



Illinois Civil Justice League

ICJL 2012 Judicial Candidate Questionnaire

Joan Marie Kubalanza Cook County Circuit Judge – Ward Vacancy

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

I have the qualifications to be a judge because I possess each of the qualities a judge should possess: experience, knowledge of the law, honesty, integrity, impartiality and respect for those who appear before me.

One of the most important qualities a judge can possess is experience. I have experience as a judge, experience as a law clerk to a Justice of the Illinois Supreme Court, and over 22 years experience as a practicing lawyer.

The Circuit Court Judges of Cook County selected me as an Associate Judge in 1998. I subsequently went back into private practice as a partner at two prominent law firms and then the Illinois Supreme Court recalled me to serve on the bench once again. For the last three years I have served as a judge in the Child Protection Division of the Cook County Juvenile Court.

My initial work in the judicial branch of government began after graduating fourth out of 200 in my law school class at IIT/Chicago Kent College of Law. In 1984, Justice William G. Clark of the Illinois Supreme Court chose me to serve as his law clerk. In that position, I helped research and write opinions that were ultimately published and become controlling Illinois law. I then spent over 22 years in private practice representing individuals, small businesses and other entities in a wide variety of complex commercial litigation cases. During my time in practice, I tried cases before judges and juries and argued appeals before the Seventh Circuit Court of Appeals, the Illinois Supreme Court, and the Illinois Appellate Court. These trials and appeals deepened my understanding of the judicial process and further prepared me to serve as a judge.

After law school I continued to study and stay abreast of developments in the law during my years in practice and also during the time I taught law school classes. During my years in practice, I identified legal issues, researched the law, applied the law to the facts, and set forth the differences and similarities between the facts in my case and the case law I found. I then presented the courts with well written briefs and solid arguments. I continue to remain a student of the law and remain current with developments in case law

and legislation. Moreover, I continue to research the law as to legal issues that now come before me and with respect to contested hearings and trials I write my opinions to provide the parties and their attorneys with a full explanation as to how I reached my decision.

Honesty and integrity are values I cherish. I have never had a complaint filed against me as a practicing attorney or as a judge. In addition, I would never embarrass myself, my family and friends or my colleagues by doing anything improper or dishonest. My role as a judge, and formerly as an attorney, is extremely important to me and I dedicate myself to preserving the integrity of the court and the legal system by always dealing with people honestly and in a manner that earns their trust and respect.

Finally, I treat all parties who appear before me with respect and dignity and provide all of them the opportunity to be heard. Currently, I have one of the most difficult and challenging assignments in the court system. As a Judge in the Child Protection Division, I am called upon to hear and decide cases involving child abuse, neglect and dependency. I base my decisions on the law and what I find to be in the best interest of the children whose cases are before me with the knowledge that my rulings will almost always have an immediate impact on the lives of the those children, their parents and other members of their families. It takes a strong resolve, dedication to the law and very often a tremendous amount of civility, honesty, integrity and fairness, to deal with and resolve the issues presented, which are often highly emotional. I treat all litigants and their attorneys with respect and dignity and expect them to do the same. Many times not all of the parties receive the result they may have hoped to obtain, but I do my utmost to ensure that they know they have been treated fairly and honestly and that their voices have been heard.

I believe the Chicago Bar Association recognized that I possess the important qualities a judge should possess when, in its evaluation, it described me as "knows the law, is hardworking, diligent, and possesses a fine demeanor." All of the bar associations that evaluate candidates for judicial positions have found me to be either "Qualified" or "Recommended" for the position I now seek.

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-two 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. 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)

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 commented that I am "considered to have good legal ability." The Chicago Bar Association in describing me stated "knows the law."

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: "possesses a fine demeanor." I treat those who appear before me the way I would want to be treated.

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.

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.