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Annual Report to the General Assembly on 2008 Judicial Conference

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The annual meeting of the Illinois Judicial Conference was held on October 23, 2008, in Chicago, Illinois. The Conference, which is authorized by Article VI, Section 17 of the Illinois Constitution of 1970, is mandated to consider the work of the courts and to suggest improvements in the administration of justice. The constitutional mandate is implemented through Supreme Court Rule 41, which defines the duties and the membership of the Illinois Judicial Conference. Consistent with the Rule, the Conference is composed of judges from every level of the judiciary, representing Illinois' five judicial districts. The Justices of the Supreme Court of Illinois, including the Chief Justice, who presides over the Conference, also serve as members. Through a recent amendment to Supreme Court rule, the Administrative Director serves as an ex-officio member.

The work of the Judicial Conference is conducted throughout the year, largely by the efforts of seven appointed committees: Alternative Dispute Resolution Coordinating Committee; Automation and Technology Committee; Study Committee on Complex Litigation; Committee on Education; Committee on Criminal Law and Probation Administration; Committee on Discovery Procedures; and the Study Committee on Juvenile Justice. The rosters of the various committees include appellate, circuit and associate judges who serve as full members of the Judicial Conference. Their work is aided by law professors, attorneys and some additional judges, all appointed by the supreme court to serve as either associate members or advisors to the committees. Senior level staff of the Administrative Office of the Illinois Courts serve as liaisons to support the committees' activities.

The Executive Committee, which is also authorized through Supreme Court Rule 41, acts on behalf of the Conference when the Conference is not in session. The Executive Committee consists of fourteen judges, six of whom are from the First Judicial District (Cook County) and two members each from judicial districts two, three, four and five. The Executive Committee previews the written reports of the conference committees and submits, for the Supreme Court's approval, an agenda for the annual meeting.

The 2008 Annual Meeting of the Judicial Conference was conducted in a one-day format to minimize judicial time away from the bench and to effectively manage costs. The meeting was convened by the Chief Justice of the Supreme Court of Illinois, the Honorable Thomas R. Fitzgerald. In his opening remarks, Chief Justice Fitzgerald welcomed the Conference members and thanked them for their hard work during the Conference year. He then recognized the presence of current members of the Supreme Court as well as retired Supreme Court Justices John Stamos and Benjamin Miller. In concluding his introductions, Chief Justice Fitzgerald recognized Cynthia Y. Cobbs, Director of the Administrative Office of the Illinois Courts, and thanked the Director and her staff for their noteworthy work in coordinating the committees and preparing for the annual meeting of the Conference.

Chief Justice Fitzgerald remarked, notwithstanding the constitutional mandate to convene a Judicial Conference, such a gathering to improve the administration of justice would occur, nonetheless, because of the sense of commitment to duty shared by Illinois' judges. Reflecting on the role of the courts, the Chief Justice noted that the judiciary is charged not only with deciding individual cases, but also with managing and administering the system in which those decisions are made. Asserting that the state of the Illinois courts is very strong, he proclaimed that the unifying theme of every Judicial Conference, naturally, is the continuation of a strong judiciary.

Citing *Federalist 78*, which was written to explicate and justify the structure of the judiciary under the *Constitution of the United States*, Chief Justice Fitzgerald offered a quote from Alexander Hamilton, who characterized the judiciary as the "weakest of the three branches of government as it has neither the force nor the will to impose its judgments." "The complete independence of the courts is [particularly] essential," said Hamilton, "because such independence may be a safeguard against the effects of occasional ill humors in society." Independent judges are, remarked Chief Justice Fitzgerald in contrast, the safeguard of our liberties.

Chief Justice Fitzgerald noted that the struggle for constitutional government is not singularly a struggle for good laws, but also for intelligent, independent and impartial courts. Making intelligent, independent and impartial courts is precisely the point of the Judicial Conference. To ensure that the court system operates fairly and independently, judges must make certain that the wheels of justice turn in a manner that is efficient in both the courtroom and in less traditional fora. As part of a long, standing tradition, the court's view on independent, impartial courts remains steadfast. This firm view may be the reason that co-equal branches of government in Illinois, unlike their counterparts elsewhere, have recognized the essence of an independent judiciary.

In closing, Chief Justice Fitzgerald reminded judges that, when verdicts are rendered and orders signed, it is judges who ensure judicial independence and observe the rule of law whereby outside influences are put aside, making certain that judicial decisions involve nothing more than the application of law to the facts to reach the correct result. The important work of the Conference, the amount of study, debate and analysis that are dedicated by each committee to meet its charge and tasks, is the foundation for improving the quality and efficiency of our justice system. The committees' work, during Conference Year 2008, provides insight of the great things to come and will shape the future of the judicial branch.

The Annual Meeting continued with Conference Committee meetings devoted to finalizing Committee reports and initiating planning for Conference Year 2009. The afternoon plenary session included a presentation of each of the committees' activities in Conference Year 2008 and initial suggestions for tasks in Conference Year 2009. The following summarizes the written and oral substance of those reports:

Alternative Dispute Resolution Coordinating Committee

The Alternative Dispute Resolution Coordinating Committee monitors and assesses both the court-annexed mandatory arbitration programs and mediation programs approved by the Supreme Court. During the course of the Conference year, the Committee developed a uniform arbitrator reference manual and presented it to the Administrative Office of the Illinois Courts for review and presentation to the Supreme Court. Upon review and appropriate consideration, the manual will be distributed to arbitration supervising judges and program administrators for use as a training tool and reference guide.

The Committee also reviewed arbitrator services in the context of *pro bono* service. As a result of that review, the committee proposed amendments to Supreme Court rules to allow arbitrators the opportunity to waive compensation and accept *pro bono* service credit instead.

Other projects commenced during the Conference year include the study of child custody and visitation mediation; identification of a mechanism for tracking statistical data; reconsideration of a proposal to amend Supreme Court Rule 91 (Absence of a Party at Hearing); consideration of an increase to arbitration program jurisdictional dollar limits and its impact; examination of the qualification for individuals chairing arbitration panels; arbitrator chair qualifications; review of the issue of attorney costs as part of an arbitration award; and, the development of an arbitration program participant satisfaction survey.

Automation and Technology Committee

In Conference Year 2008, the Automation and Technology Committee completed its analysis of video court/conference systems, including the impact of using such technologies in the trial courts and the possible need for amendments to Supreme Court Rules. For the purpose of the Committee's work, video court/conference systems are defined as an interactive video conference technology that allows judicial proceedings, such as arraignments, bond calls, first appearances, or remote testimonies, to be conducted with participants in different locations.

The use of video conference technologies appears to be an option of increasing value to the efficient administration of justice. However, the Committee cautioned that the use of such technology should be considered against its overall effect on the operation of the larger court system and, the fundamental rights of the parties to equal access to the courts and to confront witnesses. The Committee developed an impact statement that explores and describes the benefits and detriments of video court/conference systems, the scope of its use by courts, and the state of the law governing the use of this technology. The impact statement includes recommendations for amendments to Supreme Court Rules relating to the use of video court/conference systems.

Study Committee on Complex Litigation

The Study Committee on Complex Litigation researched the development of a forum for judges to disseminate information regarding the disposition of complex cases. The Committee identified no significant barriers to the formation of a judicial discussion forum on the Internet and concluded that such a forum would be useful, particularly for judges handling complex litigation.

The Committee also commenced a study to determine whether the current methods of managing multiple parallel or overlapping litigation constituted a problem in the various circuits. Information has been solicited from the Conference of Chief Circuit Judges on this issue. Completion of the study is anticipated in Conference year 2009.

The Committee also reviewed the Civil Manual and determined that text should be added on the subject of construction cases. Text on this new topical area is anticipated to be added as part of the first major revision of the Civil Manual, initially published in 1997. New text on declaratory judgment actions in the context of Alternate Dispute Resolution is also planned. Minor updates to the Manual include recent cases, rules and statutes compiled from Conference Years 2006-2008. The complete revised Civil Manual will be available in Conference year 2009.

Committee on Criminal Law and Probation Administration

The Committee on Criminal Law and Probation Administration forwarded its final draft of an evidence based practices pre-sentence investigation report form to the Administrative Office of the Illinois Courts for consideration as a component of the Court's existing standards of probation practices. The Committee also began consideration of the utility of a criminal dispute resolution program for Illinois by examining other states' criminal dispute resolution programs.

Also during the course of this Conference year, the Committee studied and considered the feasibility of improving court efficiency in the acceptance of guilty pleas by examining both the procedures and formats used by other jurisdictions in the acceptance of written guilty pleas. The Committee concluded that while the use of a written form acknowledging the various waivers and stipulations of a guilty plea is potentially beneficial in reducing claims of ineffective assistance of counsel, a statewide mandate for the use of a particular written guilty plea form was not necessary since admonishments are mandated by rule and caselaw and also must be placed on the record.

The Committee also examined and reported on proposed Supreme Court Rule 404, which would require an admonishment, at the initial appearance of foreign nationals who are charged with a felony, of their ability to inform their consulate of their detention. Tracking the United States Supreme Court's decision in *Medellin v. Texas*, 128 S.Ct.1346 (2008), the Committee approved the rule, as long as it was abundantly clear that the proposed rule applied only to felony cases and the notification requirement was the responsibility of either the defendant or defense counsel, and not the trial court. The Committee suggested to the Supreme Court Rules Committee that consideration be given to drafting additional language to incorporate the statutory mandate of warning a non-resident alien that their guilty plea could lead to deportation proceedings being initiated.

The Committee also examined and reported on proposed Supreme Court Rule 430 concerning the use of restraints in criminal trials. The Committee drafted and presented proposed Rule 430 for consideration by the court which, if adopted, will provide guidance to trial court judges on when restraints are to be used and what findings need to be made prior to the application of restraints.

Finally, the Committee continued to monitor the impact of the United States Supreme Court's decision of *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2004) on the Illinois court system.

Committee on Discovery Procedures

The purpose of the Committee on Discovery Procedures is to review and assess discovery devices used in Illinois, with the goal of making recommendations to expedite discovery and to eliminate any abuses of the discovery process. In keeping with its statement of purpose, the Committee addressed proposals to amend various Supreme Court Rules. The Committee considered a proposal, forwarded by the Supreme Court Rules Committee, to amend Supreme Court Rule 204. The proposed amendments would allow an order of body attachment to issue upon a non-party when there has been non-compliance with a discovery order or subpoena. The Committee adopted that portion of the proposal permitting an order of body attachment to issue upon a non-party provided that there is proof of personal service of the rule to show cause or order of contempt. The Committee rejected that portion of the proposal permitting a body attachment to issue upon a non-party without proof of personal service, following a showing that there exists a reasonable likelihood of imminent and irreparable harm. The Committee contended that personal service upon a non-party should not be excused.

The Committee also revised its proposed amendments to Supreme Court Rules 216 and 222 to address the abuses surrounding requests to admit and the impact of the Illinois Supreme Court's decision in *Vision Point of Sale, Inc. v. Haas, et al.*, 226 Ill. 2d 334 (2007), which recognized the trial court's discretion with respect to resolving requests for admission. Specifically, the Committee's proposed amendments limit the number of requests to be consistent with Supreme Court Rule 213(c) and require prior leave of court. Amending Rule 216 to require trial court approval prior to issuance of requests to admit will eliminate many post hoc disputes about whether "good cause" for the failure to adhere to time limitations has been shown. The proposed amendments also recognize the trial court's discretion with respect to the timing for issuance of requests to admit and whether discovery is, or is not, needed to provide the proper response. It is the intent of the proposed amendments to provide the trial court with the ability to control the conduct of the parties so as to eliminate the abusive use of requests to admit. In conjunction with Rule 216, the Committee's proposed amendments to Rule 222, which applies to cases seeking damages not in excess of \$50,000, also limit the timing of requests to admit in such cases.

The Committee also concluded its study of e-Discovery and forwarded a report to the supreme court for consideration. The report discusses the current status of federal and state rules, case law and guidelines implemented by various organizations regarding e-Discovery. The report provides the court with options for addressing e-Discovery issues, including: (1) revamping the Supreme Court rules to incorporate the federal rules; (2) amending select Illinois rules to conform to the federal rules; and/or (3) promulgating guidelines for trial judges.

Committee on Education

The Committee on Education is charged with identifying ongoing education needs for the Illinois judiciary and developing short-term and long-term plans to address those needs. For Conference Year 2008, the Committee received a continuing charge to identify emerging legal, sociological, cultural, and technical issues that may impact decision-making and court administration and, based on these emerging issues, to recommend and develop programs for both new and experienced Illinois judges. The Committee was charged with assessing the judicial education needs, expectations and program participation of Illinois judges and recommending topics and faculty for the annual New Judge Seminar, the annual Seminar Series, Education Conference and the Advanced Judicial Academy. The Committee also was charged with reviewing and recommending judicial education programs offered by organizations and entities other than the supreme court as potential sources for continuing judicial education credit.

In accordance with its overall charge and the new Minimum Continuing Judicial Education (MCJE) provisions, the Committee undertook specific activities in Conference Year 2008. In collaboration with the Administrative Office of the Illinois Courts, the Committee delivered and evaluated the newly expanded 30-hour curriculum for Education Conference 2008; completed production and distribution of five of the six comprehensive judicial benchbooks in each of the following core curriculum areas: civil law and procedure, family law and procedure, traffic law/DUI, evidence, and domestic violence; and, implemented the plan developed in Conference Year 2006 for enhanced identification, recruitment and preparation of judicial education faculty members in each of the recommended core curriculum areas. Additional activities included the continued development of plans for advanced use of technology to deliver judicial education programs and resources, including web-casting, web archiving, CD and DVD tutorials and other "distance learning" options as well as the provision of benchbooks through electronic media. Additional education programs presented in Conference Year 2008 included the annual New Judge Seminar, in addition to an abbreviated schedule of seminars which covered such topical areas as presiding over property related litigation, the hidden traps of sentencing, and a faculty development workshop.

Study Committee on Juvenile Justice

The Study Committee on Juvenile Justice updated Volume II of the *Illinois Juvenile Law Benchbook*, which addresses juvenile court proceedings involving allegations of abuse, neglect and dependency. The Committee anticipates that an update of Volume II will be available for the January 2009 New Judge Seminar, which is a component of the supreme court's comprehensive Judicial Education Plan, with mandated attendance for every newly elected or appointed trial judge.

The Committee also reported on the efficacy of the juvenile problem-solving courts in a few select jurisdictions. As a general observation, the Committee noted the lack of uniformity in gathering data on the effectiveness of specialty courts; the lack of standards for follow-up data to measure the success of the program; and, the lack of state-wide uniform standards to measure and collect any data in regards to such courts.

As a final matter, the Committee gathered information from each circuit court, via survey, regarding their need for mental health evaluations and services for juveniles. The survey results indicated that there is a lack of mental health services being made available to juveniles in various regions of Illinois. The Committee prepared a chart with the survey results for the courts' consideration. With the court's approval, the Committee anticipates examining practices in other jurisdictions that address both the scope of and access to mental health services for juveniles.

Summary Statement

The work of the seven Judicial Conference Committees is ongoing, with many projects and initiatives which began in Conference Year 2008, and expected to continue into Conference Year 2009. The Committees covered a broad range of topics and issues. Their work included suggestions on improving alternative dispute resolution processes, assessing the efficacy of problem-solving courts, the utility of video court/conferencing systems in the trial courts, as well as enhancing judicial competence through the development of manuals, benchbooks and course work. The continuation of these efforts will serve to greatly improve the administration of justice in Illinois.

Supreme Court Decisions Which the General Assembly May Wish to Consider

Illinois Vehicle Code - Blocked Crossing

In *Eagle Marine Industries, Inc. v. Union Pacific Railroad Company*, S. Ct. Docket No. 102462 (January 25, 2008), 227 Ill. 2d 377 (2008), the supreme court considered the Illinois blocked-crossing provision of the Illinois Vehicle Code (625 ILCS 5/18c-7402(1) (b) (West 2004)) which prohibits a rail carrier from permitting a train, railroad car, or engine to block a road-highway grade crossing for more than 10 minutes unless the train, car or engine is moving or the circumstances causing the obstruction are beyond the carrier's control. Plaintiff sought a preliminary injunction against defendant to prevent it from blocking a railroad crossing for more than ten minutes. The trial court entered a permanent injunction, and the appellate court affirmed. The supreme court directed that the injunction be dissolved, holding that the statute violated the commerce clause of the U.S. Constitution (U.S. Const., Art. I, sec. 8) and was preempted by the Federal Railroad Safety Authorization Act of 1994 (49 U.S.C. §20101 *et seq.* (2000)).

Illinois Vehicle Code - False or Secret Compartment in a Motor Vehicle

In *People v. Carpenter*, *People v. Garibaldi*, *People v. Montes-Medina*, S. Ct. Docket Nos. 103616, 103856, 103857 (April 17, 2008), 228 Ill. 2d 250 (2008), the supreme court considered section 12-612 of the Illinois Vehicle Code (625 ILCS 5/12-612(a)), which prohibits driving a vehicle with a secret compartment. Defendants in these consolidated actions challenged the constitutionality of the statute, subsection (a) of which makes it unlawful for any person to own or operate a motor vehicle that he or she knows to contain a "false or secret compartment," defined in subsection (b) as "any enclosure that is intended and designed to be used to conceal, hide, and prevent discovery by law enforcement officers of the false or secret compartment or its contents, and which is integrated into a vehicle." The supreme court concluded that the statute was overly broad and potentially criminalizes innocent conduct, as it does not even require the contents of the secret compartment to be illegal for a conviction to result. The court rejected the notion that the intent to conceal something from law enforcement officers necessarily entails illegal conduct. As such, the supreme court held that section 12-612 violates the due process provisions of the United States Constitution (U.S. Const., Amends. V and XIV) and the Illinois Constitution (Ill. Const., Art. I, Sec. 2).