



Candidate: Joan Marie G. Kubalanza

Cook County, 15th Judicial Subcircuit, Lipinski Vacancy

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

As a sitting judge, I have actual judicial experience. I was an Associate Judge and went back into private practice. The Illinois Supreme Court has recalled me twice to return to the bench. Since my recall three of my decisions have been appealed. The Illinois Appellate Court has affirmed all three. Of course, I have issued many other decisions which have not been appealed at all. Every bar association that rates judicial candidates has rated me either "Qualified" or "Recommended."

I model my behavior on the bench after the late Justice William G. Clark of the Illinois Supreme Court for whom I clerked after graduating 4th in my class of 200 from law school. I listen to all arguments, have an open mind and do not prejudge. I am knowledgeable about the law; I am very good at researching the law, analyzing the law and applying the law to the facts before me. As a judge, I rule based on the law and not on my personal beliefs.

In addition, I have over 20 years of experience as a litigation attorney practicing before both federal and state court judges at the trial court and appellate court levels. While in private practice, I dealt with a wide range of litigation matters including breach of contract, product liability, employment law, medical malpractice, real estate and civil rights claims. You should also read my answer to the second question for additional information about my qualifications.

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.

Integrity: In over twenty years of being a private practitioner, I have been a member in good standing of the Illinois Supreme Court bar, the United States Supreme Court and various federal circuit court and district court bars. I have never been sanctioned or reprimanded by any court. As a judge, I do not tolerate ex parte communications and as a practicing attorney, I did not initiate ex parte communications with judges before whom I appeared. I am very proud of the manner in which I conduct myself and I am mindful that my conduct reflects on the entire judicial system. In addition, I have handled pro bono matters. One of note was a death penalty appeal to the Illinois Supreme Court. My high degree of integrity makes me qualified to serve on the bench.

Impartiality: I am impartial. I favor no "office," position or side over another. I look at the law, not the persons or entities before the court.

Legal Ability: My legal ability is excellent, as evidenced by my judicial track record. Every decision I have issued that has been appealed has been affirmed. For example, the Department of Children and Family Services appealed my ruling on a case of first impression in Illinois (no appellate court in Illinois had considered the issue prior to the appeal of my decision). The First District Appellate Court affirmed my decision. (*In re S.D., a minor*, No. 1-09-0100, decided Sept. 9, 2009.) In addition, two other cases I decided were appealed. In both of those cases the appellate panels that reviewed the matters found no issues of arguable merit. (*In re J.S., a minor*, No. 1-09-1184, Aug. 28, 2009; *In re D.R., a minor*, 1-09-1623, Nov. 9, 2009 (D.R.'s father's appeal) and *In re D.R., a minor*, 1-09-1679, Dec. 7, 2009 (D.R.'s mother's appeal)).

If there is a case out there, I will find it and there usually is case law that at the very least can be analogized to the facts before the court. The Chicago Council of Lawyers in their evaluation process commented that I am "considered to have good legal ability."

Temperament: In its evaluation of me, the Chicago Council of Lawyers stated that I am "praised for her temperament." Similarly, the Chicago Bar Association's evaluation of me stated: "Judge Kubalanza is thorough, efficient, and well regarded by the lawyers and litigants who appear before her." I treat those who appear before me the way I would want to be treated. At the same time, I pride myself on running an efficient court room and issuing rulings promptly.

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

I am very proud of my work for the landlord of a commercial property whose tenant refused to pay a fair-market rent for a commercial building it rented based on a 1906 lease. I am proud of my work on this case because it illustrates my ability to research and argue complex issues to reach the right and fair result.

The parties' 99-year lease contained a "gold clause," which permitted the landlord to demand rental payments be made in gold coin of the United States. (Gold clauses were used in many leases in the early 1900's so as to guard against inflation.) In 1998, my client made a written demand for monthly rent to be paid in gold coin because without the gold clause being enforceable the tenant was only paying about \$1,800.00 to rent a six story commercial building in a desirable part of Chicago. The tenant refused to pay in gold arguing that a 1933 Congressional joint resolution made the gold clause unenforceable. The trial court agreed and granted summary judgment in favor of the tenant

On appeal, I argued, that the parties had re-affirmed their agreement to pay in gold by amending their lease in 1989. As such, the 1933 Congressional joint resolution did not apply because, in 1977, Congress had amended its 1933 resolution to permit gold clauses if agreed to after October 27, 1977. The Illinois Appellate Court agreed and held that the gold clause was enforceable. As a result, the monthly rent increased from about \$1,800.00 a month to over \$20,000.00 a month, which was much closer to the fair market rent for a six story commercial building in Chicago.

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

I believe the change I would make is on its way. I would allow electronic filing of court papers and electronic access to filed papers as allowed in the federal court.

This change will increase access to court records, making the judicial process more transparent and, ideally, more economical and efficient for litigants, attorneys and judges alike.

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?

One of the common complaints about the American judicial system is that too many frivolous cases are filed. Truly frivolous cases harm both the litigants, who must incur attorneys' fees defending against such cases, and the court system, which gets bogged down in handling such cases while meritorious cases are delayed. To deter frivolous cases, Illinois Supreme Court Rule 137 could be amended to add the same "safe harbor" provision that is in Federal Rule of Civil Procedure 11. The safe harbor provision requires a litigant to inform its opponent of its belief that a frivolous pleading has been filed so that the filer has an opportunity to withdraw it before facing possible sanctions. If judges knew that a filer had an opportunity to withdraw a false or frivolous pleading but refused, they may be more inclined to award sanctions in appropriate cases. If litigants and their attorneys know that Rule 137 will be vigorously enforced in appropriate cases, they may be less likely to engage in harassing or frivolous litigation.

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

I think Illinois courts would have a better chance of deterring and penalizing frivolous litigation if Illinois trial court used the sanctions in Rule 137 more often in appropriate cases. Illinois may also want to consider adding an "offer of judgment" rule, which is recognized in most states and the federal courts. An offer of judgment rule, if properly drafted, could have the effect of requiring plaintiffs to thoughtfully consider reasonable settlement offers or risk that the defendant's costs and fees be shifted to the plaintiff if the plaintiff receives less in a trial than the defendant offered. Issuing and enforcing such rules will not deter meritorious cases, but will require litigants intent on abusing the court system for their own personal gain to face real consequences.

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?

As a sitting judge, I am not going to comment on whether the Illinois Constitution precludes legislative establishment of limitations on civil damages. There would have to be a case before me with its own facts before I would comment on this matter.

I believe the law already distinguishes between economic, non-economic and punitive damages.