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Annual Report to the General Assembly on 2006 Judicial Conference

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The annual meeting of the Illinois Judicial Conference was held on October 19, 2006, in Chicago. The Conference, which is authorized by Article 6, section 17 of the Illinois Constitution, 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.

The work of the Judicial Conference is conducted throughout the year, largely through the efforts of seven appointed committees: Automation and Technology Committee, Alternative Dispute Resolution Coordinating Committee, Study Committee on Complex Litigation, Committee on Criminal Law and Probation Administration, Committee on Discovery Procedures, Study Committee on Juvenile Justice, and the Committee on Education. The rosters of the various committees include appellate, circuit and associate judges who serve as full members of the Judicial Conference. The work of the committees is aided by non-Judicial Conference judges, law professors, and attorneys, who are appointed by the Supreme Court to serve as either associate members or advisors. Senior level staff of the Administrative Office of the Illinois Courts serve as liaisons to the committees to support their work as defined in the committee charge.

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 is comprised of fourteen judges, six of whom are from the First Judicial District (Cook County) and the remaining eight of whom are 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 2006 Annual Meeting of the Judicial Conference, as was the manner in the two prior years, was consolidated into a one-day format in order 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 Robert R. Thomas. In his opening remarks, Chief Justice Thomas welcomed the Conference members and thanked them for their hard work during the Conference year. He also recognized the presence of current members of the Supreme Court as well as retired Supreme Court Justices Mary Ann McMorrow and John Nickels. In concluding his introductions, Justice Thomas recognized Cynthia Y. Cobbs, Director of the Administrative Office of the Illinois Courts, and thanked the Director and her staff for their work in preparing for the annual meeting of the Conference.

Chief Justice Thomas remarked that, notwithstanding that the Judicial Conference is constitutionally mandated, such a gathering, to improve the administration of justice, would occur absent such a mandate because of the sense of commitment to duty that is commonly shared by Illinois' judges. Reflecting on the role of the judiciary as a coequal branch of government, 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. Citing the *Federalist 78*, and Hamilton's analysis of the role of the judiciary in a true democracy, Justice Thomas reminded all in attendance that the judiciary's strength lies not in the power of the sword, nor in the power of the purse, but rather, it lies in the power of our judgments. If the judgments are just and persuasive, then the judiciary will have earned, and continue to earn, the respect of the other two branches of government.

Chief Justice Thomas offered to the attendees that the purpose of the Judicial Conference, "to consider the work of the courts and to suggest improvements in the administration of justice," essentially provides a compulsory self-evaluation. A little introspection, the Chief offered, is always a good thing. Over the past few years, the Supreme Court of Illinois has taken active and high-profile measures to ensure that the attorneys of Illinois are serving the judicial system effectively and with a high degree of professionalism. The Supreme Court recently enacted rules establishing minimum continuing legal education requirements for attorneys, and in an equally worthy initiative, created the Supreme Court Commission on Professionalism to create a forum in which lawyers, judges and legal educators can explore the meaning and aspirations of professionalism in contemporary legal practice. While these programs focus on the attorney side of the system, Justice Thomas also highlighted that judges must also take affirmative steps to ensure that the system lawyers serve is the best it can be. To that end, the Supreme Court has increased the continuing education requirement for Illinois judges. Beginning in 2008, the judges of the state of Illinois, like the lawyers of the state, will be required to complete 30 hours of approved course work every two years.

In closing, Chief Justice Thomas commented that the important work of the Conference, the amount of study, debate and analysis that is 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 2006 provides a hint of the great things that are to come that will shape the future of the judicial branch.

The Annual Meeting continued with time dedicated to Conference Committee meetings, devoted in part to finalization of the Committees' annual reports and to initiate planning for Conference Year 2007. The afternoon plenary session included a presentation of each of the committees' activities in Conference Year 2006 and some initial suggestions for tasks in Conference Year 2007. The following summarizes the written and oral substance of those reports:

Alternative Dispute Resolution Coordinating Committee

The Alternative Dispute Resolution Coordinating Committee monitored both Court-Annexed Mandatory Arbitration Programs and Court-Sponsored Major Civil Case Mediation Programs.

During the course of the Conference year, the Committee met with arbitration administrators and supervising judges of circuits with mandatory arbitration programs. Meeting topics included discussion on amending Supreme Court Rule 87 with respect to arbitrator compensation, Supreme Court Rule 93 with respect to the rejection fee for an arbitration award, consideration of the feasibility of a *voluntary* arbitration program, and discussion on programmatic issues raised by arbitration administrators and supervising judges.

Currently, Supreme Court Rule 87 provides that arbitrators be compensated at the rate of \$75 per case. Noting that the compensation amount has not increased since the inception of the program, the Committee recommended to the Court that, upon research by the Administrative Office of the Illinois Courts, the compensation rate be increased.

Supreme Court Rule 93 mandates that a fee of either \$200 or \$500, dependent upon the amount of the award, shall be paid by litigants who, upon the announcement of the arbitrator's award, rejects that award. Upon rejection, an arbitration case may be disposed of by proceeding to trial but, more often than not, the case terminates by settlement of the parties. In addition to the Committee's recommendation for an increase in the arbitrator's fee, the Committee also recommended that the Court consider an increase in the arbitration award rejection fee.

Finally, the Committee focused some attention on identifying a means by which the Court could indicate appreciation to those Illinois attorneys who serve as arbitrators. In that regard, the Committee suggested that the Supreme Court issue Certificates of Appreciation acknowledging arbitrator service and dedication to the arbitration program.

Automation and Technology Committee

In Conference year 2006, the Automation and Technology Committee was charged to continue its work in examining and analyzing the myriad issues related to the effective and efficient use of technology in the Illinois courts. A new project undertaken in this conference year included the Committee's development of a Disaster Recovery Guide ("Guide") for use in the trial courts. In its current format, the Guide identifies critical topics and procedures which may be included in a court's disaster recovery plan. The Guide includes general topics, sample responses and templates that may be customized for each county where more detailed information and practices can be included for county and circuit-wide disaster recovery plans. The Guide also facilitates the sharing of resources, practices, and procedures among neighboring counties/circuits.

The Committee also began discussions regarding the use of video conferencing and video arraignment equipment in the circuit courts. While recognizing the benefits of the availability of such technology, myriad issues are presented by its use, including equipment costs and integration of existing technology systems. Continued research and analysis will include further exploration of the costs and concerns of video arraignment systems and additional research in the technology required to support these systems.

Study Committee on Complex Litigation

The charge to the Study Committee on Complex Litigation is to study and make recommendations regarding the management of multiple, overlapping litigation and other problems associated with complex litigation. The Illinois Manual for Complex Civil Litigation and the companion Manual for Complex Criminal Litigation were first developed by the Committee in 1991 and 1997, respectively. Both Manuals are updated annually, with the Committee periodically adding a new topical area to one or both manuals. In Conference year 2006, the Committee monitored and culled case law and other legal developments involving complex litigation in order to keep the Manuals current. Updated information will be incorporated in the main text of the civil and criminal manuals. The text of the manuals will continue to be available on CD-ROM which affords users the convenience of downloading, hyperlink and search capabilities.

This year the Committee undertook the drafting of a new Alternative Dispute Resolution (ADR) section for inclusion in the Civil Manual. The new section, which covers the use of ADR in specific types of complex cases, such as class actions, mass torts, and construction and real estate disputes, is intended to provide guidance to judges in selecting cases that likely will most benefit from ADR. A final version of the new draft section will be finalized for inclusion in the Manual upon review and comment by the Alternative Dispute Resolution Coordinating Committee.

Finally, the Committee considered the utility of centralized document depositories in complex litigation cases. Such repositories, which are currently utilized in the Third Judicial Circuit and the Circuit Court of Cook County, serve the purpose of promoting the efficient and economical management of voluminous documents in multi-party litigation. The Committee recommended that the use of centralized document depositories be expanded in Illinois for appropriate complex litigation cases.

In the next Conference year, the Committee plans to continue monitoring and evaluating case law, rule changes, and legislation in order to update and supplement the Manual for Complex Civil Litigation and the Manual for Complex Criminal Litigation to keep them current. The Committee also will work to update the forms currently contained in the Manual Appendixes and make them available electronically which will permit judges easy access to form orders.

Committee on Criminal Law and Probation Administration

The Committee on Criminal Law and Probation Administration focused its work on three major areas: evidence-based practices (EBP), the efficacy of problem-solving courts, and review of Supreme Court Rule 415. EBP is the term used to represent a body of research based strategies in the study of criminal conduct that, when implemented, demonstrate substantial impact in reducing offender recidivism. The Committee conducted literature reviews, held interviews with probation departments and select judiciary, as well as attended workshops on EBP. The review of these principles has prompted the Committee to seek approval from the Supreme Court to develop a guide for use by judges to assist their work in crafting targeted and effective conditions of community-based sentences.

There are no less than thirty-five problem solving courts in either operational or implementation phases in Illinois. Since the creation of the first drug court in the Circuit Court of Cook County in 1989, several other jurisdictions have created problem solving courts, including mental health courts. The Committee conducted a survey of those several therapeutic courts and compiled a summary report which includes such information as the description of the purpose, case processing procedures, administration, and staff training for such courts. The compiled report was filed as a part of the Committee's report and serves to provide the Court with an inventory of Illinois' current specialty courts.

Finally, the Committee concentrated some of its efforts on examining a proposed amendment to Supreme Court Rule 415. Rule 415 addresses the regulation of discovery in criminal proceedings in the trial courts. The amendment, as proposed, would have

allowed defense counsel the option of providing a copy of discovery to the defendant. Upon completion of its review, the Committee determined to recommend rejection of the proposed amendment because of the concern that it could give rise to increased harassment, or reprisals, against witnesses and alleged victims.
Committee on Discovery Procedures

The Committee on Discovery Procedures addressed the problems associated with sorting through various and often voluminous documents submitted pursuant to a written request to produce under Supreme Court Rule 214. The Committee sought to clarify the rule by requiring that documents, produced pursuant to a Rule 214 request, are labeled to correspond with the specific categories in the written request. Consistent with Supreme Court Rule 3, which sets forth procedures for the creation or amendment of Supreme Court Rules, the Committee forwarded its proposed amendments to the Supreme Court Rules Committee.

The Committee also analyzed the abuses surrounding a request to admit under Supreme Court Rule 216, which include burying the request with numerous other discovery requests where they are more likely to go undetected by the responding party until after the deadline has passed. The Committee found that such abuses often occur in small cases in high volume courtrooms, such as municipal court, where many of the law firms are "bulk filers," who represent credit card companies and collection agencies, and many of the litigants are pro se. After much discussion, the Committee proposed certain narrow amendments to Rule 216, including requiring prior leave of court before serving a request to admit; proper notice to all parties; and, prohibiting such requests from being served more than 120 days after the filing of a responsive pleading unless there is agreement otherwise, or the court so orders. Nevertheless, the Committee limited application of its proposed amendments to civil actions not in excess of \$50,000. Consistent with Supreme Court Rule 3, the Committee forwarded its proposed amendments to the Supreme Court Rules Committee.

The Committee began exploring the feasibility and nuances of a rule requiring mandatory disclosure of relevant documents to address the problem of parties not receiving relevant information before trial. The Committee considered, but rejected, adopting the automatic disclosure of documents procedure required under Federal Rule of Civil Procedure 26. Instead, the Committee is considering a form of minimum disclosure whereby certain aspects of Supreme Court Rule 222, which has its own mandatory disclosure requirements for civil actions seeking money damages not in excess of \$50,000, are made applicable to general discovery. To assist its discussion, the Committee has begun to examine discovery rules concerning disclosure in other states, along with gathering information about the use of case management conferences and related orders.

Committee on Education

The Supreme Court's Comprehensive Judicial Education Plan was first implemented in 1998. The Committee on Education is charged with identifying and addressing the ongoing education needs for the Illinois judiciary. Since the Plan's inception, the Committee, in collaboration with the Administrative Office of the Illinois Courts, has developed and presented a wide range of judicial education programming for Illinois' judiciary annually.

In March 2006, the scope of the Committee charge grew, with the Supreme Court's adoption of Minimum Continuing Judicial Education (MCJE) provisions for all circuit, associate and appellate judges, through the presentation of an expanded 30-hour Education Conference in alternate years, beginning in 2008.

In accordance with its overall charge and the new MCJE provisions, the Committee undertook key specific activities and priorities in Conference Year 2006:

- Developing and recommending a "core" judicial education curriculum for Illinois judges which identifies the key judicial education topics and issues to be addressed through the judicial education activities each Conference year;
- Enhancing the identification, recruitment and preparation of potential judicial education faculty members in each of the recommended core curriculum areas;
- Assessing Illinois judges' needs for comprehensive judicial reference documents, "benchbooks," and self-study materials and recommending a plan, including a template for seminar materials, to meet the identified needs; and
- Recommending a plan 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.

In addition to assessing judicial education needs and initiating implementation of the Court's MCJE provisions, the Committee's Conference Year 2006 activities included conducting Education Conference 2006, a full seminar series, the annual New Judge Seminar and the annual Faculty Development Workshop as well as initial planning for the 2007 Advanced Judicial Academy. The Resource Lending Library, sponsored by the Committee and operated by the Administrative Office of the Illinois Courts, continues to serve as a valued judicial education resource.

Study Committee on Juvenile Justice

The Study Committee on Juvenile Justice updated Volume II of the *Illinois Juvenile Law Benchbook*, which primarily addresses juvenile court proceedings involving abuse, neglect, and dependency. The Committee researched and drafted provisions on confidentiality for inclusion in Volume II of the benchbook. The new provisions will address access to juvenile court proceedings and records by the press; access to juvenile court records for research; and, use of a minor's name in notice by publication to the parent. The Committee reasonably anticipates that an update to Volume II will be available for distribution at the New Judge Seminar which will be convened in January 2007. During the 2007 Conference year, the Committee seeks to revisit and update Volume I of the *Illinois Juvenile Law Benchbook*, which primarily addresses juvenile court proceedings involving allegations of delinquency.

The Committee also discussed the insufficient funding for the operation/administration of juvenile diversion programs and the related lack of priority for juvenile diversion fees under Supreme Court Rule 529. Rule 529 sets forth the percentage distribution of fines, penalties and costs collected for traffic offenses, which in turn is equal to the bail required by Supreme Court Rule 526. The Committee recommended that in the event the Supreme Court increases the \$75 bail for traffic offenses as provided for in Rule 526, the juvenile diversion fee be given priority under Rule 529.

Finally, the Committee began examining Problem-Solving Courts in the management of juvenile delinquency, abuse, neglect, and dependency cases. The Committee is awaiting responses from various circuits to inquiries made by the Committee about the existence/nature of such specialty courts.

Summary Statement

The work of the seven Judicial Conference Committees is ongoing, with many of the projects and initiatives begun in Conference year 2006 continuing in 2007. The work of the committees covered a broad range of topics and issues. That work, which included suggestions on improving alternative dispute resolution processes, assessing the efficacy of problem solving courts, providing resources for the continuation of court operations in the event of a disaster, as well as enhancing judicial competence through the development of manuals, benchbooks and course work, will serve to improve the administration of justice in Illinois.

**Supreme Court Decisions Which the General Assembly May Wish to Consider
Governmental Regulation - Single Subject Clause**

In *People v. Olender et al.*, S. Ct. Docket No. 98932 (December 15, 2005), the supreme court held that Public Act 88-669, entitled "An Act in Relation to Governmental Regulation," violated the single subject clause of the constitution because it contained unrelated provisions that by no fair interpretation have any legitimate relation to one another. The court concluded that not all of the provisions of the Act have a natural and logical connection to the single subject of revenue to the state.

Election Code-Constitutionality

In *O'Brien et al., v. White et al.*, S. Ct. Docket No. 102077 (March 6, 2006), the supreme court considered section 7A-1 of the Election Code (10 ILCS 5/7A-1 (West 2004)). Section 7A-1 of the Election Code provided that an elected judge seeking retention must file a declaration of candidacy to succeed himself or herself on or before the first Monday in December before the general election preceding the expiration of the judge's term of office. The court held that section 7A-1 of the Election Code was facially unconstitutional because it directly conflicted with the clear and unambiguous deadline established by Article VI, §12(d) of the Illinois Constitution which provides that judges have the right to file retention declarations not less than six months before the general election preceding the expiration of their term of office. The supreme court determined that §12(d) is directed at the judge, not the General Assembly, such that it gives the judge the right to file his or her declaration within the constitutionally established time frame.

Endangering the Life or Health of a Child - Mandatory Rebuttable Presumption

In *People v. Jordan*, S. Ct. Docket No. 99895 (January 20, 2006), the supreme court considered section 12-21.6(b) of the Criminal Code of 1961, (720 ILCS 5/12-21.6(b)) which provides that there is a rebuttable presumption that a person committed the offense of endangering the life or health of a child if he or she left a child six (6) years of age or younger unattended in a motor vehicle for more than ten (10) minutes. The court held that section 12-21.6(b) created an unconstitutional mandatory rebuttable presumption which impermissibly shifts the burden of production to the defendant.

Criminal Law-Mandatory Rebuttable Presumption

In *People v. Woodrum*, S. Ct. Docket No. 99984 (October 5, 2006), the supreme court considered section 10-5(b)(10) of the Criminal Code of 1961, (720 ILCS 5/10-5(b)(10)) which provides that the "luring or attempted luring of a child under the age of 16 into a motor vehicle, building, house trailer, or dwelling place without consent of the parent or lawful custodian of the child shall be prima facie evidence of other than a lawful purpose." The court concluded that the plain meaning of the phrase "shall be prima facie evidence" in section 10-5(b)(10) is that the ultimate fact must be presumed upon proof of the predicate facts unless disproved by evidence to the contrary. Thus, the plain language of section 10-5(b)(10) creates a facially unconstitutional mandatory presumption.