlan's work: thoughtful, moderate, and balanced. Reading his opinions, I repeatedly came away with the impression that he had applied an analytically sharp mind to a complex problem in a balanced and thoughtful way. His careful and moderate analysis of the issues is, for me, a model for what a judge should be.**

24) State any other information that you regard as pertinent to your candidacy.

**No other information of which I am aware is pertinent.**