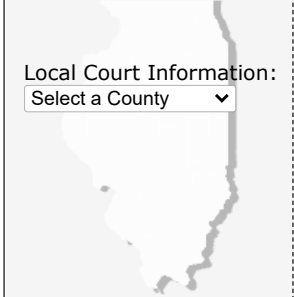




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## Annual Report to the General Assembly on 2013 Judicial Conference

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Article VI, section 17, of the Illinois Constitution mandates that the Illinois Supreme Court convene an annual judicial conference to consider the work of the courts and to suggest improvements in the administration of justice. Illinois Supreme Court Rule 41 implements this constitutional mandate by defining the duties and the membership of the Illinois Judicial Conference. The Conference is composed of judges from every level of the judiciary and represents Illinois' five judicial districts. The Chief Justice of the Supreme Court of Illinois presides over the Conference, and the other Justices serve as members.

An Executive Committee acts on behalf of the Conference when it is not in session. The Executive Committee consists of fourteen judges, with six from the First Judicial District (Cook County) and two each from the Second, Third, Fourth, and Fifth Judicial Districts. The Executive Committee previews the written reports of the Conference committees and submits an annual meeting agenda for the Supreme Court's approval.

Eight standing committees carry out the work of the Conference throughout the year. These committees are: the Alternative Dispute Resolution Coordinating Committee, the Automation and Technology Committee, the Study Committee on Complex Litigation, the Committee on Criminal Law and Probation Administration, the Committee on Discovery Procedures, the Committee on Education, the Study Committee on Juvenile Justice, and the recently added Committee on Strategic Planning. The committees' membership includes appellate, circuit, and associate judges who also serve as members of the Judicial Conference. Their work is aided by judges, law professors, and attorneys appointed by the Supreme Court as associate members or advisors. Senior level staff of the Administrative Office of the Illinois Courts serve as liaisons to support the committees' activities.

On October 24, 2013, the Illinois Judicial Conference convened its annual meeting in Chicago, Illinois, which was concentrated into one full day of meetings, rather than being spread out over several days, thereby minimizing the judges' time away from the bench and managing costs more effectively.

Chief Justice Thomas L. Kilbride convened the meeting. In his opening remarks, Chief Justice Kilbride welcomed those in attendance and thanked them for their hard work during the Conference year. He also recognized the current members of the Supreme Court, as well as the retired Supreme Court Justices in attendance. Concluding his introductions, Chief Justice Kilbride recognized Michael J. Tardy, Director of the Administrative Office of the Illinois Courts, and thanked the Director and his staff for their work in preparing for the Annual Meeting of the Conference.

With his three-year term as Chief Justice of the Supreme Court of Illinois concluding, Chief Justice Kilbride remarked that he had observed countless accomplishments by the judiciary during his term. For example, several circuit courts had implemented pilot projects for extended media coverage, allowing cameras in the courtroom in selected cases. In addition, several circuits implemented e-filing of court documents in civil cases. Both of these initiatives are being expanded throughout the state. He also acknowledged the enthusiastic commitment and dedication of judges statewide.

Chief Justice Kilbride noted the work of the Commission on Access to Justice including its advancement of fundamental issues relating to access to justice and the development of a plan to ensure greater access to justice in Illinois. The Commission has focused its first efforts in three areas: (1) court guidance and training, (2) language access, and (3) standardized forms. Chief Justice Kilbride lauded the work of the Commission in exploring strategies for legal services for unrepresented litigants, enhancing interpreter services for individuals with limited proficiency in English, and developing standardized forms to create uniformity in court proceedings across the State.

Chief Justice Kilbride also noted the promulgation of statewide standards and new and amended Supreme Court Rules that allow all Illinois circuit courts to begin electronically filing court documents in civil cases. He commented that uniform standards allow all circuit courts to benefit from e-filing's greater efficiency and long-range cost savings as well as provide a more modern way of doing business. Chief Justice Kilbride expressed his hope that the Illinois judiciary will continue to advance e-business practices and encouraged the circuit courts to implement e-filing.

Chief Justice Kilbride noted that the Supreme Court continues to advance its goal to restructure and reframe the Illinois Judicial Conference to create a more robust, active, and energized body. A number of structural changes have been introduced into the Conference during 2013. The most significant change has been altering the focus of the annual meeting from a retrospective report of the past year's activities to the prospective setting of goals and priorities for the coming year. Additional changes will be implemented during the 2014 Conference Year. These reorganization efforts are designed to revitalize the Illinois Judicial Conference by fostering partnership and collaboration, with the overarching goal of creating an evolving strategic plan to improve the administration of justice in Illinois. As the constitutional entity charged with considering the work of the courts and suggesting improvements in the administration of justice to the Supreme Court, the Illinois Judicial Conference must be organized to meet the challenges of a changing society and constantly evolving technology so that the people of Illinois will be served by a more responsive, efficient, and accessible judicial system.

In closing, Chief Justice Kilbride encouraged Conference members to continue to reflect on ways to enhance the accessibility, productivity, and responsiveness of Illinois' courts because their work is the foundation for improving our justice system. He noted that the Judicial Conference offers an opportunity to examine existing judicial practices and to recommend adjustments and improvements to the court system. Thus, committee charges and deliberations should be open to all ideas that might enable the judiciary to adapt to meet changing demands.

After the Chief Justice concluded his remarks, Conference members met to focus on strategic planning. Discussion centered on objectives and outcomes identified at the April 2013 "Shaping the Future of the Illinois Courts Conference."

Each of the eight standing committees of the Illinois Judicial Conference provided written reports to the Supreme Court. Their reports are briefly summarized below.

## **Committee Reports**

### **Alternative Dispute Resolution Coordinating Committee**

The Alternative Dispute Resolution Coordinating Committee monitors and assesses court-annexed mandatory arbitration and mediation programs approved by the Supreme Court. Along with the Administrative Office of the Illinois Courts, the Committee tracks mandatory arbitration statistics to determine program efficacy.

During this Conference year, the Committee finalized a comprehensive report to the Court regarding the results of an arbitration program participant satisfaction survey. The Committee was also charged with considering the perceptions of judges and attorneys regarding assignment of cases to civil mediation. After initial discussion of this charge, the Committee noted the existence of two perceptions that should be explored: (1) parties in civil cases perceived that they were being forced into mediation even after they had determined mediation was not feasible; and (2) parties perceived that if they had agreed to mediation but could not choose a mediator, the trial judges were either appointing or strongly recommending use of particular mediators. After discussions with stakeholders, judges, and others, the Committee concluded that these two perceptions were inaccurate. To further address this concern and others, the Committee distributed a survey seeking information from judges who preside over cases subject to mandatory mediation pursuant to Illinois Supreme Court Rule 99 and mortgage foreclosure mediation programs pursuant to Illinois Supreme Court Rule 99.1. The survey will gather first-hand information about how those judges view civil mediation, the frequency of use, and the methodology of mediation implementation.

Finally, the Committee obtained the forms utilized in each circuit in their mandatory mediation and mortgage foreclosure mediation programs. In 2014, the Committee will evaluate these forms to meet the Court's charge of developing standardized forms for use by mediation programs.

### **Automation and Technology Committee**

The Automation and Technology Committee continued to review and evaluate e-business projects in the trial courts. Its focus remained on representing a judge's perspective with regard to the use of electronic court records, case management systems, and e-business initiatives such as e-filing and electronic warrants. Thus, case and document management systems and work flow designs must take into account whether the judge has access to a computer in chambers, in the courtroom, or both. Systems must also be designed to generate activity reminders, calendars, and customized reports.

The Committee also considered the need to adopt technical data exchange standards to bridge the numerous case management systems in Illinois' 102 counties. Existing national standards such as the National Information Exchange Model (NIEM) and Electronic Court Filing (ECF) standards were discussed as examples of standards that would normalize data across circuits and promote data sharing and e-business projects throughout the judicial system. Finally, the Committee discussed the need for document standards, such as PDF and PDF/A, for the indefinite storage and archiving of court documents.

### **Study Committee on Complex Litigation**

The Study Committee on Complex Litigation continued to diligently carry out its general charge to prepare revisions and updates and to introduce new topics as necessary to its Manuals on Complex Litigation (Civil and Criminal). The Criminal Manual had not been fully revised or updated since 2005; thus, in 2012, the Committee began an in-depth review of the Criminal Manual. In 2013, the Committee continued its in-depth review of existing content of the Criminal Manual. The Committee's chief objective was to make the Criminal Manual more user-friendly by up-dating non-current information and removing out-dated material and information that was readily available elsewhere. The Committee also concentrated on creating checklists, sample orders, and other useful tools to make the Criminal Manual a more valuable resource for judges who preside over complex criminal cases.

By the end of 2013, all chapters of the revised Criminal Manual had been fully drafted, reviewed, and approved for inclusion by the full Committee. In 2014, the Committee will conduct a final in-depth review of the revised Criminal Manual, paying particular attention to the statutes and cases that are cited to ensure that they are current. Publication of the revised Criminal Manual will further the Committee's goal of providing topical, efficient reference guides for Illinois judges presiding over complex litigation.

### **Criminal Law and Probation Administration Committee**

The Criminal Law and Probation Administration Committee continued to discuss the charge of updating the 2007 Specialty Court Survey. The Committee, in conjunction with the Administrative Office of the Illinois Courts, developed an initial assessment for the purpose of determining the nature and extent of problem-solving courts in each judicial circuit. Responses were received from each circuit. Once the responses were analyzed, the Committee, again in conjunction with the Administrative Office of the Illinois Courts, developed a detailed survey instrument capable of providing the Conference with a more comprehensive overview of specialty courts in Illinois. The detailed survey was e-mailed to the Trial Court Administrators for data collection.

Trial Court Administrators in all 102 Illinois counties responded to the assessment, which revealed that:

- There are 94 problem-solving courts in Illinois.
- There are 52 drug courts in Illinois.
- There are 24 mental health courts in Illinois.

- There are 12 veterans' courts in Illinois.
- There are 6 other types of specialty courts in Illinois.

Next, the Committee considered a proposal to add paragraph (g) to Supreme Court Rule 402. The proposed amendment would authorize a defendant, in the absence of an objection by the court and the prosecution, to enter a plea of guilty conditioned upon his or her ability to have the adverse pretrial suppression motion reviewed by an appellate court. The proposal is drawn directly from the Federal Rule of Criminal Procedure 11 and is commonly known as a "conditional plea." After discussion of the proposed Rule, a consensus was reached that conditional pleas are not a feasible option in Illinois for the following reasons:

- The proposal does not improve or enhance the current methodology of appealing denials of a motion to suppress. Specifically, if the reviewing court finds that the trial court erred in denying the motion to suppress, the case will be returned to the trial court and a request to withdraw the plea may be made at that time.
- The proposal might create additional bases for claims of admonishment errors which, in turn, could increase postconviction proceedings.
- The proposal might increase the filing of motions to suppress, whether or not meritorious, which, in turn, could increase the number of cases appealed.

Next, the Committee reviewed whether a rule similar to the language contained in Supreme Court Rules 416(f) (case management), 416(g), and 416(h) (certificates of readiness) should apply to other types of felony cases, in particular, cases where natural life in prison is the only sentencing option, Class X felonies, and cases where extended term sentencing is possible. It was the consensus of the Committee that these rules, which were adopted for use in capital cases to ensure that due process was provided to death-eligible defendants, should not be applied to other felonies.

As a final matter, the Committee continued to discuss the reliability of the method currently used by Illinois trial courts for determining admissibility of eyewitness testimony. The Committee examined multiple judicial opinions from Illinois, judicial opinions from other states, United States Supreme Court opinions, and scientific treatises on the reliability of eyewitness testimony. In particular, the Committee examined the cases of *State v. Henderson*, 27 A.3d 872 (N.J. 2011), *Manson v. Brathwaite*, 432 U.S. 98 (1977), *People v. Manion*, 67 Ill. 2d 564, (1977), *People v. Slim*, 127 Ill. 2d 302 (1989), and the New Jersey Attorney General Photo Identification guidelines. After thorough discussion of these cases and treatises, the Committee concluded that Illinois law provides adequate guidance to trial courts to determine the reliability of eyewitness testimony.

#### **Committee on Discovery Procedures**

The Committee on Discovery Procedures focused primarily on the issue of e-discovery, in keeping with the charge that it draft proposed amendments to select Supreme Court Rules and guidelines to assist trial court judges in addressing e-discovery issues. After surveying other state and federal discovery rules, examining case law, and reviewing articles on the subject of e-discovery, the Committee finalized its proposed amendments and accompanying Committee Comments to select Illinois Supreme Court Discovery Rules for the Supreme Court's consideration.

The proposed amendments, most of which parallel the 2006 amendments to the Federal Rules of Civil Procedure, address the scope of electronic discovery, proportionality, limitations on discovery of electronically stored information (ESI), production of ESI, and pretrial case management conferences.

Specifically, amendments are proposed to Supreme Court Rule 201, to add a definition of ESI. The proposed amendments to Rule 201 also limit the discovery of certain categories of ESI unless ordered by the court and further permit the trial court to examine the likely burden or expense of producing ESI, thereby empowering the trial court to apply a proportionality principle when considering protective orders.

Proposed amendments to Supreme Court Rule 214 address the format for the production of ESI.

Proposed amendments to Supreme Court Rule 218 require early discussion of issues involving ESI and its preservation at the pretrial case management conference to reduce the potential for discovery abuse and delay.

As a final matter, the Committee decided not to propose amendments to Supreme Court Rule 219 regarding when the duty to preserve ESI arises and potential sanctions for the loss or destruction of ESI. The Committee determined that the current rule and case law sufficiently covers such situations.

The related project of drafting guidelines to assist trial court judges in addressing e-discovery issues is on the Committee's agenda for 2014.

#### **Committee on Education**

The Committee on Education is charged with identifying ongoing educational needs for the Illinois judiciary and developing short-term and long-term plans to address those needs. For Conference Year 2013, the Committee received two continuing charges: (1) to develop and recommend a calendar of judicial education programs for new and experienced judges that reflects emerging legal, sociological, cultural, and technical issues that impact judicial decision making and court administration; and (2) to evaluate judicial education programs on an on-going basis. Under this broad topic of judicial education and training, the Committee continued to research and recommend topics and faculty for the biennial Education Conference, the annual New Judge Seminar, the multiple training events comprising the annual Seminar Series, and the Advanced Judicial Academy.

Consistent with its overall charge, the Committee completed the 2012 Illinois Judicial Benchbook projects; delivered and evaluated the June 2013 *Advanced Judicial Academy*, the January 2013 and December 2013 *New Judge Seminar*, the March 2013 *Upholding Rights While Enforcing Legal Obligations: An Appropriate Judicial Response to Financial Matters in the Courtroom*

seminar, the May 2013 *DUI/Traffic* seminar, the September 2013 *Faculty Development Workshop*, the November 2013 *Genomics for Judges* seminar, and the November 2013 *Public Health Law and Science* seminar.

The Committee also initiated planning of the May 2014 *DUI/Traffic* seminar, 2013 Illinois Judicial Benchbook projects, and the 2014 Education Conference. In addition, the Committee recommended that judges who preside over delinquency and neglect and abuse cases be given training on disproportionate minority representation, evidence-based practices in juvenile court, and cultural competencies.

### **Study Committee on Juvenile Justice**

The Study Committee on Juvenile Justice updated Volume I of the *Illinois Juvenile Law Benchbook*, which addresses proceedings brought in juvenile court that involve allegations of delinquency, addicted minors, minors requiring authoritative intervention, and truant minors in need of supervision. It also addresses confidentiality and juvenile court records.

The Committee concluded its study of truancy and the measures available to the court to address the problem. The Committee concluded that under the Juvenile Court Act, there is little that a judge or the juvenile court system can do to address truancy issues in individual cases. The Committee observed that if an individual judge wishes to address the issue of truancy in the community, numerous resources and publications are available to assist in this effort.

Next, the Committee reviewed its earlier recommendation that judges should be assigned to juvenile court for a significant length of time, in keeping with recognized best practices for juvenile courts. With respect to the duration of judicial assignments in juvenile justice and child welfare cases, the Committee reviewed the National Council on Juvenile and Family Court Judges Technical Assistance Brief, "*Key Principles for Improving Court Practice in Juvenile Delinquency Cases*," which recommends "six continuous years as the minimum time for a judge to spend on the juvenile delinquency court bench." The Committee acknowledged that, in many Illinois circuits, a six-year assignment to the juvenile delinquency call is not realistic. However, the Committee recommended that chief circuit judges try to assign judges who are genuinely interested in and committed to juvenile justice issues and attempt to retain those judges in the call on a long-term basis.

With respect to juvenile abuse and neglect cases, the Committee noted that the National Council of Juvenile and Family Court Judges recommends that judges who hear these cases "be interested in the juvenile court's work and be prepared to remain in the court for at least three years." The Committee also recognized the need to provide specialized training to judges who hear juvenile delinquency and abuse and neglect cases.

As a final matter, the Committee analyzed its previous recommendation for proposed legislative changes to select provisions of the Juvenile Court Act. With respect to increasing post-disposition detention time available to judges, the Committee, after reviewing other state laws, determined that it will make no recommendations regarding a change to the law in Illinois. With respect to the mandatory five-year probation term for forcible felonies, the Committee monitored pending legislation to eliminate the five-year minimum term of probation. The Committee, however, determined that several juvenile advocacy groups are actively seeking to accomplish this result in Illinois so that the Committee need not continue its study of this issue. With respect to court supervision, the Committee has supported a change in the continuance under supervision provisions of the Juvenile Court Act to grant a judge the discretion to impose a continuance under supervision without the agreement of the State's Attorney. Public Act 98-0062, effective January 1, 2014, addressed this issue by authorizing a judge to impose court supervision without the State's Attorney's agreement, if the court finds certain conditions are met.

### **Committee on Strategic Planning**

The Committee on Strategic Planning focused on planning a Future of the Courts Conference. The Conference, titled: *Shaping the Future of the Illinois Courts Conference: Vision, Values & Strategies*, was held on April 16, 2013.

In preparation for the conference, the Committee reviewed the reports from the small group discussions that were held during the October 2012 Annual Meeting of the Judicial Conference. From these reports, the Committee identified six subject areas: Technology & Automation, Civil Justice, Judicial & Court Performance, Court Funding & Organization, Criminal Justice, and Juvenile Justice. Two members of the Committee were assigned as co-chairs for each topic. The Committee assisted the Court with planning the agenda for the Conference, including dividing discussion of each of the six topics into two or three breakout groups. This allowed the individual participants to be more engaged in the discussion of objectives and strategies. Materials relating to each of the six topics were gathered by the Committee and distributed to Conference participants before the event to encourage meaningful discussion on each topic during the breakout groups.

The Committee also assisted in preparing a survey consisting of statements about each of the six topical areas that was distributed to Conference participants, who were asked to what extent they agreed or disagreed with each statement. Finally, the Committee offered suggestions to the Court regarding the invitee list, which eventually included over 275 stakeholders from the judiciary and the legal community, representatives from state and local government, bar associations, and non-profit organizations.

After the breakout discussions, the co-chairs of each of the six groups prepared a summary of the objectives identified by the participants and the strategies they recommended for achieving these goals. These summaries were forwarded to the chairs of the relevant standing committees of the Illinois Judicial Conference for their consideration and determination of concrete next steps.

The Committee also reviewed the reports submitted by the other Judicial Conference Committees and submitted its report of next steps to the Executive Committee.

### **Conclusion**

As evidenced by these Committee summaries, the scope of the work undertaken by the Judicial Conference in 2013 was broad, ranging from consideration of amendments to various Supreme Court Rules and updating manuals and benchbooks to the education and training of both new and experienced judges. Although many projects and initiatives were completed in Conference

Year 2013, some will continue into Conference Year 2014, and additional projects will be assigned for the coming year. Thus, the Judicial Conference will continue to honor its constitutional mandate and remain steadfast in its goal of improving the administration of justice in Illinois.

### Supreme Court Decisions That the General Assembly May Wish to Consider

*People v. Aguilar*, 2013 IL 112116 (Sept. 12, 2013).

The 17-year-old defendant was found in possession of a loaded handgun while on the property of a friend. He was convicted of the Class 4 form of aggravated unlawful use of a weapon (AUUW), 720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (d), and unlawful possession of a firearm (UPF), 720 ILCS 5/24-3.1(a)(1). The Court considered whether either statute was facially violative of the right to keep and bear arms guaranteed by the second amendment to the United States Constitution.

With regard to the AUUW statute, the Court agreed with the Seventh Circuit Court of Appeals' recent decision in *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), which held that the right to keep and possess firearms for self-defense extends outside the home and, further, that the Class 4 form of AUUW, which prohibits the carrying of ready-to-use firearms outside the home, constituted a total ban on the exercise of a personal right specifically guaranteed by the United States Constitution and recognized by the United States Supreme Court. As such, the Court held that the AUUW statute was unconstitutional on its face.

The Court upheld the validity of the UPF statute, which prohibits anyone under 18 years of age from possessing a handgun, in agreement with a recent decision by the United States Supreme Court that the possession of handguns by minors falls outside the scope of the second amendment's protection. *Affirmed in part, reversed in part, and remanded.*

*Board of Education of Peoria School District No. 150 v. Peoria Federation of Support Staff, Security/Policeman's Benevolent & Protective Ass'n Unit No. 114*, 2013 IL 114853 (Oct. 18, 2013).

This case involved a challenge to the constitutionality of Public Act 96-1257, which amended the Illinois Public Labor Relations Act to transfer a single school district's security guards and truant officers from the jurisdiction of the Illinois Educational Labor Relations Board to that of the Illinois Labor Relations Board. The school district in this case was the only district in the State that employed security agents and guards.

Public Act 96-1257 applied only to "a school district which employs peace officers in its own police department in existence on the effective date" of the legislation. The Court held that this violated article IV, section 13 of the Illinois Constitution, which prohibits "special legislation," because it applied only to a specific group of individuals employed by a single school district on a specific date. The Constitutional prohibition in article IV, section 13, prohibits passage of a special law where a generally applicable law is or can be made available. Where a law addresses a problem that is unique to a particular geographic area or where no other persons or entities can occupy the precise position of the parties affected, such legislation will be upheld. However, in the case of Public Act 96-1257, the Court found that there was no basis for limiting the reach of the legislation to only those peace officers employed by the school district on a specific date. Because a general law could have been made applicable, the Court held that Public Act 96-1257 constituted "special legislation" in violation of the Illinois Constitution. *Circuit court judgment reversed. Appellate court judgment affirmed, as modified.*

*Hartney Fuel Oil Co. et al. v. Hamer et al.*, 2013 IL 115130 (November 21, 2013).

This case concerned the proper situs for retail occupation tax (ROT) liability under three Illinois statutes: the Home Rule County Retailers' Occupation Tax Law, the Home Rule Municipal Retailers' Occupation Tax Act, and the Regional Transportation Authority Act. The Court considered the legislative intent of each statute and its interpretation by the Department of Revenue in its administrative regulations.

The Court found that the legislative intent of the ROT statutes was to permit home rule municipalities and counties, along with the RTA, to enact the retail occupation taxes to place some of the burden of paying for local government services on the retailers who enjoy them. The Court held that the tax is laid upon the "business of selling," and not upon the sales themselves. The Court further held that the plain language of the statutes did not reveal legislative intent as to how the "business of selling" was defined. In accordance with case law, the Court held that the question of situs required a fact-intensive inquiry. Absent any further direction from the General Assembly via amendments to the statutes in question, a retailer is subject to the ROT in the jurisdiction where its predominant selling activities occurs, as determined on a case-by-case basis, notwithstanding the fact that the retailer engages in limited activities, including acceptance of orders in another jurisdiction.

With regard to the Department's implementing regulations, the Court determined that, while the regulations sufficiently reflected the statutory intent to impose the ROT taxes in the jurisdiction where the "business of selling" takes place, they did not sufficiently allow for a factual case-by-case determination to be made, and were therefore invalidated as inconsistent with statute. *Appellate court judgment affirmed in part and reversed in part.*