



Illinois Civil Justice League

Candidate: Don R. Sampen

Appellate Court, First Judicial District, O'Malley Vacancy

1. State the qualifications and experiences that make you qualified to serve on the bench in Illinois.

I am qualified to serve as appellate court judge because of my proven background of hard work, writing ability, litigation/appellate experience, teaching interests, and intellectual ability.

I graduated magna cum laude from Northwestern Law School in 1975, where I served as an editor of the Law Review. Following graduation I clerked for a year on the 7th Circuit, handling nothing but appeals for more than a year. I then joined Jenner & Block and became a partner in 1982. In 1988 I became head of the litigation area at Martin Craig Chester & Sonnenschein, where I remained for seven years. In 1995 I joined the Illinois Attorney General's Office, where I served as Chief of the Public Interest Division and Chief of the Special Litigation Bureau, handling complex or unusual cases that came into the office.

I returned to private practice in 2003, and currently am a partner in the Appellate Group at Clausen Miller P.C. focusing on appellate advocacy and insurance coverage litigation.

My practice has been mostly in the commercial litigation area, and I have an excellent trial court background, having handled trials, arbitrations and mediations. In addition, I have handled many appeals. (My appellate work over the last several years is summarized in a separate attachment.)

I also have published numerous articles and book chapters, and spoken at various legal seminars. (My writing and speaking activities are summarized in a separate attachment.) I have handled numerous pro bono cases, mostly in the prisoners' rights area. I also have taught a variety of law school courses, including served as an adjunct professor teaching insurance law at Loyola School of Law for the past six years.

In addition, I have been active in bar association activities, have twice chaired the CBA Federal Civil Procedure Committee, have chaired the ISBA Antitrust Law Section Council, and served as editor of several bar association newsletters.

All of these types of activities qualify me for the position of appellate court judge.

2. One prominent Illinois judicial evaluation survey asks attorneys to evaluate candidates on Integrity, Impartiality, Legal Ability and Temperament. Critique yourself in these four areas as to how they make you qualified to serve on the bench.

I excel in all four qualities. All are important for a judge, but impartiality is the most important and is the critical factor that distinguishes American judicial systems from those in despotic countries. It is critical for judges not only to display their impartiality in the courtroom, but also to do privately everything humanly possible to put aside personal predilections and prejudices, so that the law may be applied even handedly to achieve a just result.

Integrity overlaps with impartiality, but also brings to mind the need to avoid conflicts of interest and to resist temptations of corruption and influence buying. While the judicial canons prescribe some guidelines, these issues are ultimately matters that must be resolved on a personal basis.

Legal ability depends largely upon the experiences that a judge brings with him/her to the bench. The experiences I have had, as outlined above, demonstrate my ability.

Temperament is more an issue for trial court judges than appellate judges, but even appellate judges ought to be charged with showing respect and courtesy to the attorneys and litigants that appear before them. This includes preparing adequately for oral arguments, commencing proceedings on time, and deciding cases expeditiously.

3. Describe the case in which you are most proud of your work as a lawyer.

I take pride in all the work I do, and there is not just "the case" about which I am most proud.

For example, I am proud of my pro bono work. Although my pro bono hours these days are devoted mostly to teaching, in the past I have spent many hours working on prisoner rights cases. One was *Smith v. Nash*, No. 89 C 3770, in the United States District Court for the Northern District of Illinois, a prisoner beating case eventually resolved in 1994. Overcoming substantial odds, I successfully tried the case to a jury and won a modest monetary recovery for my client. Another was *Walsh v. Brewer*, 837 F.2d 789 (7th Cir. 1988), which I argued in the 7th Circuit and which contributed significantly to the cause of protecting inmates from assaults by fellow inmates.

I am also proud of the work I have done in commercial litigation. A case that stands out from a few years ago is *EEOC v. Francis W. Parker School*, 41 F.3d 1073 (7th Cir. 1994), which was the first case in the country to hold that the disparate impact theory of employment discrimination (practices which are neutral on their face but which arguably fall more harshly on one group than another) does not apply to the Age Discrimination in Employment Act. The case had nationwide significance for all employers. A more recent commercial case is *Hartford Fire Insurance Co. v. Clark*, 562 F.3d 943 (8th Cir. 2009), a difficult but successful (from my client's perspective) appeal in which the court held that boilerplate language on the back of a standard contract, which imposed a 90-day deadline for filing a lawsuit against a common carrier, would not apply to a fraud action brought after the 90-day period.

A public interest matter that comes to mind during my days with the Illinois Attorney General's Office (1995-2003) involved the Dixmoor Park District

receivership proceeding. This proceeding was commenced as the result of the gross mismanagement of a tiny park district in an impoverished southern suburb of Chicago, and the theft of the district's funds by its former commissioners. The Illinois Attorney General's Office was appointed receiver, and I headed up efforts within the Office to negotiate many claims both by and against the park district, including claims involving Banc One, Chapman & Cutler, and various persons named as defendants in fraud litigation. I was successful in recovering hundreds of thousands of dollars for the park district, some of which was used to build new playground equipment.

4. Name one change you would make in the Illinois court system.

I can think of many changes that would help to improve the system. See Response to question 5, below. The one change most in need of implementation, however, is giving the Cook County judicial system a fair and impartial image.

I mention this needed "change" in light of studies that continue to show that Cook County is among the worst places in the country to have a case decided. The results of these studies are significant in that they demonstrate that important segments of the population – primarily business groups – perceive the civil justice system in Cook County as having serious problems. Regardless of whether all the conclusions in the studies are fully justifiable, the business community's loss of confidence in our civil justice system has many potential implications. These include implications for the way that cases are resolved (*e.g.*, settled, tried, appealed), the ultimate costs of the claimants' alleged injuries to society, liability insurance rates and coverages, other direct and indirect costs of doing business in the state, and, even more broadly, overall satisfaction with government.

The loss of confidence should *not*, in my view, be addressed by wholesale efforts designed to assure more victories for tort defendants. The citizens of Cook County are entitled to fair and impartial treatment for both defendants *and* plaintiffs. Moreover, many of the recommendations identified in the studies are legislative in nature, and thus are beyond the ability of the judicial branch to implement.

However, to the extent that the negative findings for Cook County are based upon inconsistencies in the application of procedural or evidentiary requirements by circuit or appellate judges, or upon decisions that are overturned because of the clear misapplication of legal standards, then the studies raise matters that judges need to address in their decision-making processes. To a significant extent, these types of problems can be dealt with by electing competent judges that are willing to take the time and effort necessary to ascertain controlling legal standards and precedents, and who will articulate the bases for their decisions in a manner that helps to assure consistent compliance with those standards.

5. Are there civil litigation reforms that you would like to see enacted to remedy particular problems that you have detected, either as a practicing lawyer or as a sitting judge? Are there reforms that would benefit the civil justice system? What needs to be changed? Should the enactment of any such changes be the province of the legislature, the Supreme Court or by Constitutional amendment?

Both the judiciary and the legislature may promulgate procedural rules, but the judiciary has the more important role, and rules of the Illinois Supreme Court take precedence over inconsistent legislative enactments. In general, individual

judges, the Supreme Court (as the main judicial rule-making body), and the legislature should all exercise constant vigilance for reforms that might improve our system of justice.

Specific procedural-type civil reforms that could benefit the Circuit Court of Cook County include: greater use of the individual calendar system, and a move away from the master calendar system; more frequent written opinions and findings of fact at the circuit court level, and less shoot-from-the-hip style of justice; an increase in the dollar limit for mandatory arbitration in circuit court; full and continuous trial days, and abandonment of the practice in some courtrooms of trials and hearings spread sporadically over weeks or months; greater consistency in standards for jury service, including excuses for not serving; better compensation/expense reimbursement for jurors; greater consistency in the application of venue standards; a professionalized mediation system in the appellate court; a revised system for the assignment of appellate opinions; and less reliance on clerks by appellate court judges in writing opinions.

Most of these reforms can be accomplished within the judiciary without the need for legislation. I am not aware of any needed civil litigation reforms that would require a constitutional amendment.

6. Do you believe that our judicial system adequately deters and penalizes frivolous litigation? If not, what reforms would you like to see?

Adequate safeguards currently exist, but need to be used effectively. The safeguards include both a Rule of Professional Conduct (RPC 1.2) and two Supreme Court Rule, Rule 137 applicable at the trial court level, and Rule 375 applicable on appeal. The two rules expressly authorize the court to impose sanctions, including expenses and fees, against those – both litigants and attorneys – who file pleadings and other documents in bad faith. I favor application of these rules where the circumstances warrant.

7. Do you believe the Illinois Constitution precludes legislative establishment of limitations on civil damages? Are there or should there be distinctions among economic, non-economic and punitive damages?

Common law evidentiary standards recognize obvious distinctions among economic, non-economic and punitive damages that affect both the right and the amount of recovery. A further distinction was added by the Illinois legislature in 2005, when it passed tort reform legislation that imposed dollar limits on the recovery of non-economic damages. (See 735 ILCS 5/2-1706.5.)

The Illinois Supreme Court in *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 689 N.E.2d 1057 (1997), however, found unconstitutional a prior legislative enactment that imposed a \$500,000 limit on compensatory damages for non-economic injuries. My understanding is that a lower court has found the 2005 tort reform legislation unconstitutional as well.

I have not independently researched the issue of an Illinois constitutional limit on civil damages, and could not opine on the matter in a vacuum in any event, particularly since the issue is likely to come before the appellate court. (See Canon 7 of the Code of Judicial Conduct.) I can say that, even in the absence of legislation, circuit court judges have the inherent authority to adjust inappropriate

awards of damages by ordering a remittitur, as even the Supreme Court recognized in *Best*. Excessive awards of non-economic damages have also, on occasion, been found to violate constitutional guarantees. See, e.g., *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 416-17 (2003) (finding that due process prohibits grossly excessive or arbitrary punitive damages).