



## SUPREME COURT OF ILLINOIS

CHAMBERS OF  
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January 31, 2017

The Honorable Michael J. Madigan  
Speaker of the House  
House of Representatives  
Springfield, IL 62706

The Honorable John J. Cullerton  
President of the Senate  
State Senate  
Springfield, IL 62706

The Honorable Jim Durkin  
House Republican Leader  
House of Representatives  
Springfield, IL 62706

The Honorable Christine Radogno  
Republican Leader  
State Senate  
Springfield, IL 62706

Dear Legislative Leaders:

I am pleased to provide an Annual Report of the activities of the 2016 Illinois Judicial Conference in keeping with Article VI, Section 17, of the Illinois Constitution of 1970. Pursuant to this constitutional provision, Illinois Supreme Court Rule 41 creates the Illinois Judicial Conference and charges the Judicial Conference with considering the work of the courts and suggesting improvements in the administration of justice. The past year has been a very productive one for the Judicial Conference.

The Judicial Conference consists of an Executive Committee and six standing committees that address issues of: (1) alternative dispute resolution, (2) civil justice, (3) criminal justice, (4) judicial education, (5) juvenile justice and (6) strategic planning. The annual meeting of the Judicial Conference was convened on October 27, 2016, with a theme of *Challenges and Changes to Illinois Justice*. The format and agenda of the annual meeting were structured to promote active participation by all attendees in our effort to identify innovative and promising improvements in the administration of justice.

In further compliance with Article VI, Section 17 of the Illinois Constitution of 1970, this report includes a summary of the work performed by each of the committees. Each of the six standing committees of the Judicial Conference provided a written report to the Supreme Court, summarizing initiatives undertaken during Conference Year 2016 and proposing projects for 2017.

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The work of the Judicial Conference supports the Supreme Court's overall commitment to the efficient administration of justice and management of our court system, as well as the prudent stewardship of both human and financial resources. The Supreme Court will continue to set goals and develop plans to assure that the judiciary provides equal justice to all and upholds the rule of law.

This report also includes a summary of several Supreme Court decisions that are offered for the General Assembly's consideration. In offering these cases, the Court is mindful of the distinct roles of the General Assembly and the Court. While we intend no intrusion upon the prerogatives of the General Assembly in the exercise of its authority, we do respectfully offer these cases for your consideration and look forward to the General Assembly's continued responsiveness and support.

On behalf of the Court, I respectfully submit the Supreme Court's Annual Report to the Legislative Leaders of the General Assembly on the 2016 Illinois Judicial Conference. This report is also available to the members of the General Assembly on the Supreme Court's website at [www.illinoiscourts.gov](http://www.illinoiscourts.gov).

Respectfully,



Lloyd A. Karmeier  
Chief Justice  
Supreme Court of Illinois

Enclosure

c: Members of the General Assembly

## **Annual Report to the General Assembly on the 2016 Illinois Judicial Conference**

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 requirement 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.

Pursuant to Illinois Supreme Court Rule 41, an Executive Committee acts on behalf of the Conference when it is not in session. The Executive Committee consists of fourteen judges: 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.

Six standing committees carry out the work of the Conference throughout the year. These committees are: the Alternative Dispute Resolution Coordinating Committee, the Civil Justice Committee, the Criminal Justice Committee, the Juvenile Justice Committee, the Committee on Education, and the Committee on Strategic Planning. The committees' membership includes appellate, circuit, and associate judges, law professors, and attorneys appointed by the Supreme Court as advisors. Senior level staff of the Administrative Office of the Illinois Courts serves as liaisons to support the committees' activities.

On October 27, 2016, the Illinois Judicial Conference held its annual meeting in Lombard, Illinois. The meeting was concentrated into one full day to minimize the judges' time away from the bench and to reduce costs.

Former Chief Justice Rita B. Garman convened the meeting and welcomed those in attendance. Justice Garman then introduced Chief Justice Lloyd A. Karmeier who had been sworn into the position of Chief Justice on October 26, 2016.

Chief Justice Karmeier began his remarks by acknowledging the work of Justice Garman over the last three years as Chief Justice. Chief Justice Karmeier stated he has had the good fortune to serve under several different Chief Justices and that all had done an outstanding job in leading the Court. Chief Justice Karmeier commented that Justice Garman had over the last three years served as Chief Justice with dignity, patience, and perseverance.

Chief Justice Karmeier then outlined his goals as Chief Justice: continue to expand access to justice, adopt a statewide electronic filing system and continue discussion on ways to improve pre-trial services.

The Chief Justice then stated that he has had the pleasure and privilege of attending several judicial conferences and that he is firmly convinced that the Illinois court system derives its strength from the diversity of the judiciary from the different parts of the state. He indicated that the entire structure of the Conference is premised on the notion that the court system needs

to find ways to move forward faster and better, and the diversity and expertise of the Conference membership is certainly a strength to achieve that goal. Chief Justice Karmeier added that he was impressed by how many judges and attorneys were willing and able to serve on the Conference committees and when called on to do so are not hesitant in accepting the task.

The Chief Justice concluded his remarks by again thanking former Chief Justice Garman for her outstanding service to the Court, not only for the last three years as chief justice, but for her entire tenure on the Court.

Former Chief Justice Garman began her address to the Conference by saying she was pleased to have the opportunity to speak to the members so she could say "thank you" to each and every person for their support and encouragement over the last three years.

Justice Garman stated that she had three goals when she became Chief Justice: an emphasis on civility and professionalism; greater efficiency and transparency in the judicial system; and expansion on the use of technology to create a more effective and responsive judicial system. Justice Garman then stated that great strides had been made in each of these areas.

With regard to improving civility and professionalism, Justice Garman stated that the formation of the Illinois Judicial College and the continuing efforts of the Commission on Professionalism have been helpful in achieving this goal. Justice Garman also credited the ambitious survey of court users which revealed a high level of satisfaction with the judicial system, while also revealing areas which require improvement. Justice Garman highlighted the Court's effort to improve civility and professionalism by reaching out to other branches of government, such as inviting members of the Illinois General Assembly to attend oral arguments, as well as offering in the near future a law school for legislators to share information with newly-elected members of the General Assembly about the structure and function of the judicial branch, including how it interacts with the other two branches of state government.

With regard to improving efficiency and transparency, Justice Garman discussed the Court's adoption of uniform standards and certification programs for therapeutic courts, the continuing efforts to improve pre-trial services, the creation of a Supreme Court Committee on Equality to promote equality and fairness in the administration of justice, and the creation of a certification program and registry of language interpreters. Justice Garman also emphasized that the Court's new public service information office will create a better flow of information to both the public and the legal community. She further added that the Court has held oral arguments in venues throughout the state so that more people can see how the Supreme Court functions.

With regard to technology, Justice Garman advised that e-filing in civil cases has been implemented state wide. Further, she noted that the use of cameras in the courtroom is now being utilized in all parts of Illinois. Justice Garman then stated that a new internal case information system called C-Track had recently went live in the Supreme Court. She indicated that while C-Track will have minimal impact on the public, it will bring improved efficiency to the internal communications in case processing and will be implemented in the Appellate Courts soon.



Justice Garman announced that this year's Conference placed a focus on social justice and addressed other cutting edge issues that have potential to significantly impact the Illinois judicial system. These issues include the report of the Statutory Court Fee Task Force and the report of the Illinois State Commission on Criminal Justice and Sentencing Reform. She commented that each report is highly relevant to the Court's efforts to improve both access to justice and transparency to the judicial system.

In conclusion, Justice Garman indicated that her remarks were not an invitation to stroll down memory lane, but were intended to encourage the Conference to find ways to advance these goals and that the accomplishments of the last three years will serve as a call to action to find ways to improve the court system in Illinois. On behalf of the Illinois Supreme Court, she thanked the Conference members for their service on the various committees.

Justice Garman then introduced Mr. Vincent F. Cornelius, President of the Illinois State Bar Association, who addressed the Conference on the topic of social justice. Subsequent introductions from the former Chief Justice also included: Mr. Steven F. Pflaum, Chair of the Statutory Court Fee Task Force and Representative Elaine Nekritz, Member of the Statutory Court Fee Task Force, who both shared remarks about the Task Force Report; Mr. Rodger Heaton, Chairman of the Illinois State Commission on Criminal Justice and Sentencing Reform, who offered comments on the Commission's work; Mr. George H. Sheldon, Director, Illinois Department of Children and Family Services, who spoke about the implementation of Immersion Sites; and Chief Circuit Judge David A. Hylla, Chair of the Supreme Court's e-Business Policy Advisory Board, and Mr. Terry Derrick, Operations Director of Tyler Technologies, Inc., who both commented on implementation of mandatory e-filing of civil cases.

Each of the six standing committees of the Illinois Judicial Conference provided a written report 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 monitor program efficacy.

During Conference Year 2016, the Committee, in consultation with the Administrative Office of the Illinois Courts, continued to develop uniform methods of statistical reporting for court annexed mediation programs authorized pursuant to Illinois Supreme Court Rules 99 and 99.1. Due to the varied nature of court annexed mediation programs, this project needs additional time to be completed.

The Committee also continued to work to develop standardized forms for use in civil mediation. Analysis of forms currently in use by existing programs revealed disparities in the types of forms and content. This topic requires further discussion by the Committee with resulting recommendations to the Court.

The Committee facilitated the improvement and expansion of major civil case mediation programs by collaborating with the Judicial Conference Committee on Education to educate judges on the best practices of mediation, and also by meeting with the Conference of Chief Circuit Judges to encourage mediation.

The Committee made a recommendation to the Supreme Court to amend Supreme Court Rule 92 by incorporating a new subparagraph (e) which authorizes arbitration panels to assess costs. The Court adopted the Committee's recommendation, and the amendment to the rule was filed on December 5, 2016, with an effective date of January 1, 2017.

The Committee also discussed whether or not Supreme Court Rule 86 should be amended to mandate mandatory court annexed arbitration programs in all 24 judicial circuits and whether to expand the maximum case value to include cases with a value in excess of \$50,000.00. The Committee recommended that Rule 86 not be amended for either suggestion, as each Chief Circuit Judge currently has the discretion to request a court annexed mandatory arbitration program and is in the best position to determine each circuit's caseload and needs. As such, the Committee concluded that the *status quo* should remain.

Finally, the Committee examined Supreme Court Rule 93 to assess whether some types of court annexed mandatory arbitration case awards should be binding with no right of rejection. The Committee collected and reviewed statewide data on the frequency of rejections and reached a consensus that rejection of arbitration awards was not significant enough to warrant modification of rejection rules. Concern also existed that by removing the right of rejection a person's constitutional right to a trial by jury in civil cases guaranteed by Article 1, Section 13 of the Illinois Constitution and by the Seventh Amendment to the United States Constitution would be violated.

### **Civil Justice Committee**

The Civil Justice Committee has an overarching mandate to advise the Judicial Conference and the Supreme Court in matters affecting civil justice. The Committee's charge for Conference Year 2016 was to review and make recommendations on matters affecting civil justice. The Committee was to review, analyze and examine new issues arising out of legislation and case law that impact civil law and procedures and any aspect of civil justice. The Committee members possess significant trial experience, from various jurisdictions, both large and small.

The Committee has undertaken projects designed to provide valuable information to the Supreme Court to assist it in determining ways to ensure that the Illinois civil justice system is functioning effectively. In Conference Year 2016, the Civil Justice Committee focused on three projects:

- A. Distributing questionnaires to attorneys, jurors and judges to assess ways to improve the juror deliberative process and to evaluate the use and effectiveness of jury instructions before, during and after the presentation of evidence.
- B. Studying the elimination of expert depositions.

- C. Studying discovery rules to consider (a) adopting a mandatory disclosure requirement similar to Federal Rule of Civil Procedure 26 and (b) eliminating the discovery deposition.

In Conference Year 2017, the Civil Justice Committee hopes to use the results of the civil jury trial questionnaires to assess ways to improve juror deliberative process and evaluate the use and effectiveness of jury instructions before, during and after the presentation of evidence. The Civil Justice Committee did not recommend the elimination of expert depositions. The Civil Justice Committee continues to study discovery rules to consider adopting a mandatory disclosure requirement and eliminating the discovery deposition and thus, was not ready to make any final recommendations during this conference year.

### **Criminal Justice Committee**

During Conference Year 2016, the Criminal Justice Committee explored ways of assisting in the implementation, utilization, and evaluation of evidence based practices in sentencing by the Illinois judiciary, including coordinating with the Judicial Conference Committee on Education and the Administrative Office of the Illinois Courts. These efforts resulted in regional trainings on evidence based practices.

Further, the Committee discussed a request from the Supreme Rules Committee to comment on a proposal to amend Supreme Court Rule 415(c) to remove the requirement that materials furnished to an attorney remain in his or her exclusive custody. The proposal also sought to amend Rule 415(d) to provide that the court may order that specified disclosures be restricted, conditioned upon compliance with protective measures; and that the material/information is disclosed in sufficient time for counsel to make beneficial use of the disclosure. The Committee reached a consensus that the proposal could provide to criminal defendants sensitive information about victims, witnesses, police officers and jury members, which could possibly be used for inappropriate purposes. The Committee also agreed that even if the sensitive information were to be redacted, the proposed language would require additional discussion and arguments regarding the need to redact the information, thereby causing cases to move through the system more slowly.

The Committee continued to discuss ways of implementing sentencing flexibility similar to the federal sentencing guidelines. The Committee, however, was advised that the Illinois General Assembly had begun to address this issue legislatively and decided to defer discussion on this issue pending legislative action.

The Committee also examined drafting a best practices guide for criminal trial court judges in coordination with the Committee on Education. The Committee's goal is to identify recurring issues in the criminal court system and for suggesting solutions, which would then be placed in a best practices guide to hopefully reduce the need for new rules and/or amending existing rules. To further discussion, the Committee is preparing to send a survey to appellate judges to solicit their input on common issues seen on appeal in criminal cases. These responses will serve as a foundation for drafting the best practices guide.

## **Committee on Education**

The Committee on Education, in Conference Year 2016, has continued its charge to design and sustain the delivery of continuing education programs for Illinois judges while the Illinois Judicial College, established by the Supreme Court effective January 1, 2016, becomes operational. When fully operational, the Committee on Education will serve as one of the six standing Committees of the Illinois Judicial College. The College will expand continuing education beyond the judiciary to include non-judicial branch officers, employees, and others who aid the court in the administration of justice, providing increased opportunity for comprehensive professional development and multi-disciplinary continuing education. Faculty Development Workshops offered by the Committee continue to provide new and experienced faculty with the opportunity to become more effective facilitators and design learning activities focused on the adult learner.

The Judicial Benchbook project is also managed by the Committee on Education collaboratively with the Administrative Office of the Illinois Courts and oversees the publication of Illinois Judicial Benchbooks and Manuals on a range of substantive areas of the law. These benchbooks and manuals are resources created for the benefit of Illinois judges, but are not citable as legal authority. In coordination with the Administrative Office of the Illinois Courts and other Supreme Court Committees, the Committee released the 2016 Benchbooks and Manuals in hard copy and CD in the fall of 2016.

In addition, the Committee planned, delivered, and evaluated the February and April 2016 Judicial Education Conferences, May 2016 DUI Seminar, October 2016 Access to Justice Seminar, November 4<sup>th</sup> Appellate District and 5<sup>th</sup> Appellate District regional seminars on Effective Pretrial Practices, while concurrently planning for the January 2017 New Judge Seminar and other education events scheduled for 2017.

## **Juvenile Justice Committee**

During Conference Year 2016, the Court requested that the Juvenile Justice Committee develop a biennial conference for juvenile court judges in collaboration with the Committee on Education. A subcommittee was formed to develop the conference consisting of members from the Committee on Education and Juvenile Justice Committee. The subcommittee has begun planning the two day conference scheduled for 2017, with an emphasis on trauma-informed juvenile courts. In addition to having experts from the respective fields present on relevant topics, educational tools and networking opportunities will be implemented and include youth speakers, small group discussions and a sharing of program ideas.

The Committee was also tasked with developing a web-based clearinghouse to identify programs created by juvenile court judges throughout the state and be available to all judges as a resource guide. The Committee worked with the Administrative Office of the Illinois Courts to develop a location on the Court's website for the clearinghouse. A program submission form was created, made available to judges online, and is to be submitted to the Committee for consideration of placement on the clearinghouse. It is anticipated that all submissions will be vetted by the Committee and that the clearinghouse will be reviewed at least annually to confirm information is current and accurate.



The Committee was further asked to explore mandatory minimal education requirements for attorneys' assigned juvenile abuse and neglect cases. The Committee reviewed research on the topic and discussed the pros and cons of requiring minimum educational requirements, including the availability for educational opportunities and the manner in which this could be monitored. The Committee learned that 17 states require some type of Continuing Legal Education (CLE) for Child Welfare Attorneys and/or Guardian Ad Litem. Minimum requirements ranged from 2 hours per year (Alabama) and up to 8 hours per year (Wisconsin), a one-time training, or a one-time training and CLE. The Committee also reviewed current Supreme Court Rules to determine what rules, if any, may already apply and what impact minimum requirements would have on current CLE requirements. After careful consideration and discussion about the unique nature of abuse and neglect proceedings, the evolving research on development and behavior, the court rules and procedures specific to these cases, and the impact that turnover in attorneys, caseworkers and judges has on a juvenile's success, the Committee unanimously agreed that it is vitally important that any attorney assigned this type of proceeding have at least some on-going legal education specific to juvenile law and research. Such a requirement would be consistent with national trends and ensure the best outcome for children involved in abuse and neglect proceedings.

Lastly, the Committee explored the issue of shackling youth in court, including current standards and trends, and whether it is appropriate to make any recommendations in regards to the shackling of youth in court. The Committee reviewed research on juvenile shackling practices and reform trends across the country, shackling practices within Illinois, and considered a proposal submitted to the Supreme Court Rules Committee by the Illinois Justice Project. In addition, the Committee reached out to Illinois judges who are currently assigned a juvenile court call to determine what impact, if any, such a rule would have on their court and whether there was a need for such a rule. The Committee discussed the pros and cons of the proposed rule at length, considered the objectives of the rule, and discussed the appropriate location for such a rule. Ultimately, the Committee agreed to modifying language of the proposed rule to ensure judicial discretion in the use of shackles and placing the proposed rule in Article IX of the Supreme Court Rules, and adding a committee comment for clarification of the rule. The modified proposed rule was approved by the Committee and the Illinois Judicial Project, and then referred back to the Supreme Court's Rules Committee. A public hearing on the proposed rule was held on July 8, 2016. Supreme Court Rule 943, addressing the shackling of juveniles during court proceedings, became effective November 1, 2016.

### **Committee on Strategic Planning**

During Conference Year 2016, the Committee on Strategic Planning continued its mission to assist the Supreme Court in advancing the Court's goal of an impartial, accessible and efficient justice system. The Committee has undertaken projects designed to provide valuable information to the Supreme Court to assist it in determining ways to ensure the Illinois court system is functioning in a just and efficient manner. The Committee has established communications with the Conference of Chief Circuit Judges and other Supreme Court Committees and Commissions in order to keep abreast of developments related to strategic planning and to collaborate where possible.

In 2016, the Committee discussed court efficiency and fairness obstacles pertaining to a wide array of court functions, processes and overall organization. The Committee provided the Supreme Court with an interim report which contained expressions of the Committee's support for specific court programs and support for the Court's progress and initiatives related to e-business. The Committee's interim report also contained proposals for short term and long term initiatives all related to court efficiency and fairness. The Supreme Court has forwarded several of the Committee's proposals to other relevant Supreme Court Committees and Commissions who have subject matter expertise and can further explore these ideas. The Committee also explored the idea of a statewide survey for court staff. The goal of the survey would be to measure court efficiencies from the perspective of the court staff and allow court staff to suggest ideas for improving court efficiencies. The Committee will continue these discussions in 2017.

## **Conclusion**

As evidenced by these Committee summaries, the scope of work undertaken by the Judicial Conference in 2016 was broad and included recommendations on improving efficiency through the continuing use and expansion of technology and alternative dispute resolution programs. Committees also focused on developing judicial education programs, continuing legal education requirements for practitioners, and presenting training on evidenced based practices. Several amendments to Supreme Court Rules were offered, as well as recommendations on how to enhance access, fairness, transparency and diversity in the administration of justice.

Although many projects and initiatives were completed in the 2016 Conference Year, some will continue on into Conference Year 2017, and additional projects will be assigned in 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. Williams*, Case No. 2016 IL 118375 (January 22, 2016).

Defendant pleaded guilty to unlawful delivery of a controlled substance in exchange for a sentencing cap of 25 years' imprisonment. He later moved to withdraw his plea, claiming he had been improperly admonished regarding the maximum sentence he faced. The trial court had stated, several times, that he faced a maximum sentence of 60 years' imprisonment because a prior conviction made him eligible for Class X sentencing (6-30 years) and his prior drug offense doubled the maximum to 60 years. Defendant was subsequently sentenced to 25 years' imprisonment, in accordance with the plea agreement.

The appellate court reversed and remanded, concluding that defendant was improperly admonished. On review, the Supreme Court considered whether Section 408(a) of the Controlled Substances Act (720 ILCS 570/408(a)) should have been applied to double defendants' potential maximum sentence of 30 years. Defendant argued that Section 408(a) should only be applied to offenses committed in violation of the Controlled Substances Act, while the State argued it may be applied to double defendant's enhanced Class X maximum of 30 years to 60 years. The Court,

after examining the plain language of the statute, concluded that the language of Section 408(a) was ambiguous, and thus it was unable to determine with certainty that the legislature had intended Section 408(a) to apply to offenses such as defendant's. Accordingly, the Court invoked the rule of lenity to determine that Section 408 could not be applied to double defendant's enhanced Class X potential maximum sentence. The Court also encouraged the General Assembly to revisit Section 408(a) to clarify to what extent, if any, the statute may apply to offenses other than those committed in violation of the Controlled Substances Act. *Appellate court judgment affirmed.*

*State of Illinois v. AFSCME Council 31*, 2016 IL 118422 (March 24, 2016).

At issue in this case was a 2008 collective bargaining agreement (CBA) between the State and AFSCME, a bargaining unit representing approximately 40,000 state employees, which called for a 4% wage increase for state employees to take effect on July 1, 2011. Thereafter in 2010, in recognition of the ongoing fiscal crisis then facing the State, the parties entered into two cost savings agreements that included a partial deferral of the scheduled increase, amounting to a 2% increase to take effect on July 1, 2011, with the remaining 2% to be implemented on February 1, 2012. In his FY2012 budget proposal, Governor Pat Quinn included a request for appropriations to fully fund the increases reflected in these agreements. However, the General Assembly did not appropriate sufficient funding to increase all employees' salaries, and 14 agencies were unable to fully fund the raises.

AFSCME filed a grievance under the CBA and demanded arbitration to resolve the dispute. Before the arbitrator, the State relied heavily upon Section 21 of the Illinois Public Labor Relations Act (5 ILCS 315/21), which provides that all collective bargaining agreements between public employers and unions are "subject to the appropriation power of the employer..." According to the State, Section 21 mandates that any expenditures by the executive branch pursuant to a CBA must be contingent on appropriations of the funds by the General Assembly, and that the Appropriations Clause of the Illinois Constitution contains the same mandate. The State also argued that Section 21 was incorporated into its CBA with AFSCME. Conversely, AFSCME argued that Section 21 should not be read to make collective bargaining agreements subject to the approval of the General Assembly.

The arbitrator sided with AFSCME, finding that the State violated its contractual obligation to pay the salary increases. The trial court ruled in favor of AFSCME and upheld the arbitrator's award. On appeal, the appellate court likewise affirmed the arbitrator's award and rejected the State's argument that the CBA was subject to the appropriation.

Reversing the arbitrator and both reviewing courts, the Supreme Court ruled in favor of the State and ultimately vacated the award, finding that enforcement of the CBA would have violated public policy. Although the State may enter into multi-year collective bargaining agreements covering wage and salary terms for state employees, such agreements are ultimately subject to appropriation by the General Assembly. The Court cited both the Appropriations Clause and Section 21 of the IPLRA in holding that, although the State had the authority to bargain over wages with its employees and to sign a multi-year CBA, public policy gives the

power to appropriate for the expenditure of public funds to the General Assembly alone. In light of this public policy, the Court vacated the arbitration award. *Judgments reversed.*

*Jones v. Municipal Employees' Annuity and Benefit Fund of Chicago*, 2016 IL 119618 (March 24, 2016).

At issue in this case was whether Public Act 98-641, which amended the Illinois Pension Code for certain pension funds for employees of the City of Chicago, violated the pension protection clause of the Illinois Constitution. The City of Chicago Pension Funds in question ("Funds") provide traditional defined benefit plans under which members receive specified annuities upon retirement. Prior to the enactment of PA 98-641, annuity payments for employees hired before January 1, 2011 were subject to a compounded 3% automatic annual increase. For employees hired after January 1, 2011, annuity adjustments were tied to the Consumer Price Index (CPI). All employees contributed 8.5% of their salary annually, and the City contributed an amount based on a fixed multiplier as provided in the Pension Code.

PA 98-641 was intended to address a funding crisis that threatened the solvency and sustainability of the Funds. It increased the City's contributions to the Funds in order to bring them up to a 90% funding ratio, and increased employee contributions on an incremental basis. PA 98-641 also limited the amount of the annual increase for all employees to the lesser of a flat 3% increase, or half the annual unadjusted percentage increase in the CPI. PA 98-641 also eliminated compounding of the annual increases, and eliminated the increases entirely for some years.

The trial court declared PA 98-641 to be unconstitutional under the pension protection clause of the Illinois Constitution (Ill. Const. 1970, art. XII, §5). The Supreme Court affirmed the trial court's ruling, finding that under the clause, a public employee's membership in a pension system is an enforceable contractual relationship, and the employee has a constitutionally protected right to the benefits of that contractual relationship. The constitutional protections attach at the time the individual begins employment and becomes a member of the public pension system. Thus, the General Assembly may not unilaterally reduce or eliminate pension benefits conferred by membership in that pension system.

The Court rejected defendants' argument that PA 98-641, when read as a whole, did not diminish or impair pension benefits, because it provided a "net-benefit" to members by rescuing the Funds from insolvency. The pension protection clause guarantees members the right to receive their pension benefits. The purported "offsetting benefit" of actuarially sound funding and solvency in the Funds merely offered members in those systems what they were already entitled to. The Court held that the promise of solvency could not be "netted" against an unconstitutional diminishment of benefits.

Defendants also argued that PA 98-641 was not the product of unconstitutional unilateral action, but was instead a bargained-for exchange between the City and the unions representing the Funds' participants. The Court also rejected this argument, holding that, as a matter of law, members of the Funds did not bargain away their constitutional rights, as the Unions in question were not acting as authorized agents within the collective bargaining process, but were engaging



in legislative advocacy when they agreed to the changes in PA 98-641. Public Act 98-641 was therefore declared unconstitutional in its entirety, under the pension protection clause of the Illinois Constitution. *Affirmed.*

*Matthews v. Chicago Transit Authority*, 2016 IL 117638 (May 5, 2016).

At issue in this case was the enforceability of plaintiffs' rights to retiree health care benefits as set forth in a 2004 collective bargaining agreement (CBA) between the Chicago Transit Authority (CTA) and the labor unions (Unions) representing CTA's bus and rail employees.

Beginning in 1949, the CTA and its unions incorporated a Retirement Plan Agreement into their CBAs, which contained provisions for retiree health care. The 2004 Retirement Plan Agreement included a provision requiring the Retirement Plan to pay "an amount sufficient to provide insurance coverage for all retirees" under the Group Plan. The 2004 Agreement also specified that the retiree health care benefit would terminate when the retiree reached age 65.

In 2006, the Unions and CTA were unable to negotiate an extension of the 2004 CBA, and the dispute was subject to an interest arbitration proceeding. The interest award deleted the prior health care provision and created a separate trust (funded through bonds, and contingent upon enactment of necessary legislation) to pay for retiree health care benefits. The award also required current employees to pay a "payroll tax" equal to 3% of compensation, and retirees were to contribute up to 45% of the total cost of their health care. These terms were incorporated into the CBA covering the period from 2007-2011, and enacting legislation amending the Pension Code and the Metropolitan Transit Authority Act was passed in 2008 as Public Act 95-708.

Two classes of current and former employees filed challenges to the retiree health care changes contained in PA 95-708, claiming violations of the pension protection clause of the Illinois Constitution (Ill. Const. 1970, art. XII, §5), as well as breach of contract, promissory estoppel and breach of fiduciary duty. The circuit court dismissed the lawsuit in its entirety, finding that current employees did not have standing to challenge modification of their benefits, and that the provisions in the CBA allowing for modification of the CBA meant that health care benefits were subject to modification and thus were not vested. The appellate court affirmed the finding that current employees did not have standing, but held that the retirees had a vested right to receive the health care benefits in the 2004 CBA, based on the "*Yard-Man*" presumption in favor of vesting, originally adopted in *UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983). In 2015, after the appellate court issued its decision, the United States Supreme Court issued *M&G Polymers USA, LLC v. Tackett*, 135 S. Ct. 926 (2015) rejecting the "*Yard-Man*" principle.

The Illinois Supreme Court affirmed the appellate court's ruling that plaintiffs who retired before the effective date of the 2007 CBA had standing, and then analyzed whether the pension protection clause entitled plaintiffs to continuation of the 2004 CBA retiree health care benefits. The Court rejected plaintiffs' argument that the pension protection clause automatically vested the retirement benefits provided in a CBA. The Court held that the pension protection clause protects a contractual relationship, and thus is governed by the actual terms of the contract or

pension plan in effect at the time the employee becomes a member of the retirement system. The Court, acknowledging the overruling of *Yard-Man*, held that the question of whether the CBA provided a right to retiree health care benefits beyond the expiration date of the agreement must be decided by application of “ordinary contract principles” and without any presumption in favor of vesting.

The Court then went on to consider whether, under traditional rules of contract interpretation, the terms of the 2004 CBA evidenced an intention by the CTA and the Unions to vest retiree health care benefits; that is, whether the parties to the 2004 CBA intended the retiree health care benefits to remain enforceable after the termination of the 2004 CBA. The Court concluded that they did, based on the sentence in the 2004 CBA stating that the retiree health care benefits would terminate when the retiree attains age 65. This provision demonstrated that the right to retiree health care benefits was intended to extend beyond the expiration of the 2004 CBA. Thus, a class of employees who had retired prior to the expiration of the 2004 CBA had an enforceable, vested right to the health care provisions contained in the 2004 CBA. Failure to honor that right constituted not only a breach of contract but a violation of the pension protection clause. Therefore, a specific class of plaintiffs who retired from the CTA prior to the effective date of Public Act 95-708, had successfully stated a cause of action for breach of contract and for violation of the pension protection clause of the Illinois Constitution. *Appellate court judgment affirmed in part and reversed in part. Cause remanded.*

*Moline School District v. Quinn*, 2016 IL 119704 (June 16, 2016).

At issue in this case was the constitutionality of Public Act 97-1161, which amended the Property Tax Code (35 ILCS 200/1-1) to create an exemption from property taxes on leasehold interests and improvements on real estate owned by the Metropolitan Airport Authority of Rock Island County and used by a fixed base operator (FBO) to provide aeronautical services to the public. When the law was enacted, Elliott Aviation, Inc. was the only FBO leasing land from the Authority. The law was specifically designed to provide a financial incentive for Elliot to expand its operations at the Authority’s facilities rather than its operations in Des Moines, Iowa, which were not subject to property tax.

The Moline School District faced losing more than \$150,000 per year in tax revenue as a result of the exemption. It filed suit, asserting that PA 97-1161 violated the Illinois Constitution’s prohibition on “special legislation” (Ill. Const. 1970, art. IV, §13). The trial court rejected the District’s argument, and upheld the Public Act. The appellate court reversed and Supreme Court affirmed the appellate court.

The Supreme Court agreed with the appellate court that PA 97-1161 clearly discriminated in favor of one specific group. By its terms, it only provided property tax relief for FBOs providing services at the MAA’s Quad City Airport. No other FBO providing services to the public at any other Illinois airport was given similar treatment, and, under the law, no other FBO at any other Illinois airport would have the opportunity to obtain such tax treatment. The Court went on to find that the Act’s classification granting preferential tax treatment to for Elliot was not rationally related to a legitimate state interest. The stated justification in PA 97-1161 was to induce Elliot to undertake its contemplated expansion in Illinois rather than in Iowa, with the

hope that the expansion would create additional jobs and thereby boost the local Rock Island economy. However, the Court found that there was no reasonable justification for limiting the preferential tax treatment to only those FBOs operating at the Quad City airport, rather than the numerous other FBOs at other Illinois airports or, from the other Illinois businesses that operate on the state's borders or compete with companies in neighboring states. On the contrary, PA 97-1161 was an arbitrary legislative classification not founded on any substantial difference of situation or condition, and thus violated the Illinois Constitution. As such, Public Act 97-1161, which provided property tax relief for a single fixed-base operator providing aeronautical services at a single Illinois airport violated the Illinois Constitutional prohibition against special legislation, and was thus invalidated in its entirety. *Affirmed.*

*Moon v. Rhode*, 2016 IL 119572 (September 22, 2016).

On May 18, 2009, plaintiff's 90-year-old mother, Kathryn Moon, was admitted to Peoria's Proctor Hospital for a rectal prolapse. During her hospitalization, plaintiff's mother experienced numerous complications, culminating with her death on May 29, 2009. On February 28, 2013, the decedent's CT scans were reviewed upon plaintiff's request with the reviewing doctor, Dr. Dachman, opining that defendant's actions caused or contributed to Kathryn's death. In March 2013, plaintiff filed suit under the Wrongful Death Act (740 ILCS 180/1) and the Survival Act (755 ILCS 5/27-6), claiming medical malpractice against Dr. Rhode.

At issue was whether Section 13-212(a) of the Code of Civil Procedure (735 ILCS 5/13-212(a)) or Section 2(c) of the Wrongful Death Act (740 ILCS 180/2(c)) would dictate the proper statute of limitations on the plaintiff's claims. Section 13-212(a) states that a complaint for medical malpractice must be filed "2 years after the date on which the claimant knew, or the use of reasonable diligence should have known...of the existence of the injury or death," while Section 2(c) of the Wrongful Death Act states that any such action for wrongful death "shall be commenced within 2 years after the death of such person."

Defendants argued that, under either provision, the statute of limitations began running on the date plaintiff knew of his mother's death, and the suit was thus untimely. Plaintiff invoked the common law "discovery rule" arguing that the statute of limitations, as provided in Section 13-212(a) of the Code, began only after he received Dr. Dachman's report indicating that his mother's death was the result of negligence. The trial court dismissed the complaint with prejudice. A divided appellate court affirmed, reasoning that the discovery rule had no application to wrongful death or survival actions because both causes of action were legislatively created and not found at common law and that, even if that rule were applied, plaintiff's complaint would be untimely.

The Supreme Court reversed, finding the discovery rule applicable. It concluded that when both a general and a more specific statutory provision relate to the same subject, the Court must presume the legislature intended the more specific one to govern. Here the Court presumed that the legislature intended Section 13-212(a) to control, requiring a factual analysis to determine when the statute of limitations began to run. Plaintiff filed his lawsuit less than two years after receiving the initial verbal medical expert report and within the four-year statute of repose. Therefore, the common law "discovery rule" applies to Section 13-212(a) of the Code of

Civil Procedure, tolling the statute of limitations on a medical malpractice wrongful death action until the plaintiff knows, or should have known, that the death was caused by the defendant's actions. *Judgments reversed. Cause remanded.*

*Kakos v. Butler*, 2016 IL 120377 (September 22, 2016).

Plaintiffs filed a complaint alleging medical negligence and loss of consortium against defendants, who were doctors and medical providers. Defendants moved for leave to file a 12-person jury demand and “to declare Public Act 98-1132, which amended 735 ILCS 5/2-1105(b), as unconstitutional.” Public Act 98-1132 amended two statutes to limit the size of a civil jury to six persons and also increase the amount paid per day to jurors across the state.

The circuit court found the provision regarding jury size to be facially unconstitutional based on Article I, Section 13, of the Illinois Constitution, which protects the right of trial by jury “as heretofore enjoyed.” The Supreme Court affirmed, finding that “as heretofore enjoyed,” means the right as it was enjoyed at the time the constitution was drafted. Transcripts from the 1970 Constitutional Convention debates reveal that the drafters of the 1970 Constitution did not believe the legislature had the authority to reduce the size of a jury below 12 members. As such, the drafters did not act to give the legislature such power. Further, since the jury size provision could not be severed from the remainder of the Public Act, which addressed juror pay, the Act was held entirely invalid. Therefore, Public Act 98-1132, which reduced civil juries from 12 persons to six persons was declared unconstitutional on its face and was invalidated in its entirety. *Affirmed and remanded.*